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Electronically Filed
May 23 2022 03:48 p.m.
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11 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
12 **IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA**

13 LAS VEGAS VALLEY WATER DISTRICT,
14 and SOUTHERN NEVADA WATER
15 AUTHORITY,

Case No. A-20-816761-C

Dept. 1

Petitioners,

Consolidated with Cases:

vs.

A-20-817765-P
A-20-817840-P
A-20-817876-P
A-20-817977-P
A-20-818015-P
A-20-818069-P
A-21-833572-J

16 ADAM SULLIVAN, P.E., Nevada State
17 Engineer, DIVISION OF WATER
18 RESOURCES, DEPARTMENT OF
19 CONSERVATION AND NATURAL
20 RESOURCES,

Respondent.

NOTICE OF APPEAL

21
22
23 The Center for Biological Diversity, by and through counsel, pursuant to NRS 533.450(9),
24 hereby appeals to the Nevada Supreme Court from the Court's Findings of Fact, Conclusions of Law,
25 and Order Granting Petitions for Judicial Review, filed by this Court on April 19, 2022, as well as the
26 Court's Addendum and Clarification to the April 19 Order, filed on May 13, 2022. The first Notice of
27
28

1 Entry of Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review was
2 served on April 19, 2022, a copy of which is attached hereto as Exhibit 1.

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

5
6 Dated this 16th day of May, 2022.

7 /s/ Scott Lake

8 SCOTT LAKE, NV Bar No. 15765

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10 **IN ASSOCIATION WITH:**

11 LISA T. BELENKY (admitted *Pro Hac Vice*)

12 Center for Biological Diversity

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15 Email: lbelenky@biologicaldiversity.org

1 **CERTIFICATE OF SERVICE**

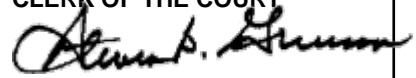
2 I certify that I am an employee of the Center for Biological Diversity, and that on this 16th
3 day of May, 2022 I served a true and correct copy of the foregoing by electronic service to the
4 participants in this case who are registered with the Eighth Judicial District Court's Odyssey
5 eFileNV File & Serve system to this matter.

6
7 */s/ Scott Lake*
8 Scott Lake
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INDEX OF EXHIBITS

Exhibit No.	Exhibit Description	Number of Pages
1	Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review filed April 19, 2022	44

Exhibit 1



1 **NEFF**
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15 WATER DISTRICT and VIDLER WATER
16 COMPANY, INC.

17 **DISTRICT COURT**
18 **CLARK COUNTY, NEVADA**

19 LAS VEGAS VALLEY WATER DISTRICT,
20 and SOUTHERN NEVADA WATER
AUTHORITY, et al.,

Case No. A-20-816761-C

Dept. No. 1

21 Petitioners,

Consolidated with Cases:

22 vs.

A-20-817765-P

A-20-818015-P

A-20-817977-P

23 ADAM SULLIVAN, P.E., Acting
24 Nevada State Engineer, et al.,

A-20-818069-P

A-20-817840-P

A-20-817876-P

25 Respondent.

A-21-833572-J

26 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW,**
27 **AND ORDER GRANTING PETITIONS FOR JUDICIAL REVIEW**

28 ///

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YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the *Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review* was entered on the 19th day of April, 2022 in the above captioned and consolidated cases, a copy of which is attached hereto.

DATED this 19th day of April, 2022.

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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused a true and correct copy of the foregoing document to be served on all parties to this action by electronic service to the participates in this case who are registered with the Eighth Judicial District Court’s Odyssey eFileNV File & Service system to this matter.

DATED this 19th day of April, 2022.

/s/ Nancy Fontenot
NANCY FONTENOT

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<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	Findings of Fact, Conclusions of Law, And Order Granting Petitions for Judicial Review	40

4857-5859-8684, v. 1

EXHIBIT “1”

FFCO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAS VEGAS VALLEY WATER DISTRICT,
and SOUTHERN NEVADA WATER
AUTHORITY,

Case No. A-20-816761-C
Dept. No. I

Petitioners,

Consolidated with Cases:

vs.

A-20-817765-P
A-20-818015-P
A-20-817977-P
A-20-818069-P
A-20-817840-P
A-20-817876-P
A-21-833572-J

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

Respondent.

And All Consolidated Cases.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PETITIONS
FOR JUDICIAL REVIEW**

This matter comes before this Court on consolidated petitions for judicial review of State Engineer's Order 1309 filed by Petitioners:

- Southern Nevada Water Authority and Las Vegas Valley Water District
- Coyote Spring Investment, LLC
- Apex Holding Co. and Dry Lake Water, LLC
- The Center for Biological Diversity
- Muddy Valley Irrigation Company
- Nevada Cogeneration Associates Nos. 1 and 2
- Georgia-Pacific Gypsum LLC and Republic Environmental Technologies, Inc.
- Lincoln County Water District and Vidler Water Company.

Bitia Yeager
Eighth Judicial District Court
Clark County, Nevada
Department I

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The parties stipulated to permit the following Intervenors into this matter:

- Sierra Pacific Power Company d/b/a NV Energy and Nevada Power Company d/b/a NV Energy
- Moapa Valley Water District
- The Church of Jesus Christ of Latter-Day Saints
- City of North Las Vegas
- Western Elite Environmental, Inc. and Bedroc Limited, LLC.

In addition, some Petitioners intervened to respond to other petitions for judicial review. The Parties appeared by and through their respective counsels of record. The Court held oral argument from February 14, 2022 to February 17, 2022.

The Court having considered the evidence, the pleadings, together with opening and closing arguments presented at the hearing for these matters, and good cause appearing therefor, makes the following Findings of Fact, Conclusions of Law, and Order:

I.

PROCEDURAL HISTORY

On June 15, 2020, the Nevada State Engineer issued Order No. 1309 as his latest administrative action regarding the Lower White River Flow System (“LWRFS”)¹.

On June 17, 2020, the Las Vegas Valley Water District and the Southern Nevada Water Authority (collectively, “SNWA”) filed a petition for judicial review of Order 1309 in the Eighth Judicial District Court in Clark County, Nevada.² Subsequently, the following petitioners filed petitions for judicial review in the Eighth Judicial District Court: Coyote Spring Investments, LLC (“CSI”); Apex Holding Company, LLC and Dry Lake Water LLC (collectively, “Apex”); the Center Biological Diversity (“CBD”); Muddy Valley Irrigation Company (“MVIC”); Nevada

¹ SE ROA 2 – 69. The LWRFS refers to an area in southern Nevada made up of several hydrological basins that share the same aquifer as their source of groundwater. The Nevada State Engineer determined that this encompasses the area that includes Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, Kane Springs Valley and the northwest portion of the Black Mountains Area.

² LVVWD and SNWA Petition for Judicial Review, filed June 17, 2020.

1 Cogeneration Associates Numbers 1 and 2 (“Nevada Cogen”); and Georgia-Pacific Gypsum LLC,
2 and Republic Technologies, Inc. (collectively, “Georgia-Pacific”). All petitions were consolidated
3 with SNWA’s petition.³

4 Later, Sierra Pacific Power Company d/b/a NV Energy (“Sierra Pacific”) and Nevada
5 Power Company d/b/a NV Energy (“Nevada Power” and, together with Sierra Pacific, “NV
6 Energy”), Moapa Valley Water District (“MVWD”), the Church of Jesus Christ and of Latter-Day
7 Saints (the “Church”), the City of North Las Vegas (“CNLV”), and Western Elite Environmental,
8 Inc. and Bedroc Limited (collectively, “Bedroc”) ⁴ were granted intervention status in the
9 consolidated petitions for judicial review of Order 1309.

10 On July 13, 2020, Lincoln County Water District and Vidler Water Co. (collectively,
11 “Vidler”) timely filed their Petition for Judicial Review of State Engineer Order 1309 in the
12 Seventh Judicial District Court in Lincoln County, Nevada, identified as Case No. CV-0702520.
13 On August 26, 2020, the Seventh Judicial District Court issued an Order Granting Motion to
14 Change Venue, transferring this matter to the Eighth Judicial District Court in Clark County,
15 Nevada. Vidler appealed the Order Granting Motion to Change Venue to the Nevada Supreme
16 Court, and on April 15, 2021, the Nevada Supreme Court entered its Order of Affirmation. On
17 May 27, 2021, per verbal stipulation by the parties, the Court ordered this matter consolidated into
18 Case No. A-20-816761-C. When transferred to the Eighth Judicial District Court, Vidler’s action
19 was assigned Case No. A-21-833572-J. Notwithstanding the consolidation of all of the cases, each
20 case retained its individual and distinct factual and legal issues.

21 Petitioners in all the consolidated actions filed their Opening Briefs on or about August 27,
22 2021. Respondents State Engineer, Intervenors, and Petitioners who were Respondent-Intervenors
23 filed their Answering Briefs on or about November 24, 2021. Petitioners filed their Reply Briefs on
24 or about January 11, 2022.

25 _____
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27 ³ Stipulation for Consolidation, A-20-816761-C, May 26, 2021.

28 ⁴ Bedroc and CNLV did not file briefs and did not participate in oral argument.

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II.

FACTUAL HISTORY

A. The Carbonate Groundwater Aquifer and the Basins

Much of the bedrock and mountain ranges of Eastern Nevada are formed from a sequence of sedimentary rocks laid down during the Paleozoic Era. These formations are limestones or dolomites, commonly referred to as “carbonates,” due to the chemical composition of the minerals composing the rocks. These formations have been extensively deformed through folding and faulting caused by geologic forces. This deformation has caused extensive fracture and fault systems to form in these carbonate rocks, with permeability enhanced by the gradual solution of minerals. The result is an aquifer system that over time has accumulated large volumes of water with some apparent degree of connection throughout the much of area.⁵ The valley floors in the basins of Eastern Nevada are generally composed of alluvium comprised largely of relatively young (<5 million years) unconsolidated sands, gravels, and clays. This sequence is loosely referred to as the “Alluvial Aquifer,” the aquifer for most shallow wells in the area. Most of the water in the Carbonate Aquifer is present due to infiltration of water thousands of years ago; recent recharge from present day precipitation may represent only a fraction of the water stored.

Approximately 50,000 square miles of Nevada sits atop of this geologic layer of carbonate rock, which contains significant quantities of groundwater.⁶ This carbonate-rock aquifer system contains at least two major “regional flow systems” - continuous, interconnected, and transmissive geologic features through which water flows underground roughly from north to south: the Ash Meadows-Death Valley regional flow system; and the White River-Muddy River Springs system.⁷ These flow systems connect the groundwater beneath dozens of topographic valleys across distances exceeding 200 miles.⁸ The White River-Muddy River Springs flow system, stretching approximately

⁵ State Engineer Record on Appeal (“SE ROA”) 36062-67, Ex. 14; SE ROA 661, Ex. 8.

⁶ SE ROA 659.

⁷ SE ROA 661.

⁸ SE ROA 661.

1 240 miles from southern Elko County in the north to the Muddy River Springs Area in the south,
2 was identified as early as 1966.⁹ The area designated by Order 1309 as the LWRFS consists
3 generally of the southern portion of the White River-Muddy River Springs flow system.¹⁰

4 The Muddy River runs through a portion of the LWRFS before cutting southeast and
5 discharging into Lake Mead.¹¹ Many warm-water springs, including the Muddy River Springs at
6 issue in this litigation, discharge from the regional carbonate groundwater aquifer.¹² The series of
7 springs, collectively referred to as the “Muddy River Springs” in the Muddy River Springs Area
8 hydrographic basin form the headwaters of the Muddy River and provide the only known habitat for
9 the endangered Moapa dace.¹³

10 The Muddy River Springs are directly connected to, and discharge from, the regional
11 carbonate aquifer.¹⁴ Because of this connection, flows from the springs are dependent on the
12 elevation of groundwater within the carbonate aquifer, and can change rapidly in direct response to
13 changes in carbonate groundwater levels.¹⁵ As carbonate groundwater levels decline, spring flows
14 decrease, beginning with the highest-elevation springs.¹⁶

15 As early as 1989, there were concerns that sustained groundwater pumping from the
16 carbonate-rock aquifer would result in water table declines, substantially deplete the water stored in
17 the aquifer, and ultimately reduce or eliminate flow from the warm-water springs that discharge
18 from the aquifer.¹⁷

20 ⁹ SE ROA 11349-59.

21 ¹⁰ *See* SE ROA 11350.

22 ¹¹ SE ROA 41943.

23 ¹² SE ROA 660-61, 53056, 53062.

24 ¹³ SE ROA 663-664, 41959, 48680.

25 ¹⁴ SE ROA 73-75, 34545, 53062.

26 ¹⁵ SE ROA 60-61, 34545.

27 ¹⁶ SE ROA 46, 34545.

28 ¹⁷ *See* SE ROA 661.

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The general rule in Nevada is that one acquires a water right by filing an application to appropriate water with the Nevada Division of Water Resources (“DWR”). If the DWR approves the application, a “Permit to Appropriate” issues. Nevada has adopted the principle of “first in time, first in right,” also known as “priority.” The priority of a water right is determined by the date a permit is applied for. Nevada’s water resources are managed through administrative units called “hydrographic basins,” which are generally defined by topography, more or less reflecting boundaries between watersheds. Nevada is divided into 232 hydrographic basins (256 hydrographic basins and sub-basins, combined) based upon the surface geography and subsurface flow.

The priority of groundwater rights is determined relative to the water rights holder within the individual basins. If there is not enough water to serve all water right holders in a particular basin, “senior” appropriators are satisfied first in order of priority: the rights of “junior” appropriators may be curtailed. Historically, The Nevada State Engineer has managed hydrographic basins in a basin-by-basin manner for decades,¹⁸ and administers and manages each basin as a discrete hydrologic unit.¹⁹ The State Engineer keeps and maintains annual pumping inventories and records on a basin-by-basin basis.²⁰

This administrative structure has worked reasonably well for basins where groundwater is pumped from “basin fill” aquifers or alluvium, where the annual recharge of the groundwater historically has been estimated based upon known or estimated precipitation data - establishing the amount of groundwater that is recharged annually and can be extracted sustainably from a basin, known as the “perennial yield.” In reality, many hydrographic basins are severely over-appropriated, due to inaccurate estimates, over pumping, domestic wells, changing climate conditions, etc.

Administration of groundwater rights is made particularly complex when the main source of

¹⁸SE ROA 654, 659, 699, 726, 755.
¹⁹ SE ROA 949-1069.
²⁰ SE ROA 1070-1499.

1 groundwater is not “basin fill” or alluvium, but aquifers found in permeable geologic formations
2 lying beneath the younger basin fill, and which may underlie large regions that are not well defined
3 by the present-day hydrographic basins. This is the case with Nevada’s “Carbonate Aquifer.”

4 When necessary, the State Engineer may manage a basin that has been designated for
5 administration. NRS 534.030 outlines the process by which a particular basin can be designated for
6 administration by the State Engineer. In the instant case, six of the seven basins affected by Order
7 No. 1309 had already been designated for management under NRS 534.030, including:

- 8 a. Coyote Spring Valley Hydrographic Basin (“Coyote Spring Valley”), Basin No. 210, since
9 1985;
- 10 b. Black Mountains Area Hydrographic Basin (“Black Mountains Area”), Basin No. 215, since
11 November 22, 1989;
- 12 c. Garnet Valley Hydrographic Basin (“Garnet Valley”), Basin No. 216, since April 24, 1990;
- 13 d. Hidden Valley Hydrographic Basin (“Hidden Valley”), Basin No. 217, since October 24,
14 1990;
- 15 e. California Wash Hydrographic Basin (“California Wash”), Basin No. 218, since August 24,
16 1990; and
- 17 f. Muddy River Springs Area Hydrographic Basin (“Muddy River Springs Area”), Basin No.
18 219, since July 14, 1971.²¹

19 Kane Springs Valley (“Kane Springs Valley”), Basin 206, which was also affected by
20 Order No. 1309, had not been designated previously for administration.²²
21

22
23 _____
²¹ See SE ROA 2-3, 71-72.

24 ²² The Court takes judicial notice of Kane Springs Valley Basin’s status of not being designated for administration per
25 NRS 534.030. <http://water.nv.gov/StateEngineersOrdersList.aspx> (available online at the Division of Water Resources.
26 “Mapping& Data” tab, under “Water Rights” tab, “State Engineer’s Orders List and Search”). Facts that are subject to
27 judicial notice “are facts in issue or facts from which they may be inferred.” NRS 47.130(1). To be judicially noticed, a
28 fact must be “[g]enerally known” or “capable of accurate and ready determination by resort to sources whose accuracy
cannot reasonably be questioned.” NRS 47.130(2); *Andolino v. State*, 99 Nev. 346, 351, 662 P.2d 631, 633-34 (1983)
(courts may take judicial notice of official government publications); *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir.
1994) (courts may take judicial notice of documents obtained from administrative agencies); *Greeson v. Imperial Irr.*
Dist., 59 F.2d 529, 531 (9th Cir.1932) (courts may take judicial notice of “public documents”).

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B. The Muddy River Decree

Over one hundred years ago, this Court issued the Muddy River Decree of 1920 (sometimes referred to herein as the “Decree” or “Muddy River Decree”), which established water rights on the Muddy River.²³ The Muddy River Decree recognized specific water rights,²⁴ identified each water right holder on the Muddy River, and quantified each water right.²⁵ MVIC specifically owns certain rights “. . . to divert, convey, and use all of said waters of said River, its head waters, sources of supply and tributaries, save and except the several amounts and rights hereinbefore specified and described . . . and to divert said waters, convey and distribute the same to its present stockholders, and future stockholders, and other persons who may have acquired or who may acquire temporary or permanent rights through said Company. . .”²⁶. The Decree appropriates all water of the Muddy River at the time the Decree was entered, which was prior to any other significant development in the area. The predevelopment flow averaged approximately 33,900 acre feet per annum (“afa”).²⁷ The rights delineated through The Muddy River Decree are the oldest and most senior rights in the LWRFS.

C. The Moapa Dace

The Moapa dace (*Moapa coriacea*) is a thermophilic minnow endemic to the upper spring-fed reaches Muddy River, and has been federally listed as endangered since 1967.²⁸ Between 1933

²³ See Judgment and Decree, *Muddy Valley Irrigation Co. v. Moapa and Salt Lake Produce Co.* (the “Muddy River Decree” or “Decree”) (March 11, 1920) (SE ROA 33770-33816).

²⁴ SE ROA 33770-816. Specifically, the Muddy River Decree finds “[t]hat the aggregate volume of the several amounts and quantities of water awarded and allotted to the parties . . . is the total available flow of the said Muddy River and consumes and exhausts all of the available flow of the said Muddy River, its headwaters, sources of supply and tributaries.” SE ROA 33792-33793.

²⁵ SE ROA 33798-806.

²⁶ SE ROA 33775.

²⁷ See SNWA Report (June 2019) (SE ROA 41930 – 42072) at § 3.4.1 (SE ROA 41962) describing the predevelopment flows as measured in 1946 as 33,900 afa and the average flow measured from July 1, 1913 to June 30, 1915 and October 1, 1916 to September 30, 1917 as 34,000 afa. The NSE further recognizes 33,900 afa as the predevelopment flow. See Order 1309 (SE ROA 2-69) at p. 61 (SE ROA 62).

²⁸ SE ROA 5.

1 and 1950, the Moapa dace was abundant in the Muddy River and was estimated to inhabit as many
2 as 25 individual springs and up to 10 miles of stream habitat. However, by 1983, the species only
3 occurred in springs and two miles of spring outflows. Currently, approximately 95 percent of the
4 total Moapa dace population occurs within 1.78 miles of one major tributary system that flows from
5 three high-elevation spring complexes within the Muddy River Springs Area.²⁹

6 Threats to the Moapa Dace include non-native predatory fishes, habitat loss from water
7 diversions and impoundments, wildfire risk from non-native vegetation, and reductions to surface
8 spring-flows resulting from groundwater development.³⁰ Because the Moapa dace is entirely
9 dependent on spring flow, protecting the dace necessarily involves protecting the warm spring
10 sources of the Muddy River.³¹

11 **D. Order 1169**

12 Significant pumping of the Carbonate Aquifer in the LWRFS began in the 1980s and
13 1990s. Initial assessments of the water available in the Aquifer suggested it would provide a new
14 abundant source of water for Southern Nevada. Because the prospective water resources of the
15 LWRFS carbonate appeared to be substantial, nearly 100 water right applications for over 300,000
16 acre feet were filed in State Engineer's office.³²

17 By 2001, the State Engineer had granted more than 40,000 acre feet of applications in the
18 LWRFS. The State Engineer considered additional applications for groundwater in Coyote Spring
19 Valley and adjacent hydrographic basins. However, concerned over the lack of information
20 regarding the sustainability of water resources from the Carbonate Aquifer, the State Engineer
21 began hearings in July and August 2001 on water right applications.³³

22
23
24 _____
25 ²⁹ SE ROA 47169.

26 ³⁰ SE ROA 47160.

27 ³¹ SE ROA 42087.

28 ³² SE ROA 4, Ex. 1.

³³ *Id.*

1 On March 8, 2002, the State Engineer issued Order 1169 to delay consideration of new
2 water right applications and require the pumping of existing groundwater to determine what impact
3 increased groundwater pumping would have on senior water rights and the environment at the
4 Muddy River (“Aquifer Test”).³⁴ Order 1169 held in abeyance all applications for the
5 appropriation of groundwater from the carbonate-rock aquifer system located in the Coyote Spring
6 Valley Basin (Basin 210), Black Mountains Area Basin (Basin 215), Garnet Valley Basin (Basin
7 216), Hidden Valley Basin (Basin 217), Muddy River Springs aka Upper Moapa Valley Basin
8 (Basin 210), and Lower Moapa Valley Basin (Basin 220).³⁵ California Wash (Basin 218) was
9 subsequently added to this Order.³⁶

10 Notably, Kane Springs was not included in the Order 1169 study area. In Ruling 5712, the
11 State Engineer specifically determined Kane Springs would not be included in the Order 1169
12 study area because there was no substantial evidence that the appropriation of a limited quantity of
13 water in Kane Springs would have any measurable impact on the Muddy River Springs that
14 warranted the inclusion of Kane Springs in Order 1169.³⁷ The State Engineer specifically rejected
15 the argument that the Kane Springs rights could not be appropriated based upon senior
16 appropriated rights in the down gradient basins.³⁸

17 Order 1169A, issued December 21, 2012, set up a test to “stress” the Carbonate Aquifer
18 through two years of aggressive pumping, combined with examination of water levels in monitoring
19 wells located throughout the LWRFS.³⁹ Participants in the Aquifer test were Southern Nevada
20 Water Authority (“SNWA”), Las Vegas Valley Water District (“LVVWD”), Moapa Valley Water
21 District, Coyote Springs Investments, LLC (“Coyote Springs”), Moapa Band of Paiutes, and Nevada
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23 ³⁴ SE ROA 654-669.

24 ³⁵ See SE ROA 659, 665.

25 ³⁶ SE ROA 659-69, Ex. 8; see also SE ROA 654, Ex. 7.

26 ³⁷ SE ROA 719.

27 ³⁸ SE ROA 713.

28 ³⁹ SE ROA 654-58, Ex. 7.

1 Power Company. Pumping included 5,300 afa in Coyote Spring Valley, 14,535 afa total carbonate
2 pumping, and 3,840 afa alluvial pumping.⁴⁰ Pumping tests effects were examined at 79 monitoring
3 wells and 11 springs and streamflow monitoring sites.⁴¹ The Kane Springs basin was not included in
4 the Order 1169 aquifer testing, and Kane Springs basin water right holders were not involved, not
5 provided notice, and did not participate in the aquifer testing, monitoring or measurements,
6 submission of reports, proceedings and actions taken by the State Engineer pursuant to Order 1169.⁴²

7 The State Engineer’s conclusions from the pump test found an “unprecedented decline” in
8 high-altitude springs, an “unprecedented decline” in water levels, and that additional pumping in
9 the central part of Coyote Spring Valley or the Muddy River Spring Area could not occur without
10 conflict with existing senior rights, including decreed surface water rights on the Muddy River, or
11 the habitat of the Moapa Dace. The State Engineer attributed observed decreases in water levels in
12 other areas of the basins to the pumping during the Order 1169 test and concluded that the test
13 demonstrated connectivity within the Carbonate Aquifer of the LWRFS. On this basis, the State
14 Engineer determined that the five basin LWRFS should be jointly managed.

15 In 2014, and based on the results of the Aquifer Test, the State Engineer issued Rulings
16 6254–6261 on January 29, 2014 denying all the pending groundwater applications in Coyote
17 Springs Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, and
18 certain portions of the Black Mountains Area.⁴³ His rationale in each ruling was the same:
19 “because these basins share a unique and close hydrologic connection and share virtually all of the
20 same source and supply of water, unlike other basins in Nevada, these five basins will be jointly
21 managed.”⁴⁴

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24 ⁴⁰ The Order uses the term acre-foot per year (afy), but for consistency with common usage, this Court uses the
equivalent term acre feet per annum.

25 ⁴¹ SE ROA 6, Ex. 1.

26 ⁴² SE ROA 36230 - 36231.

27 ⁴³ SE ROA 726 – 948.

28 ⁴⁴ See e.g., SE ROA 479.

1 **E. Interim Order 1303 and proceedings**

2 On January 11, 2019 -- nearly 17 years after issuing Order 1169, then-State Engineer Jason
3 King issued Interim Order 1303 to start a two-phased administrative process to resolve the
4 competing interests for water resources in the LWRFS.⁴⁵ He created the LWRFS as a joint
5 administrative unit and invited stakeholders to participate in an administrative hearing to address
6 the factual questions of what the boundary of the LWRFS should be, and what amount of
7 groundwater could be sustainably pumped in the LWRFS.⁴⁶ The LWRFS is the first multi-basin
8 area that the Nevada State Engineer has designated in state history. The ordering provisions in
9 Interim Order 1303 provide in pertinent part:

- 10 1. The Lower White River Flow System consisting of the Coyote Spring Valley,
11 Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley,
12 and the portion of the Black Mountains Area as described in this Order, is
13 herewith designated as a joint administrative unit for purposes of
14 administration of water rights. All water rights within the Lower White River
15 Flow System will be administered based upon their respective date of
16 priorities in relation to other rights within the regional groundwater unit.

17 Any stakeholder with interests that may be affected by water right
18 development within the Lower White River Flow System may file a report in
19 the Office of the State Engineer in Carson City, Nevada, no later than the
20 close of business on Monday, June 3, 2019.

21 Reports filed with the Office of the State Engineer should address the
22 following matters:

- 23 a. The geographic boundary of the hydrologically connected groundwater
24 and surface water systems comprising the Lower White River Flow
25 System;
- 26 b. The information obtained from the Order 1169 aquifer test and
27 subsequent to the aquifer test and Muddy River headwater spring flow as
28 it relates to aquifer recovery since the completion of the aquifer test;
- 29 c. The long-term annual quantity of groundwater that may be pumped
30 from the Lower White River Flow System, including the relationships
31 between the location of pumping on discharge to the Muddy River
32 Springs, and the capture of Muddy River flow;

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34 ⁴⁵ SE ROA 635-53, Ex. 6.

35 ⁴⁶ SE ROA 82-83.

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- d. The effects of movement of water rights between alluvial wells and carbonate wells on deliveries of senior decreed rights to the Muddy River; and,
- e. Any other matter believed to be relevant to the State Engineer's analysis.

SE ROA 647-48, Ex. 6.

The State Engineer identified the LWRFS as including the following hydrographic basins: Coyote Spring Valley, a portion of Black Mountains Area, Garnet Valley, Hidden Valley, California Wash, and the Muddy River Springs Area.⁴⁷ Kane Springs continued to be excluded as part of the LWRFS multi-basin area in Interim Order 1303.⁴⁸

In July and August 2019, reports and rebuttal reports were submitted discussing the four matters set forth in Interim Order 1303. On July 25, 2019, the State Engineer issued a Notice of Pre-Hearing Conference, and on August 9, 2019, the State Engineer held a prehearing conference. On August 23, 2019, the State Engineer issued a Notice of Hearing (which it amended on August 26, 2019), noting that the hearing would be “the first step” in determining how to address future management decisions, including policy decisions, relating to the LWRFS.⁴⁹ He also indicated that the legal question of whether groundwater pumping in the LWRFS conflicts with senior water rights would be addressed in Phase 2 of the LWRFS administrative process.⁵⁰

The Hearing Officer made it clear that “any other matter believed to be relevant” as specified in ordering paragraph 1(e) of Order 1303 would not include discussion of the administrative impacts of consolidating the basins or any policy matters affected by its decision. The State Engineer conducted a hearing on the reports submitted under Order 1303 between September 23, 2019, and October 4, 2019. At the start of the administrative hearing, the State Engineer reminded the parties the public administrative hearing was not a “trial-type” proceeding,

⁴⁷ SE ROA 70-88.
⁴⁸ *Id.*
⁴⁹ SE ROA 263, Ex. 2 (Notice); SE ROA 285, Ex. 3 (Amended Notice).
⁵⁰ SE ROA 522.

1 not a contested adversarial proceeding.⁵¹ Cross-examination was limited to between 4-17 minutes
2 per participant depending on the length of time given to a participant to present its reports.⁵²

3 Following the submission by the participating stakeholders of closing statements at the
4 beginning of December 2019, the State Engineer engaged in no additional public process and
5 solicited no additional input regarding “future management decisions, including policy decisions,
6 relating to the Lower White River Flow System basins.”⁵³

7 **F. Order 1309**

8 On June 15, 2020, the State Engineer issued Order 1309.⁵⁴ The first three ordering
9 paragraphs state as follows:

- 10 1. The Lower White River Flow System consisting of the Kane Springs Valley,
11 Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden
12 Valley, Garnet Valley, and the northwest portion of the Black Mountains Area
13 as described in this Order, is hereby delineated as a single hydrographic basin.
14 The Kane Springs Valley, Coyote Spring Valley, Muddy River Springs Area,
15 California Wash, Hidden Valley, Garnet Valley and the northwest portion of
16 the Black Mountains Area are hereby established as sub-basins within the
17 Lower White River Flow System Hydrographic Basin.
- 18 2. The maximum quantity of groundwater that may be pumped from the Lower
19 White River Flow System Hydrographic Basin on an average annual basis
20 without causing further declines in Warm Springs area spring flow and flow in
21 the Muddy River cannot exceed 8,000 afa and may be less.
- 22 3. The maximum quantity of water that may be pumped from the Lower White
23 River Flow System Hydrographic Basin may be reduced if it is determined
24 that pumping will adversely impact the endangered Moapa dace.

25 SE ROA 66, Ex. 1.

26 The Order does not provide guidance about how the new “single hydrographic basin” will
27 be administered and provided no clear analysis as to the basis for the 8000 afa number for the
28 maximum sustainable yield.

25 ⁵¹ SE ROA 52962, Transcript 6:4-6, 24 to 7:1 (Sept. 23, 2019) (Hearing Officer Fairbank).

26 ⁵² SE ROA 52962, Transcript 7:5-7 (Sept. 23, 2019) (Hearing Officer Fairbank).

27 ⁵³ See SE ROA 285, Ex. 3.

28 ⁵⁴ SE ROA 2-69.

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In its Order, the State Engineer indicated that it “considered this evidence and testimony [regarding basin inclusion and basin boundary] 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.”⁵⁵ However, the State Engineer did not disclose these criteria to the stakeholders before or during the Order 1303 proceedings. Instead, he disclosed them for the first time in Order 1309, after the stakeholders had engaged in extensive investigations, expert reporting, and factual hearing requested by Order 1303. The criteria are:

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

⁵⁵ SE ROA 48-49, Ex. 1.

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After consideration of the above criteria, the State Engineer decided to finalize what was preliminarily determined in Interim Order 1303, and consolidated several administrative units into a single hydrographic basin, designated as the “Lower White River Flow System” or “LWRFS.” The State Engineer also added the previously excluded Kane Springs Hydrographic Basin to the LWRFS,⁵⁶ and modified the portion of the Black Mountains area that is in the LWRFS. Although Order 1309 did not specifically address priorities or conflict of rights, as a result of the consolidation of the basins, the relative priority of all water rights within the seven affected basins will be reordered and the priorities will be considered in relation to all water rights holders in the consolidated basins, rather than in relation only to the other users within the original separate basins.

G. Petitioners and Their Respective Water Rights or Interests

- a. Southern Nevada Water Authority and Las Vegas Valley Water District are government agencies serving Southern Nevada’s water needs, and own water rights in Coyote Springs Valley, Hidden Valley, Garnet Valley, and a significant portion of the Muddy River decreed rights.
- b. Coyote Spring Investments, LLC is a developer who owns water rights in Coyote Spring Valley, Kane Springs Valley, and California Wash;
- c. Apex Holding Company, LLC and Dry Lake Water LLC own real estate and water rights to the area of land commonly referred to as the Apex Industrial Park, in Garnet Valley and Black Mountains Area;
- d. The Center Biological Diversity is a national nonprofit conservation organization which does not hold any water rights, but has educational, scientific, biological, aesthetic and spiritual interests in the survival and recovery of the Moapa Dace;
- e. Muddy Valley Irrigation Company is a private company that owns most of the decreed rights

⁵⁶ The Court notes that the Nevada State Engineer determined that Kane Springs should be included in this joint management area, even though the Kane Springs Basin had not been designated previously for management through the statutory process delineated in under NRS 534.030.

- 1 in the Muddy River;
- 2 f. Nevada Cogeneration Associates Numbers 1 and 2, who operate gas-fired facilities at the
- 3 south end of the LWRFS and have water rights in the Black Mountain Area;
- 4 g. Georgia-Pacific Gypsum LLC, and Republic Technologies, Inc. are industrial companies that
- 5 have water rights in the Garnet Valley Hydrographic Basin;
- 6 h. Lincoln County Water District and Vidler Water Co. are a public water district and a private
- 7 company, respectively, and own water rights in Kane Springs Valley.

8 **III.**

9 **DISCUSSION**

10 **STANDARD OF REVIEW**

11 An aggrieved party may appeal a decision of the State Engineer pursuant to NRS 533.450(1).
12 The proceedings, which are heard by the court, must be informal and summary, but must afford the
13 parties a full opportunity to be heard. NRS 533.450(2). The decision of the State Engineer is
14 considered to be prima facie correct, and the burden of proof is on the party challenging the
15 decision. NRS 533.450(10).

16 **A. Questions of Law**

17 Questions of statutory construction are questions of law which require de novo review.
18 The Nevada Supreme Court has repeatedly held courts have the authority to undertake an
19 independent review of the State Engineer’s statutory construction, without deference to the State
20 Engineer’s determination. *Andersen Family Assoc. v. Ricci*, 124 Nev. 182, 186, 179 P.3d 1201,
21 1203 (2008) (citing *Bacher v. State Engineer*, 122 Nev. 1110, 1115, 146 P.3d 793, 798 (2006) and
22 *Kay v. Nunez*, 122 Nev. 1100, 1103, 146 P.3d 801, 804 (2006)).

23 Any “presumption of correctness” of a decision of the State Engineer as provided by NRS
24 533.450(10), “does not extend to ‘purely legal questions,’ such as ‘the construction of a statute,’
25 as to which ‘the reviewing court may undertake independent review.’” *In re State Engineer*
26 *Ruling No. 5823*, 128 Nev. 232, 238-239, 277 P.3d 449, 453 (2012) (quoting *Town of Eureka v.*
27 *State Engineer*, 108 Nev. 163, 165, 826 P.2d 948, 949 (1992)). At no time will the State
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1 Engineer’s interpretation of a statute control if an alternative reading is compelled by the plain
2 language of the statute. *See Andersen Family Assoc.*, 124 Nev. at 186, 179 P.3d at 1203.

3 Although “[t]he State Engineer’s ruling on questions of law is persuasive... [it is] not
4 entitled to deference.” *Sierra Pac. Indus. v. Wilson*, 135 Nev. Adv. Op. 13, 440 P.3e 37, 40
5 (2019). A reviewing court is free to decide legal questions without deference to an agency
6 determination. *See Jones v. Rosner*, 102 Nev. 215, 216-217, 719 P.2d 805, 806 (1986); *accord*
7 *Pyramid Lake Paiute Tribe v. Ricci*, 126 Nev. 521, 525, 245 P.3d 1145, 1148 (2010) (“[w]e
8 review purely legal questions without deference to the State Engineer’s ruling.”).

9 **B. Questions of Fact**

10 The Court’s review of the Order 1309 is “in the nature of an appeal” and limited to the
11 record before the State Engineer. *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979). On
12 appeal, a reviewing court must “determine whether the evidence upon which the engineer based
13 his decision supports the order.” *State Engineer v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 205
14 (1991) (citing *State Engineer v. Curtis Park*, 101 Nev. 30, 32, 692 P.2d 495, 497 (1985)).

15 As to questions of fact, the State Engineer’s decision must be supported by “substantial
16 evidence in the record [.]” *Eureka Cty. v. State Engineer*, 131 Nev. 846, 850, 359 P.3d 1114, 1117
17 (2015) (quoting *Town of Eureka*, 108 Nev. at 165, 826 P.2d at 949). Substantial evidence is “that
18 which a reasonable mind might accept as adequate to support a conclusion.” *Bacher*, 122 Nev. at
19 1121, 146 P.3d at 800 (finding that a reasonable person would expect quantification of water
20 rights needed and no evidence of such quantification or calculations by the State Engineer is
21 included in the record). The Court may not substitute its judgment for that of the State Engineer,
22 “pass upon the credibility of the witness nor reweigh the evidence.” *Revert*, 95 Nev. at 786, 603
23 P.2d at 264.

24 Where a decision is arbitrary and capricious it is not supported by substantial evidence.
25 *See Clark Cty. Educ. Ass’n v. Clark Cty. Sch. Dist.*, 122 Nev. 337, 339-40, 131 P.3d 5, 7 (2006)
26 (concluding that an arbitrator’s award was “supported by substantial evidence and therefore not
27 arbitrary, capricious, or unsupported by the arbitration agreement”).

28 In *Revert*, 95 Nev. at 787, 603 P.2d at 264–65, the Nevada Supreme Court noted:

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The applicable standard of review of the decisions of the State Engineer, limited to an inquiry as to substantial evidence, presupposes the fullness and fairness of the administrative proceedings: all interested parties must have had a ‘full opportunity to be heard,’ *See* NRS 533.450(2); the State Engineer must clearly resolve all the crucial issues presented, *See Nolan v. State Dep’t. of Commerce*, 86 Nev. 428, 470 P.2d 124 (1970) (on rehearing); the decisionmaker must prepare findings in sufficient detail to permit judicial review, *Id.*; *Wright v. State Insurance Commissioner*, 449 P.2d 419 (Or.1969); *See also* NRS 233B.125. When these procedures, grounded in basic notions of fairness and due process, are not followed, and the resulting administrative decision is arbitrary, oppressive, or accompanied by a manifest abuse of discretion, this court will not hesitate to intervene. *State ex rel. Johns v. Gragson*, 89 Nev. 478, 515 P.2d 65 (1973).

Thus, in order to survive review, Order 1309 must be statutorily authorized, resolve all crucial issues presented, must include findings in detail to permit judicial review, and must be based on substantial evidence.

CONCLUSIONS OF LAW

A. The State Engineer Did Not Have the Authority to Jointly Administrate Multiple Basins by Creating the LWRFS “Superbasin,” Nor Did He Have the Authority to Conjunctively Manage This Superbasin.

The powers of the State Engineer are limited to those set forth in the law. *See, e.g., City of Henderson v. Kilgore*, 122 Nev. 331, 334, 131 P.3d 11, 13 (2006); *Clark Cty. School Dist. v. Clark Cty. Classroom Teachers Ass’n*, 115 Nev. 98, 102, 977 P.2d 1008, 1011 (1999) (*en banc*) (An administrative agency’s powers “are limited to those powers specifically set forth by statute.”); *Clark Cty. v. State, Equal Rights Comm’n*, 107 Nev. 489, 492, 813 P.2d 1006, 1007 (1991)); *Wilson v. Pahrump Fair Water, LLC*, 137 Nev. Adv. Op. 2, 481 P.3d 853, 856(2021) (The State Engineer’s powers thereunder are limited to “only those . . . which the legislature expressly or implicitly delegates.”); *Andrews v. Nevada State Bd. of Cosmetology*, 86 Nev. 207, 208, 467 P.2d 96, 97 (1970) (“Official powers of an administrative agency cannot be assumed by the agency, nor can they be created by the courts in the exercise of their judicial function. The grant of authority to an agency must be clear.”) (*internal citation omitted*).

The Nevada Supreme Court has made clear that the State Engineer is a creature of statute and his or her actions must be within a statutory grant of authority. *Pahrump Fair Water LLC*, 481 P.3d

1 at 856 (explaining that “[t]he State Engineer’s powers thereunder are limited to ‘only those . . .
2 which the legislature expressly or implicitly delegates’” (quoting *Clark Cty.*, 107 Nev. at 492, 813
3 P.2d at 1007)); *see also Howell v. Ricci*, 124 Nev. 1222, 1230, 197 P.3d 1044, 1050 (2008) (holding
4 that the State engineer cannot act beyond his or her statutory authority).

5 The State Engineer’s authority is outlined in NRS Chapters 532, 533 and 534. Chapter 533
6 deals generally with “water rights,” which addresses surface water as well as groundwater, and
7 chapter 534 is limited to groundwater, dealing specifically with “underground water and wells.”

8 In the instant case, the State Engineer relied on the following specific statutes as authority for
9 combining prior independently designated basins as a superbasin newly named the LWRFS, and
10 then conjunctively managing⁵⁷ this superbasin:

- 11 • NRS 533.024(1)(c), which is a legislative declaration “encourag[ing] the State Engineer to
12 consider the best available science in rendering decisions concerning the available surface
13 and underground sources of water in Nevada.”⁵⁸
- 14 • NRS 534.024(1)(e), another legislative declaration that states the policy of Nevada is “[t]o
15 manage conjunctively the appropriation, use and administration of all waters of this State,
16 regardless of the source of the water.”⁵⁹
- 17 • NRS 534.020, which provides that all waters of the State belong to the public and are subject
18 to all existing rights.⁶⁰
- 19 • NRS 532.120, which allows the State Engineer to “make such reasonable rules and
20 regulations as may be necessary for the proper and orderly execution of the powers conferred
21 by law.”⁶¹

22 ⁵⁷ The Nevada Water Words Dictionary, defines “Conjunctive (Water) Use” in part, as “the integrated use and
23 management of hydrologically connected groundwater and surface water.” *Water Words Dictionary, Nevada Division of
24 Water Planning* (2022) (available online at <http://water.nv.gov/WaterPlanDictionary.aspx>) The same dictionary
25 separately defines “Conjunctive Management” as, “the integrated management and use of two or more water resources,
26 such as a (groundwater) aquifer and a surface body of water.” *Id.*

27 ⁵⁸ SE ROA 43.

28 ⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ SE ROA 44.

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- NRS 534.110(6), which allows the State Engineer to conduct investigations into any basin where average annual replenishment is not adequate for the needs of all water rights holders, and then subsequently restrict withdrawals to conform to priority rights.⁶²
- NRS 534 and specifically NRS 534.120, which allows the State Engineer to make such rules, regulations and orders as are deemed essential for the welfare of an area where the groundwater basin is being depleted.”⁶³

However, as further discussed below, the State Engineer’s reliance on these statutes for authority is misplaced, and his actions upend the bedrock principles of the prior appropriation doctrine.

1. The Prior Appropriation Doctrine

The doctrine of prior appropriation has been part of Nevada’s common law since the 1800’s, and is a fundamental principle of water law in Nevada. *See Lobdell v. Simpson*, 2 Nev. 274, 277-78 (1866). “An appropriative right ‘may be described as a state administrative grant that allows the use of a specific quantity of water for a specific beneficial purpose if water is available in the source free from the claims of others with earlier appropriations.’” *Desert Irr., Ltd. v. State*, 113 Nev. 1049, 1051 n.1, 944 P.2d 835, 837 (1997) (quoting Frank J. Trelease & George A. Gould, *Water Law Cases and Materials* 33 (4th ed. 1986)).

“Water rights are given ‘subject to existing rights,’ NRS 533.430(1), given dates of priority, NRS 533.265(2)(b), and determined based on relative rights, NRS 533.090(1)-(2).” *Mineral Cty. v. Lyon Cty.*, 136 Nev. 503,513, 473 P.3d 418, 426 (2020). Thus, “[i]n Nevada, the doctrine of prior appropriation determines the priority of both pre-1905 vested water rights and modern statutory water law.” *Rand Properties, LLC v. Filippini*, 484 P.3d 275, Docket 78319 at 2 (Nev. 2021) (unpublished disposition). It is universally understood that the priority of a water right is its most valuable component. *See Gregory J. Hobbs, Jr., Priority: The Most Misunderstood Stick in the Bundle*, 32 *Envtl. L.* 37, 43 (2002) (“Priority determines the value of a water right”).

“A priority in a water right is property in itself”; therefore, “to deprive a person of his

⁶² *Id.*

⁶³ *Id.*

1 priority is to deprive him of a most valuable property right.” *Colorado Water Conservation*
2 *Bd. v. City of Cent.*, 125 P.3d 424, 434 (Colo. 2005) (internal quotation marks omitted). “A loss of
3 priority that renders rights useless ‘certainly affects the rights’ value’ and ‘can amount to a de facto
4 loss of rights.”” *Wilson v. Happy Creek, Inc.*, 135 Nev. 301, 313, 448 P.3d 1106, 1115 (2019)
5 (quoting *Andersen Family Assocs.*, 124 Nev. at 190-1, 179 P.3d at 1201).

6 Nevada’s statutory water law reflects the importance of priority. Not only did the
7 Legislature choose not to bestow the State Engineer with discretion to alter priority rights, but it also
8 affirmatively requires the State Engineer to preserve priority rights when performing the State
9 Engineer’s statutory duties. *See, e.g.*, NRS 534.110(6) (providing that any curtailment “be restricted
10 to conform to priority rights”); NRS 534.110(7) (same); NRS 533.040(2) (“If at any time it is
11 impracticable to use water beneficially or economically at the place to which it is appurtenant, the
12 right may be severed from the place of use and be simultaneously transferred and become
13 appurtenant to another place of use, in the manner provided in this chapter, without losing priority of
14 right.”).

15 The prior appropriation doctrine in Nevada, “the driest state in the Nation”⁶⁴ becomes
16 particularly critical when, as in the instant case, there is not enough water to satisfy all of the
17 existing rights of the current water right holders, and the threat of curtailment looms ominously in
18 the near future. One of the greatest values of a senior priority right is the assurance that the holder
19 will be able to use water even during a time of water shortage because junior water right holders will
20 be curtailed first. Thus, senior right holders rely on their senior priority rights when developing
21 businesses, entitling and permitting land development, negotiating agreements, making investments,
22 obtaining permits and various approvals from State and local agencies, and generally making
23 financial and other decisions based on the relative certainty of their right.

24 Priority in time of a right is only as valuable as where the holder stands in relation to others
25 in the same situation, or more specifically in this case, in the same basin. As the statutes are written,
26

27 _____
28 ⁶⁴ *United States v. State Engineer*, 117 Nev. 585, 592, 27 P.3d 51, 55 (2001)(Becker, J., concurring in part and
dissenting in part).

1 water right holders only compete in time for their “place in line” with other water right holders in
2 their same basin. Therefore, the year that one acquires a priority right is only as important as the
3 year that other water right holders in your basin acquired theirs. It is in this setting that State
4 Engineer has issued Order 1309.

5 **2. Joint Administration**

6 The State Engineer’s position is that the “best available science” demonstrates that the
7 seven⁶⁵ named hydrographic basins are so hydrologically interconnected that science dictates they
8 must be managed together in one superbasin. However, NRS 533.024(1)(c) is a policy declaration
9 of the Legislature’s intent that simply “encourages” the State Engineer “to consider the best
10 available science in rendering decisions” that concern water he has authority to manage. NRS
11 533.024(1)(c).

12 Statements of policy from the Legislature do not serve as a basis for government action, but
13 rather inform the interpretation of statutes that authorize specific action. *See, Pawlik v. Deng*, 134
14 Nev. 83, 85, 412 P.3d 68, 71 (2018). In *Pawlik*, the Nevada Supreme Court expressed the relevance
15 of statements of policy in terms as follows: “if the statutory language is subject to two or more
16 reasonable interpretations, the statute is ambiguous, and we then look beyond the statute to the
17 legislative history and interpret the statute in a reasonable manner ‘in light of the policy and the
18 spirit of the law.’” *Id.* (quoting *J.E. Dunn Nw., Inc. v. Corus Constr. Venture, LLC*, 127 Nev. 72, 79,
19 249 P.3d 501, 505 (2011)).

20 While such statements of policy are accorded deference in terms of statutory interpretation,
21 the Nevada Supreme Court has specifically held that they are not binding. *See McLaughlin v. Hous.*
22 *Auth. of the City of Las Vegas*, 227 P.2d 206, 93 (1951) (“It has often been said that the declaration
23 of policy by the legislature, though not necessarily binding or conclusive upon the courts, is entitled
24 to great weight, and that it is neither the duty nor prerogative of the courts to interfere in such
25 legislative finding unless it clearly appears to be erroneous and without reasonable foundation.”); *see*
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⁶⁵ More accurately, the LWRFS is comprised of six hydrographic basins and a portion of a seventh.

1 also *Clean Water Coal. v. M Resort, LLC*, 127 Nev. 301, 313, 255 P.3d 247, 255 (2011) (“The State
2 acknowledges that when legislative findings are expressly included within a statute, those findings
3 should be accorded great weight in interpreting the statute, but it points out that such findings are not
4 binding and this court may, nevertheless, properly conclude that section 18 is a general law despite
5 the Legislature's declaration to the contrary.”).

6 Statements of policy set forth by the Legislature are therefore not operative statutory
7 enactments, but rather tools to be used in interpreting operative statutes—and only then where such
8 statutes are ambiguous on their face. *See Pawlik*, 134 Nev. at 85, 412 P.3d at 71; *see also Cromer v.*
9 *Wilson*, 126 Nev. 106, 109-10, 225 P.3d 788, 790 (2010) (if the plain language of a statute “is
10 susceptible of another reasonable interpretation, we must not give the statute a meaning that will
11 nullify its operation, and we look to policy and reason for guidance”).

12 This statement of policy is not, in and of itself, a grant of authority that allows the State
13 Engineer to change boundaries of established hydrographic basins as science dictates. This Court
14 certainly acknowledges that since the time the 256 hydrographic basins and sub-basins were
15 delineated, that science and technology have made great strides. While certain navigable waters and
16 topography were more easily identifiable at the time the basins were established, the complexity lies
17 in the less obvious interconnectivity and formations of sub-surface structures that were more
18 difficult to detect at that time. There is no doubt that scientific advancements allow experts to more
19 accurately assess sub-surface formations and groundwater than they have in the past, and certainly
20 technology will continue to improve accuracy in the future. However, this Court notes that the
21 Legislature specifically used the word “encourages” to describe how the Nevada State Engineer
22 should utilize the best available science. NRS 533.024(1)(c). The statute does not declare that the
23 best available science should dictate the decisions.

24 Indeed, if science was the sole governing principle to dictate the Nevada State Engineer’s
25 decisions, there would be a slippery slope in the changes that could be made in the boundaries of the
26 basins and how they are managed; each time scientific advancements and discoveries were made
27 regarding how sub-surface water structures are situated or interconnected, under this theory of
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1 authority, the Nevada State Engineer could change the boundaries of the existing basins. Each
2 boundary change would upend the priority of water right holders as they relate to the other water
3 right holders in the new, scientifically-dictated “basin.” This would lead to an absurd result as it
4 relates to the prior appropriation doctrine. Every water right holder would be insecure in their
5 priority, as their relative priority could change at any moment that science advances in determining
6 further interconnectivity of water below the surface. In the administration of water rights, the
7 certainty of those rights is particularly important and prior appropriation is “largely a product of the
8 compelling need for certainty in the holding and use of water rights.” *Mineral Cty. v. Lyon Cty.*, 136
9 Nev. at 518, 473 P.3d at 429 (quoting *Arizona v. California*, 460 U.S. 605, 620 (1983)). Science in
10 and of itself cannot alter common law and statutes. Thus, the State Engineer’s reliance on NRS
11 533.024(1)(c) for giving him authority to create a superbasin out of seven existing basins is
12 misplaced.

13 While NRS 532.120 allows the State Engineer to make reasonable rules and regulations as
14 may be necessary for proper and orderly execution, this authority is not without its limits, and is
15 only authorized for those “powers conferred by law.” Nothing in Chapters 532, 533 or 534 gives the
16 State Engineer direct authority to eliminate, modify, or redraw the boundaries of existing
17 hydrographic basins, or to consolidate multiple, already established, hydrographic basins into a
18 single hydrographic superbasin. For at least 50 years, holders of groundwater rights in Nevada have
19 understood a “hydrographic basin” to be an immutable administrative unit. This has been the case
20 regardless of whether the boundaries of the unit accurately reflected the boundaries of a particular
21 water resource. The Nevada Legislature has adopted a comprehensive scheme that provides the
22 framework for the State Engineer to administer surface water and groundwater. Moreover, the State
23 Engineer has, for decades, administered water on the basis of hydrographic basins identified,
24 described, and released to the public and relied upon by the Legislature, former State Engineers, and
25 the public. Applications to appropriate water are and have been on the basis of each hydrographic
26 basin. Protests, agreements, and resolutions of water applications have been on the basis of each
27 basin. Furthermore, statutes require that the State Engineer consider available water and
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1 appropriations based on the basins already defined.

2 It is interesting to note that in the statutes that *do* confer authority on the Nevada State
3 Engineer to manage water, they specifically mention the management as being done on a basin-by-
4 basin (or a sub-basin within a basin) basis. NRS 534.030 is the original source of authority for the
5 State Engineer’s designation of an “administrative area” by “basin.” NRS 534.030. Through NRS
6 534.030 and NRS 534.011, the State Engineer has authority to designate “any groundwater basin, or
7 portion therein” an “area of active management,” which refers to an area “[i]n which the State
8 Engineer is conducting particularly close monitoring and regulation of the water supply because of
9 heavy use of that supply.” Under the statute’s plain meaning, a *basin* is intended to be an
10 *administrative unit*, defined by boundaries described by “legal subdivision as nearly as possible.”
11 NRS 534.030(1)(b). In other words, a hydrographic basin so designated was synonymous with an
12 administrative unit—a *legal* construct, defined thereafter by a *geographic* boundary. Water rights
13 within these basins are to be administered according to the laws set forth in NRS Chapters 533 and
14 534, and the principles of prior appropriation are applied to water uses *within* each basin.

15 Moreover, the Legislature consistently refers to a singular basin throughout the statute. *See*,
16 *e.g.*, 534.030(1) (describing a petition under NRS Chapter 534 as one that requests the State
17 Engineer “to administer the provisions of this chapter as relating to designated areas, ... in any
18 particular basin or portion therein”); NRS 534.030(2) (“a groundwater basin”); NRS 534.030(2)
19 (“the basin”). In fact, in the State Engineer’s prior rulings and orders, including Order 1169, Order
20 1169A, and Rulings 5712 and 6455, the State Engineer employs a basin-by-basin management
21 approach.

22 NRS 534.110(6) sets forth the State Engineer’s ability to make basin-specific determinations
23 and provides the authority to curtail water rights where investigations into specific basins
24 demonstrate that there is insufficient groundwater to meet the needs of all permittees and all vested-
25 right claimants. NRS 534.110 plainly applies to investigations concerning administration and
26 designation of critical management areas within a basin. If the State Engineer conducts an
27 investigation as set forth in NRS 534.110(6) and determines that the annual replenishment to the
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1 groundwater supply is not adequate for the permittees and vested-right claimants, he has the
2 authority to either (1) order that withdrawals from domestic wells be restricted to conform to priority
3 rights, or (2) designate as a critical management area the basin in which withdrawals of groundwater
4 consistently exceed the perennial yield. NRS 534.110(6)-(7). It is important to note, however, that
5 the statute does not provide authority to change the boundaries of established basins, combine
6 multiple basins into one unit or superbasin, and then modify or curtail groundwater rights based
7 upon restructured priority dates in this newly created superbasin.

8 The Court acknowledges that the State Engineer can and should take into account how water
9 use in one basin may affect the water use in an adjoining or closely related basin when determining
10 how best to “actively manage” a basin. However, this is much different than how the State Engineer
11 defines “joint management”: erasing the borders of seven already established legal administrative
12 units and creating one legal superunit in the LWRFS superbasin. If the Legislature intended for the
13 State Engineer to designate areas across multiple basins for “joint administration,” it would have so
14 stated. *See Slade v. Caesars Entm’t Corp.*, 132 Nev. 374, 380-81, 373 P.3d 74, 78 (2016) (citing
15 Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 107 (2012)
16 (“The expression of one thing implies the exclusion of others.”)). Thus, under NRS 534.030, while
17 the State Engineer can administer basins individually, the statute does not allow the State Engineer
18 to combine basins for joint administration, nor do NRS 532.120, NRS 533.024, or NRS 534.110(6)
19 confer express authority on the State Engineer to do so.

20 **3. Conjunctive Management**

21 The Nevada State Engineer relies on NRS 534.024(1)(e), as the source of authority that
22 allows him to manage both surface and groundwater together through “conjunctive management.”⁶⁶
23 Historically, surface water and ground water have been managed separately. In fact, the term
24 “conjunctive management” was only introduced in the statutes in the 2017 session of the Nevada
25 Legislature when it added subsection 1(e) to NRS 533.024. However, as discussed previously, this
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⁶⁶ SE ROA 43.

1 statute is a declaration of legislative intent, and as a statement of policy, it does not constitute a grant
2 of authority to the State Engineer, nor is it a water management tool in and of itself.

3 In fact, there is no authority or guidance whatsoever in the statutes as to how to go about
4 conjunctively managing water and water rights. While the Court agrees that it makes sense to take
5 into account how certain groundwater rights may affect other surface water rights when managing
6 water overall, as this Court noted previously, the powers of the State Engineer are limited to those
7 set forth in the law. While Nevada law provides certain tools for the management of water rights in,
8 for example, over appropriated basins, *e.g.*, NRS 534.110(7) (authorizing the State Engineer to
9 “designate as a critical management area any basin in which withdrawals of groundwater
10 consistently exceed the perennial yield of the basin”), nothing in Chapters 532, 533 or 534 gives the
11 State Engineer express authority to conjunctively manage, in this proceeding, both the surface and
12 groundwater flows he believes are occurring in the LWRFS superbasin.

13 This Court finds that as a result of the consolidation of the basins, the relative priority of all
14 water rights within the seven affected basins will be reordered and the priorities will be considered
15 in relation to all water rights holders in the consolidated basins, rather than in relation only to the
16 other users within the original separate basins.⁶⁷ By redefining and combining seven established
17 basins for “joint administration,” and “conjunctive management,” the State Engineer essentially
18 strips senior right holders of their priority rights by deciding that all water rights within the LWRFS
19 superbasin should be administered based upon their respective dates of priority in relation to other
20 rights “within the regional groundwater unit.”

21 The State Engineer’s position is that the determination of conflicts and priorities has not yet
22 occurred since that is to occur in the second step of the proceeding. However, by the very nature of
23 erasing the existing basins and putting all of the water rights holders in one superbasin, he has
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26 ⁶⁷ This Court rejects the State Engineer’s argument that Order 1309 did not change priorities merely because it did not
27 change priority dates. His argument conflates the meaning of *priority* as defined by the date of a water right application,
28 and the common meaning of *priority*, as defined by one’s “place in line.” While it is true that the Order does not change
priority dates, this Court finds that it *does* change the relative priorities, as petitioners who previously held the most
senior rights within their singular basin may now be relegated to more junior status within the “superbasin.”

1 already reprioritized certain rights as they relate to one another, even if their priority dates remain
2 the same.⁶⁸ As a result of creating this superbasin, water rights holders with some of the most senior
3 priority rights within their basin are now relegated to a much a lower priority position than some
4 water right holders in basins outside of their own. Such a loss of priority would potentially render
5 certain water rights valueless, given the State Engineer’s restrictions on pumping in the entire
6 LWRFS. The Court concludes that the State Engineer does not have authority to redefine Nevada
7 basins so as to reorder the priority rights of water right holders through conjunctive management
8 within those basins. Accordingly, Order 1309 stands at odds with the prior appropriation doctrine.

9 The Court determines that the question of whether the State Engineer has *authority* to change
10 the boundaries of basins that have been established for decades, or subject that newly created basin
11 to conjunctive management, or not, is a legal question, not a factual one. The State Engineer has
12 failed to identify a statute that authorizes him to alter established basin boundaries or engage in
13 conjunctive management. Based upon the plain language of the applicable statutes, the Court
14 concludes that the State Engineer acted outside the scope of his authority in entering Order 1309.

15 **B. The State Engineer Violated Petitioners’ Due Process Rights in Failing to Provide**
16 **Notice to Petitioners or an Opportunity to Comment on the Administrative Policies Inherent**
17 **in the Basin Consolidation.**

18 The Nevada Constitution protects against the deprivation of property without due process of
19 law. Nev. Const. art. 1, § 8(5). “Procedural due process requires that parties receive notice and an
20 opportunity to be heard.” *Eureka Cty. V. Seventh Jud. Dist. Ct.*, 134 Nev. 275, 279, 417 P.3d 1121,
21 1124 (2018)(internal quotation marks omitted). “In Nevada, water rights are ‘regarded and
22 protected as real property.’” *Id.*(quoting *Application of Filippini*, 66 Nev. 17, 21-22, 202 P.2d 535,
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24 ⁶⁸ Although this Court refrains from analyzing whether or not 1309 is supported by substantial evidence, the Court notes
25 that part of the State Engineer’s 1309 decision of limiting use to 8,000afa or less is based on the concern of adversely
26 impacting the endangered Moapa Dace, located in the Muddy River Springs. This decision does not appear to take into
27 account more nuanced effects of how pumping in each separate basin affects the Muddy River flows, no matter how far
28 away the basin is from the river. In other words, reprioritization of each water rights holder in relation to the other (by
prioritization date in the newly created superbasin) means that their standing (and more importantly, their potential for
curtailment) is only by date. Water use in one basin may not have the same effect as another in reducing Muddy River
flows; however, these distinguishing factors are all erased by combining all of the basins together for joint
administration.

1 537 (1949)). Therefore, holders of water rights in Nevada are entitled to constitutional protections
2 regarding those property rights, including procedural due process. *See id.*

3 The Nevada Supreme Court has held that “[a]lthough proceedings before administrative
4 agencies may be subject to more relaxed procedural and evidentiary rules, due process guarantees of
5 fundamental fairness still apply.” *Dutchess Bus. Serv. ’s, Inc. v. Nev. State Bd. of Pharmacy*, 124
6 Nev. 701, 711, 191 P.3d 1159, 1166 (2008). In *Dutchess*, the Nevada Supreme Court noted further
7 that “[a]dministrative bodies must follow their established procedural guidelines and give notice to
8 the defending party of ‘the issues on which decision will turn and . . . the factual material on which
9 the agency relies for decision so that he may rebut it.” *Id.*

10 With respect to notice and hearing, the Nevada Supreme Court has held that “[i]nherent in
11 any notice and hearing requirement are the propositions that the notice will accurately reflect the
12 subject matter to be addressed and that the hearing will allow full consideration of it.” *Public Serv.*
13 *Comm’n of Nev. v. Southwest Gas Corp.*, 99 Nev. 268, 271, 772 P.2d 624, 626 (1983). “Notice must
14 be given at an appropriate stage in the proceedings to give parties meaningful input in the
15 adjudication of their rights.” *Seventh Jud. Dist. Ct.*, 134 Nev. at 280-81, 417 P.3d at 1125-26 (citing
16 *Hamdi v. Rumsfeld*, 542 U.S. 507, 533, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004) (“It is equally
17 fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful
18 time and in a meaningful manner.”). A party’s due process rights attach at the point at which a
19 proceeding holds the *possibility* of curtailing water rights, and due process necessitates notice of that
20 possibility to the party potentially affected.⁶⁹

21 For the reasons that follow, this Court concludes that (a) the notice and hearing procedure
22 employed by the State Engineer failed to satisfy the requirements of due process because the notice
23 failed to put the parties on notice that the State Engineer would decide on a management protocol for
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25 ⁶⁹ “[B]ecause the language in the show cause order [indicates that the district court may enter an order forcing curtailment
26 to begin, junior water rights holders must be given an opportunity to make their case for or against the option of
27 curtailment. Notice must be given at an appropriate stage in the proceedings to give parties meaningful input in the
28 adjudication of their rights...Thus, junior water rights holders must be notified before the curtailment decision is made,
even if the specific “how” and “who” of curtailment is decided in a future proceeding.” *Seventh Jud. Dist. Ct.*, 134 Nev.
275, 280–81, 417 P.3d 1121, 1125 (2018).

1 the LWRFS at the conclusion of the proceeding; (b) the hearing itself failed to satisfy due process
2 because the parties were not afforded a full and complete opportunity to address the implications of
3 the State Engineer’s decision to subject the LWRFS to conjunctive management and joint
4 administration, and (c) the State Engineer’s nondisclosure, before or during the Order 1303
5 proceedings of the six criteria he would use in evaluating the connectivity of the basins and
6 determining the new consolidated basin boundary, failed to satisfy the requirements of due process.

7 Specifically, the notice of hearing and amended notice of hearing (“Notice”) noticed an
8 opportunity for the parties that submitted Order 1303 reports to explain their positions and
9 conclusions with respect to the questions posed for consideration in Order 1303.^{70 71} But the
10 questions posed in Order 1303 did not relate to management of the LWRFS, such as issues of
11 conjunctive or joint administration, but rather related to factual inquiries. Instead, Order 1303
12 specifically authorized stakeholders to file reports addressing four specific areas, none of which
13 related to the management of the LWRFS.⁷²

14 In noticing the hearing to consider the reports submitted pursuant to Order 1303, there was
15 no mention of consideration of the prospective management of the LWRFS, *i.e.*, whether it would be
16 appropriately managed conjunctively and as a joint administrative unit. Indeed, this was consistent
17 with the Hearing Officer’s opening remarks at the August 8, 2019, prehearing conference in which
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19 _____
⁷⁰ See SE ROA 262-82, Ex. 2; SE ROA 284-301, Ex. 3

20 ⁷¹ The Notice included the following summary:

21 On August 9, 2019, the State Engineer held a pre-hearing conference regarding the hearing on the
22 submission of reports and evidence as solicited in Order 1303.... The State Engineer established that
23 the purpose of the hearing on the Order 1303 reports was to provide the participants an opportunity to
24 explain the positions and conclusions expressed in the reports and/or rebuttal reports submitted in
25 response to the Order 1303 solicitation. The State Engineer directed the participants to limit the offer of
26 evidence and testimony to the salient conclusions, including directing the State Engineer and his staff
27 to the relevant data, evidence and other information supporting those conclusions. ***The State Engineer
further noted that the hearing on the Order 1303 reports was the first step in determining to what
extent, if any, and in what manner the State Engineer would address future management decisions,
including policy decisions, relating to the Lower White River Flow System basins. On that basis, the
State Engineer then addressed other related matters pertaining to the hearing on the Order 1303
reports, including addressing the date and sequence of the hearing, as set forth in this Notice of
Hearing.*** SE ROA 285, Ex. 3 (emphasis added).

28 ⁷² SE ROA 647-48. Ex. 6.

1 the State Engineer actively discouraged participants from providing input regarding that very
2 question. The hearing officer stated as follows at the August 8 prehearing conference:

3 And so, and I'm going to talk about this and we've spoken about this before, is
4 that really this is a threshold reporting aspect, that this is part of a multi-tiered
5 process in terms of determining the appropriate management strategy to the
6 Lower River Flow System.

7 This larger substantive policy determination is not part of the particular
8 proceeding. That's part of later proceedings....

9 SE ROA 522, Ex. 5 (Hr'g Tr. at 10:6-20).

10 The hearing officer gave additional consistent guidance at the outset of the September 23
11 hearing, further directing the parties not to address policy issues even in relation to the fact that
12 Order 1303 authorized stakeholders to include in their reports "[a]ny other matter believed to be
13 relevant to the State Engineer's analysis."⁷³ Specifically, the Hearing Officer directed as follows:

14 And while that fifth issue is [as set forth in Ordering Paragraph 1(e) of Order
15 1303] not intended to expand the scope of this hearing into making policy
16 determinations with respect to management of the Lower White River Flow
17 System basin's individual water rights, those different types of things, because
18 those are going to be decisions that would have to be made in subsequent
19 proceedings should they be necessary.

20 SE ROA 52962, Ex. 26 (Hr'g Tr. 6:4-15).

21 Not only did the notice not adequately notify the parties of the possibility of the
22 consideration and resolution of policy issues, but the Hearing Officer consistently
23 directed the parties to avoid the subject, compounding the due process violation.

24 Notwithstanding the Hearing Officer's admonitions and the plain language of the notice, the
25 State Engineer ultimately issued a dramatic determination regarding management of the LWRFS. In
26 doing so, the State Engineer precluded the participants from providing input that would have
27 allowed for the full consideration of the issue. Specifically, participants and experts did not have the
28 opportunity to, and were actively discouraged from addressing policy issues critical to the

⁷³ SE ROA 648, Ex. 6.

1 management of the LWRFS.⁷⁴ The refusal to consider these issues ensured that the State Engineer’s
2 decision was not based on a fully developed record.

3 The State Engineer acknowledged as much in Order 1309 itself. There, the State Engineer
4 noted the fact that Georgia-Pacific and Republic raised concerns over the sufficiency of the scope of
5 the proceedings at hearing but inexplicably asserted that a to-be-determined management scheme
6 would be developed to address “management issues” in the LWRFS:

7 Georgia-Pacific and Republic asserted that boundaries are premature without
8 additional data and without a legally defensible policy and management tools in
9 place. They expressed concern that creating an administrative unit at this time
10 inherently directs policy without providing for due process. The State Engineer
11 has considered these concerns and agrees that additional data and improved
12 understanding of the hydrologic system is critical to the process. He also believes
13 that the data currently available provide enough information to delineate LWRFS
14 boundaries, and that an effective management scheme will provide for the
15 flexibility to adjust boundaries based on additional information, retain the ability
16 to address unique management issues on a sub-basin scale, and maintain
17 partnership with water users who may be affected by management actions
18 throughout the LWRFS.

19 SE ROA 54, Ex. 1.

20 This language reflects a serious misunderstanding of the effect of Order 1309. Insofar as
21 Order 1309 subjects the LWRFS to conjunctive management and joint administration, resulting in
22 effectively reordering of priority of water rights in the LWRFS superbasin, the order effectuates a
23 management scheme with far reaching consequences. Thus, agreeing on the one hand that an
24 “effective management scheme” will be necessary to address challenges in the LWRFS, but
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26 ⁷⁴ These issues include, but are not limited to: whether Nevada law allows the State Engineer to conjunctively manage
27 multiple hydrographic basins in a manner that modifies the relative priority of water rights due to the administration
28 consolidation of basins; whether the State Engineer would establish a “critical management area” pursuant to NRS
534.110 and, if so, whether he would develop a groundwater management plan or defer to the stakeholders to develop
one; whether Nevada law gives the State Engineer authority to designate a management area that encompasses more than
one basin; whether “safe-yield” discrete management areas should be established within the proposed administrative
unit; whether water rights holders enjoy a “property right” in the relative priority of their water rights such that impairing
that right may constitute a “taking”; whether unused (or only sporadically used) senior water rights take precedence over
certificated or fully used junior rights, particularly where these junior rights are in continuous use to support
economically significant enterprises; whether States compel quantification of federal reserved rights by a date certain;
and whether the State Engineer should approach the legislature to seek different or additional management tools or
authority. See SE ROA 52801-8, Ex. 25 (Georgia Pacific and Republic Closing Argument, outlining policy questions
for consideration by the State Engineer at later proceedings, proceedings that never took place).

1 contending it will be developed in the future, reveals a lack of appreciation of the implications of the
2 order to the detriment of not only the participants but all water rights holders in the LWRFS basins.
3 Without consideration of the implications of the management decision contained in the order, it
4 cannot be based on a full consideration of the issues presented. In affirmatively limiting the scope of
5 the proceeding to include a full consideration of the issues, the State Engineer violated the
6 stakeholders' due process rights. Both the notice and the hearing procedures employed failed to
7 comport with due process.

8 Finally, as noted above, the State Engineer did not give notice or disclose before or during
9 the Order 1303 proceedings, the six specific criteria that he would use in evaluating the connectivity
10 of the basins and determining the new consolidated basin boundary. Although the State Engineer
11 asserted that he considered the evidence and testimony presented in the public hearing "on the basis
12 of a common set of criteria that are consistent with the original characteristics conserved critical in
13 demonstrating a close hydrologic connection requiring joint management in Rulings 6254-6261,"⁷⁵
14 a review of these rulings reveals that none of the six criteria or characteristics were previously
15 identified, examined in the hydrological studies and subsequent hearing that followed the
16 completion of the Order 1169 aquifer test, or expressly disclosed in Rulings 6254-6261.⁷⁶ These
17 criteria were instead explicitly disclosed for the first time in Order 1309, which means the
18 participants had no opportunity to directly address these criteria in their presentations, or critically,
19 to address the appropriateness of these criteria.

20 This Court is unpersuaded by the State Engineer's argument that it could develop the criteria
21 only after it heard all the evidence at the hearing. Even if it did, this does not justify a deprivation of
22 the right to due process. In order to provide the parties due process and a meaningful opportunity to
23 present evidence on these issues, the State Engineer should have included these factors in the Notice
24 of Pre-Hearing Conference. *See Eureka Cty.*, 131 Nev. at 855, 359 P.3d at 1120; *Revert*, 95 Nev. at
25 787, 603 P.2d at 265 (criticizing the state engineer for engaging in post hoc rationalization). This

27 ⁷⁵ See SE ROA 48.

28 ⁷⁶ SE ROA 726-948.

1 due process violation is particularly harmful to water rights holders in Kane Springs, the sole basin
2 that had not been previously designated for management under NRS 534.030, had not been included
3 in the Order 1169 aquifer test, and had not been identified as a basin to be included in the LWRFS
4 superbasin in Order 1303.

5 Accordingly, this Court concludes that revealing the criteria only after stakeholders had
6 engaged in the extensive investigations, expert reporting, and the intense factual hearing requested
7 by Order 1303 further violates the participants' due process rights.

8 As this Court has determined that the Nevada State Engineer exceeded his statutory authority
9 and violated the participants' due process rights in issuing Order 1309, it declines to reach further
10 analysis on whether his factual findings in Order 1309 were supported by substantial evidence.

11 **IV.**
12 **CONCLUSION**

13 The Court FINDS that the Nevada State Engineer exceeded his statutory authority and had
14 no authority based in statute to create the LWRFS superbasin out of multiple distinct, already
15 established hydrographic basins. The Nevada State Engineer also lacked the statutory authority to
16 conjunctively manage this LWRFS superbasin.

17 The Court ALSO FINDS that the Nevada State Engineer violated the Petitioners'
18 Constitutional right to due process by failing to provide adequate notice and a meaningful
19 opportunity to be heard.

20 As a result, Order 1309 is arbitrary, capricious, and therefore void.

21 Good cause appearing, based upon the above Findings of Fact and Conclusions of Law, the
22 Court ORDERS, ADJUDGES AND DECREES as follows:

23 IT IS HEREBY ORDERED that the petition for review of the Nevada State Engineer's
24 Order No. 1309 filed by Petitioners Lincoln County Water District and Vidler Water Company, Inc.
25 is GRANTED.

26 IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer's
27 Order No. 1309 filed by Petitioners Coyote Springs Investment, LLC is GRANTED.
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IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer’s Order No. 1309 filed by Petitioners Apex Holding Company, LLC and Dry Lake Water, LLC is GRANTED.

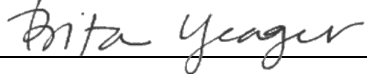
IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer’s Order No. 1309 filed by Petitioners Nevada Cogeneration Associates Nos. 1 and 2 is GRANTED.

IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer’s Order No. 1309 filed by Petitioners Georgia-Pacific Gypsum LLC, and Republic Environmental Technologies, Inc. is GRANTED.

IT IS FURTHER ORDERED that the State Engineer’s Order 1309 is VACATED in its entirety.

IT IS SO ORDERED.

Dated this 19th day of April, 2022



**66B 24A E875 2549
Bitia Yeager
District Court Judge**

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Southern Nevada Water
Authority, Plaintiff(s)

CASE NO: A-20-816761-C

7 vs.

DEPT. NO. Department 1

8
9 Nevada State Engineer, Division
of Water Resources,
10 Defendant(s)

11
12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

16 Service Date: 4/19/2022

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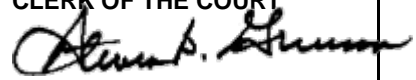
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1 **ASTA**

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8 CENTER FOR BIOLOGICAL DIVERSITY
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14 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
15 **IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA**

16 LAS VEGAS VALLEY WATER DISTRICT,
17 and SOUTHERN NEVADA WATER
18 AUTHORITY,

19 Petitioners,

20 vs.

21 ADAM SULLIVAN, P.E., Nevada State
22 Engineer, DIVISION OF WATER
23 RESOURCES, DEPARTMENT OF
24 CONSERVATION AND NATURAL
25 RESOURCES,

26 Respondent.

Case No. A-20-816761-C

Dept. 1

Consolidated with Cases:

A-20-817765-P
A-20-817840-P
A-20-817876-P
A-20-817977-P
A-20-818015-P
A-20-818069-P
A-21-833572-J

CASE APPEAL STATEMENT

27 1. The Appellant filing this Case Appeal Statement is the Center for Biological Diversity.
28 2. The District Court Judge issuing the April 19, 2022 Order appealed from, which Order
was entered on April 19, 2010, is the Honorable Bitu Yeager, of Department 1 of the Eighth Judicial
District Court for Clark County, Nevada.

3. The parties to the proceedings in the District Court were as follows:

- a. Petitioner the Center for Biological Diversity;
- b. Petitioners Southern Nevada Water Authority and Las Vegas Valley Water District;
- c. Petitioner Muddy Valley Irrigation Company;
- d. Petitioner Coyote Springs Investment, LLC;
- e. Petitioners Lincoln County Water District and Vidler Water Company, LLC;
- f. Petitioners Apex Holding Company, LLC and Dry Lake Water, LLC;
- g. Petitioners Nevada Cogeneration Associates Nos. 1 and 2;
- h. Petitioners Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc.;
- i. Respondent Nevada State Engineer (whose office is within the Nevada Department of Conservation and Natural Resources, Division of Water Resources);
- j. Respondent-Intervenor the Church of Jesus Christ of Latter-Day Saints;
- k. Respondent-Intervenor Sierra Pacific Power Company d/b/a NV Energy and Nevada Power Company d/b/a NV Energy;
- l. Respondent-Intervenor Moapa Valley Water District;
- m. Respondent-Intervenor City of North Las Vegas;
- n. Respondent-Intervenor Western Elite Environmental, Inc. and Bedroc Limited, LLC.

4. The Appellant expects that all parties involved in the district court proceedings will also be involved in this appeal.

5. Appellants include the Center for Biological Diversity, the Nevada State Engineer, Southern Nevada Water Authority, and Las Vegas Valley Water District. Appellants are represented by the following counsel:

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1 slake@biologicaldiversity.org

2 In association with:

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12 Steve Shevorski, Chief Litigation Counsel
13 James N. Bolotin, Senior Deputy Attorney General
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1 *Counsel for the Southern Nevada Water Authority and the Las Vegas Valley Water*
2 *District*

3 6. Other Petitioners and Respondent-Intervenors were represented by the following
4 counsel in the district court, and will likely be represented by the same counsel on appeal:

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

21 7. Lisa T. Belenky, an attorney for the Center identified above at Paragraph 5, is not
22 licensed to practice law in Nevada. The district court granted Ms. Belenky permission to appear under
23 SCR 42. Please see Order Admitting Practice attached hereto as Exhibit 1. The other attorneys
24 identified above in response to question 3 and 4 are licensed to practice law in Nevada.

25 8. The Center for Biological Diversity was represented by retained counsel before the
26 district court, as indicated in paragraph 5.

27 9. The Nevada State Engineer, all other Petitioners, and all Respondent-Intervenors were
28 represented by retained counsel in the district court.

10 10. The Appellant did not seek and was not granted leave to proceed in forma pauperis in
11 the district court.

12 11. The first petition for judicial review of the State Engineer's Order 1309 was served and
13 filed on or about June 17, 2020. Seven other petitions for judicial review of Order 1309 were

1 subsequently timely filed, pursuant to NRS 533.450(1), all of which were ultimately consolidated
2 under this district court case number with each petitioner intervening in each other's petition (along
3 with other intervenors who did not file petitions).

4 12. The Nevada State Engineer's Order 1309 made several findings of fact and conclusions
5 of law, including that the seven groundwater basins comprising the "Lower White River Flow System"
6 ("LWRFS") in southeastern Nevada share the same supply of water, and that the maximum amount of
7 groundwater available for appropriation in the LWRFS without harming senior existing water rights
8 or the environment is 8,000 acre-feet annually, and may be less. Petitioner/Appellant the Center for
9 Biological Diversity narrowly challenged one aspect of Order 1309; namely, the State Engineer's
10 conclusion that a limit of 8,000 acre-feet annually was sufficient to protect senior decreed water rights
11 and the environment. Otherwise, the Center, as Respondent-Intervenor with respect to petitions filed
12 by Lincoln County Water District and Vidler Water Company, Inc., Coyote Springs Investment, LLC,
13 Apex Holding Company, LLC and Dry Lake Water, LLC, Nevada Cogeneration Associates Nos. 1
14 and 2, and Georgia-Pacific Gypsum LLC and Republic Environmental Technologies, LLC, argued in
15 support of Order 1309. Following full briefing on all petitions and an oral argument held from
16 February 14-17, 2022, the district court issued an order vacating Order 1309 in its entirety, on the
17 grounds that the State Engineer exceeded his statutory authority and violated the prevailing petitioners'
18 due process rights. The Center appeals the district court's determination that the State Engineer lacked
19 statutory authority to enter Order 1309, and the district court's conclusion that Order 1309 violated
20 certain petitioners' due process rights.

21 13. This case has not been the subject of an appeal to or original writ proceeding in the
22 Supreme Court.

23 14. This appeal does not involve child custody or visitation.

24 15. Based upon the nature of the appeal, and the arguments that will be raised therein, this
25 case does not involve the possibility of settlement.

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

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Dated this 16th day of May, 2022.

/s/ Scott Lake

SCOTT LAKE, NV Bar No. 15765

Email: slake@biologicaldiversity.org

IN ASSOCIATION WITH:

LISA T. BELENKY (admitted *Pro Hac Vice*)

Center for Biological Diversity

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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Center for Biological Diversity, and that on this 16th
3 day of May, 2022 I served a true and correct copy of the foregoing by electronic service to the
4 participants in this case who are registered with the Eighth Judicial District Court's Odyssey
5 eFileNV File & Serve system to this matter.

6
7 */s/ Scott Lake*
8 Scott Lake
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INDEX OF EXHIBITS

Exhibit No.	Exhibit Description	Number of Pages
1	Order Admitting Practice (of Lisa Belenky) filed Sept. 21, 2020	3

Exhibit 1

1
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**IN THE EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA**

CENTER FOR BIOLOGICAL
DIVERSITY,

Petitioners,

vs.

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

Respondents.

**CASE NO. A-20-817876-P
DEPT. NO. XIX**

**ORDER ADMITTING
PRACTICE**

Lisa Belenky, Esq., having filed her Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a Certificate of Good Standing for the State of California, and the State Bar of Nevada Statement, said application having been noticed, no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby

ORDERED, that said application is hereby granted and Lisa Belenky, Esq., is hereby admitted to practice in the above entitled Court for the purposes of the above entitled matter only.

DATED this day of August, 2020. ^{Dated this 21st day of September, 2020}

William D. Kephart

District Judge
D09 3A8 E0D7 4C45
William D. Kephart
District Court Judge

Submitted by:

Julie Cavanaugh-Bill

Julie Cavanaugh-Bill
NV Bar No. 11533
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 In the Matter of the Petition of | CASE NO: A-20-817876-P
7 Center for Biological Diversity | DEPT. NO. Department 19
8

9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Order Admitting to Practice was served via the court's electronic eFile
12 system to all recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 9/21/2020

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19 If indicated below, a copy of the above mentioned filings were also served by mail
20 via United States Postal Service, postage prepaid, to the parties listed below at their last
21 known addresses on 9/22/2020

22	Christian Balducci	Marquis Aurbach Coffing
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25		Las Vegas, NV, 89145
26	James Bolotin	Bureau of Litigation - Public Safety Division
27		Adam Paul Laxalt
28		100 N. Carson St.
		Carson City, NV, 89701

CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C

Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources,
Defendant(s)

§
§
§
§
§

Location: **Department 1**
Judicial Officer: **Yeager, Bita**
Filed on: **06/17/2020**
Case Number History:
Cross-Reference Case Number: **A816761**

CASE INFORMATION

Related Cases

A-20-817765-P (Consolidated)
A-20-817840-P (Consolidated)
A-20-817876-P (Consolidated)
A-20-817977-P (Consolidated)
A-20-818015-P (Consolidated)
A-20-818069-P (Consolidated)
A-21-833572-J (Consolidated)

Case Type: **Other Civil Matters**

Case Flags: **Consolidated - Lead Case
Appealed to Supreme Court**

Statistical Closures

04/19/2022 Summary Judgment

DATE

CASE ASSIGNMENT

Current Case Assignment



Case Number	A-20-816761-C
Court	Department 1
Date Assigned	01/04/2021
Judicial Officer	Yeager, Bita

PARTY INFORMATION


		<i>Lead Attorneys</i>
Plaintiff	Las Vegas Valley Water District	Taggart, Paul G. <i>Retained</i> 7026875195(W)
	Southern Nevada Water Authority	Taggart, Paul G. <i>Retained</i> 7026875195(W)
Defendant	Nevada State Engineer, Division of Water Resources	Bolotin, James N. <i>Retained</i> 775-684-1159(W)
	Wilson, Tim	
Intervenor	Apex Holding Company, LLC	Balducci, Christian T. <i>Retained</i> 702-382-0711(W)
	Center for Biological Diversity Removed: 05/13/2022 Dismissed	Wolf, Douglas W <i>Retained</i> 202-510-5604(W)
	Coyote Springs Investment, LLC	Herrema, Bradley J <i>Retained</i> 805-963-7000(W)
	Dry Lake Water, LLC	Balducci, Christian T. <i>Retained</i> 702-382-0711(W)
	Georgia-Pacific Gypsum LLC	Ferguson, Sarah


CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C


		<i>Retained</i> 775-247-4999(W)
	Lincoln County Water District	Klomp, Wayne O. <i>Retained</i> 775-786-5000(W)
	Muddy Valley Irrigation Company Removed: 05/13/2022 Dismissed	King, Steven D. <i>Retained</i> 7023555666(W)
	Nevada Cogeneration Associates Nos. 1 and 2.	Flaherty, Francis C <i>Retained</i> 7758851896(W)
	Nevada Power Company	Knox, Michael D. <i>Retained</i> 775-788-8666(W)
	Vidler Removed: 06/25/2021 Data Entry Error	
	Vidler Water Company, Inc.	Peterson, Karen A. <i>Retained</i> 7756870202(W)
Other	Bedroc Limited, LLC	Ure, Therese A <i>Retained</i> 775-786-8800(W)
	City of North Las Vegas	Ure, Therese A <i>Retained</i> 775-786-8800(W)
	Moapa Valley Water District	Morrison, Gregory H. <i>Retained</i> 775-789-6547(W)
	Republic Environmental Technologies, Inc.	Ferguson, Sarah <i>Retained</i> 775-247-4999(W)
	Sierra Pacific Power Company	Knox, Michael D. <i>Retained</i> 775-788-8666(W)
	The Church of Jesus Christ of Latter-day Saints	Carlson, Severin A. <i>Retained</i> 775-884-8300(W)
	Western Elite Environmental, Inc.	Ure, Therese A <i>Retained</i> 775-786-8800(W)


DATE	EVENTS & ORDERS OF THE COURT	INDEX
06/17/2020	 Petition for Judicial Review Filed by: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District [1] <i>Petition for Judicial Review of State Engineer's Order 1309</i>	
06/22/2020	 Notice of Appearance Party: Defendant Nevada State Engineer, Division of Water Resources [2] <i>Notice of Appearances for Respondent State Engineer</i>	
06/23/2020		


CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C


 Clerk's Notice of Nonconforming Document
[3] Clerk's Notice of Nonconforming Document


07/07/2020  Notice of Appearance
Party: Other The Church of Jesus Christ of Latter-day Saints
[4] Notice of Appearance


07/07/2020  Notice of Intent to Participate
Filed By: Other The Church of Jesus Christ of Latter-day Saints
[5] Notice of Intent to Participate


07/07/2020  Initial Appearance Fee Disclosure
[6] Initial Appearance Fee Disclosure


07/07/2020  Statement
Filed by: Intervenor Nevada Power Company; Other Sierra Pacific Power Company
[7] Statement of Intent to Participate


07/08/2020  Certificate of Service
Filed by: Intervenor Nevada Power Company; Other Sierra Pacific Power Company
[8] Certificate of Service


07/10/2020  Notice of Intent to Participate
[9] Notice of Intent to Participate


07/10/2020  Initial Appearance Fee Disclosure
Filed By: Intervenor Coyote Springs Investment, LLC
[10] Initial Appearance Fee Disclosure (payment was posted under Nevada Power)


07/14/2020  Certificate of Service
Filed by: Intervenor Coyote Springs Investment, LLC
[11] Certificate of Service of Notice of Intent to Participate

07/14/2020  Notice of Intent to Participate
Filed By: Other Moapa Valley Water District
[12] Notice of Intent to Participate














07/14/2020  Notice of Intent to Participate
Filed By: Other Moapa Valley Water District
[13] Notice of Intent to Participate

07/15/2020  Initial Appearance Fee Disclosure
Filed By: Intervenor Nevada Power Company; Other Sierra Pacific Power Company
[14] Initial Appearance Fee Disclosure

07/15/2020  Amended Notice
Filed By: Other Moapa Valley Water District
[15] Amended Notice of Intent to Participate

07/16/2020  Filing Fee Remittance
Filed By: Intervenor Nevada Power Company; Other Sierra Pacific Power Company
[16] Filing Fee Remittance

CASE SUMMARY
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07/17/2020	 Notice of Intent to Participate Filed By: Other City of North Las Vegas <i>[17] Notice of Intent to Participate by City of North Las Vegas</i>
07/17/2020	 Initial Appearance Fee Disclosure Filed By: Other City of North Las Vegas <i>[18] Initial Appearance Fee Disclosure (NRS Chapter 19) for City of North Las Vegas with Certificate of Service attached.</i>
07/17/2020	 Notice of Intent to Participate Filed By: Other Western Elite Environmental, Inc.; Other Bedroc Limited, LLC <i>[19] Notice of Intent to Participate by Western Elite Environmental, Inc. and Bedroc Limited, LLC</i>
07/17/2020	 Initial Appearance Fee Disclosure Filed By: Other Western Elite Environmental, Inc.; Other Bedroc Limited, LLC <i>[20] Initial Appearance Fee Disclosure (NRS Chapter 19) for Western Elite Environmental, Inc. and Bedroc, LLC with Certificate of Service attached.</i>
07/21/2020	 Motion to Consolidate Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District <i>[21] Motion to Consolidate</i>
07/22/2020	 Clerk's Notice of Hearing <i>[22] Notice of Hearing</i>
07/23/2020	 Notice of Intent to Participate Filed By: Intervenor Apex Holding Company, LLC; Intervenor Dry Lake Water, LLC <i>[23] Notice of Intent to Participate</i>
07/23/2020	 Initial Appearance Fee Disclosure Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District <i>[24] Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
07/29/2020	 Initial Appearance Fee Disclosure Filed By: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc. <i>[25] Initial Appearance Fee Disclosure</i>
07/29/2020	 Notice of Intent to Participate Filed By: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc. <i>[26] Notice of Intent to Participate in Petition for Judicial Review of Order 1309</i>
07/29/2020	 Stipulation Filed by: Intervenor Coyote Springs Investment, LLC <i>[27] Stipulation for Consolidation</i>
07/31/2020	 Motion to Intervene Party: Intervenor Coyote Springs Investment, LLC <i>[28] Coyote Springs Investment, LLC's Motion to Intervene</i>
08/03/2020	 Clerk's Notice of Hearing

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[29] Notice of Hearing

08/04/2020

 Response

Filed by: Defendant Nevada State Engineer, Division of Water Resources; Defendant Wilson, Tim
[30] State Engineer's Response to LVVWD's and SNWA's Motion to Consolidate

08/14/2020

 Stipulation

Filed by: Intervenor Coyote Springs Investment, LLC
[31] Joint Stipulation for Order Allowing Each Petitioner to Intervene in the Other Petitioners' Actions

08/17/2020

 Order Granting

Filed By: Intervenor Coyote Springs Investment, LLC
[32] Order Granting Consolidation

08/20/2020

 Response

Filed by: Intervenor Coyote Springs Investment, LLC
[33] Coyote Springs Investment, LLC's Response to Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc.'s Motion to Intervene


08/27/2020

CANCELED Motion to Consolidate (3:00 AM) (Judicial Officer: Kephart, William D.)
Vacated - per Law Clerk
Plaintiff's Motion to Consolidate


08/27/2020

CANCELED Motion to Intervene (3:00 AM) (Judicial Officer: Kephart, William D.)
Vacated - per Law Clerk
Coyote Springs Investment, LLC's Motion to Intervene

08/28/2020


 Clerk's Refund Request
[34]

08/28/2020

 Reply to Opposition


Filed by: Other Moapa Valley Water District
[35] (9/14/20 Withdrawn) Reply to Lincoln County Water District's Opposition to Motion to Intervene

09/01/2020

 Motion to Intervene

Party: Other The Church of Jesus Christ of Latter-day Saints
[36] The Church of Latter-Day Saints' Motion To Intervene

09/01/2020

 Clerk's Notice of Hearing
[37] Notice of Hearing

09/02/2020

 Amended Certificate of Service

Party: Other The Church of Jesus Christ of Latter-day Saints
[38] Amended Certificate of Service

09/03/2020


CANCELED Motion to Intervene (3:00 AM) (Judicial Officer: Kephart, William D.)
Vacated - per Law Clerk
Las Vegas Valley Water District and Southern Nevada Water Authority's Motion to Intervene [Rescheduled From Sub Case A-20-817765-P]


09/03/2020


CANCELED Motion to Intervene (3:00 AM) (Judicial Officer: Kephart, William D.)
Vacated - per Law Clerk
Georgia-Pacific Gypsum LLC and Republic Environmental Technologies Inc.'s Motion to Intervene [Rescheduled From Sub Case A-20-817765-P]


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09/03/2020 **CANCELED Status Check** (3:00 AM) (Judicial Officer: Kephart, William D.)
Vacated - per Law Clerk
Status Check [Rescheduled From Sub Case A-20-817-77-P]


09/14/2020  Notice of Withdrawal
Filed By: Other Moapa Valley Water District
[39] Notice of Withdrawal


09/15/2020  Order Approving
Filed By: Intervenor Coyote Springs Investment, LLC
[40] Order Approving Joint Stipulation for Joint Intervention

09/15/2020  Non Opposition
Filed By: Defendant Nevada State Engineer, Division of Water Resources
[41] Non-Opposition to the Church of Jesus Christ of Latter-Day Saints' Motion to Intervene

09/15/2020  Response
Filed by: Intervenor Coyote Springs Investment, LLC
[42] Coyote Springs Investment, LLC's Response to the Church of Jesus Christ of Latter-Day Saints' Motion to Intervene


09/17/2020  **Motion to Associate Counsel** (3:00 AM) (Judicial Officer: Kephart, William D.)
Plaintiff Center for Biological Diversity's Motion to Associate Counsel [Rescheduled From Sub Case A-20-817876-P]


09/21/2020  Motion to Intervene
Party: Other Western Elite Environmental, Inc.; Other Bedroc Limited, LLC
[43] Western Elite Environmental, Inc. and Bedroc limited, LCC's Motion to Intervene


09/21/2020  Motion to Intervene
Party: Other City of North Las Vegas
[44] City of North Las Vegas' Motion to Intervene

09/22/2020  Reply to Opposition
Filed by: Other The Church of Jesus Christ of Latter-day Saints
[45] The Church of Latter-Day Saints' Reply to CSI's Opposition to Motion To Intervene

09/23/2020  Clerk's Notice of Nonconforming Document
[46] Clerk's Notice of Nonconforming Document

09/23/2020  Clerk's Notice of Nonconforming Document
[47] Clerk's Notice of Nonconforming Document

09/24/2020  Clerk's Notice of Nonconforming Document and Curative Action
[48] Clerk's Notice of Curative Action

09/24/2020  Clerk's Notice of Nonconforming Document and Curative Action
[49] Clerk's Notice of Curative Action

09/24/2020  Clerk's Notice of Hearing
[50] Notice of Hearing

09/24/2020

CASE SUMMARY
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-  Clerk's Notice of Hearing
[51] Notice of Hearing
- 09/24/2020  Non Opposition
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[52] Non Opposition to City of North Las Vegas' Motion to Intervene
- 09/24/2020  Non Opposition
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[53] Non Opposition to Church of Jesus Christ of Latter Day Saints' Motion to Intervene
- 09/24/2020  Non Opposition
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[54] Non Opposition to Western Elite Environmental and Bedroc's Motion to Intervene
- 09/25/2020  Motion to Intervene
Party: Other Moapa Valley Water District
[55] Motion to Intervene
- 09/25/2020  Clerk's Notice of Nonconforming Document
[56] Clerk's Notice of Nonconforming Document
- 09/28/2020  Non Opposition
Filed By: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc.
[57] Georgia-Pacific and Republic's Non-Opposition to Western Elite Environmental and Bedroc's Motion to Intervene
- 09/28/2020  Non Opposition
Filed By: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc.
[58] Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc's Non-Opposition to City of North Las Vegas's Motion to Intervene
- 09/29/2020  Clerk's Notice of Nonconforming Document and Curative Action
[59] Clerk's Notice of Curative Action
- 09/29/2020  Clerk's Notice of Hearing
[60] Notice of Hearing
- 09/29/2020  Motion to Intervene
Party: Intervenor Nevada Power Company; Other Sierra Pacific Power Company
[61] Motion to Intervene
- 09/29/2020  Non Opposition
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[62] SNWA/LVVWD Non Opposition to NV Energy Motion to Intervene
- 09/29/2020  Non Opposition
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District

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[63] SNWA/LVVWD Non Opposition to Moapa Valley Water District Motion to Intervene

09/30/2020



Certificate of Service

Filed by: Intervenor Nevada Power Company; Other Sierra Pacific Power Company

[64] Certificate of Service

09/30/2020



Clerk's Notice of Nonconforming Document

[65] Clerk's Notice of Nonconforming Document

10/01/2020



Motion to Associate Counsel

Filed By: Intervenor Center for Biological Diversity

[66] Motion to Associate Counsel

10/01/2020



Clerk's Notice of Hearing

[67] Notice of Hearing

10/02/2020



Status Report

Filed By: Intervenor Coyote Springs Investment, LLC

[68] Coyote Springs Investment, LLC's Status Report

10/05/2020



Non Opposition

Filed By: Defendant Nevada State Engineer, Division of Water Resources; Defendant Wilson, Tim

[69] Non-Opposition to City of North Las Vegas Motion to Intervene

10/05/2020



Non Opposition

[70] Non-Opposition to Western Elite Environmental, Inc. and Bedroc Limited, LLC s Motion to Intervene

10/05/2020



Miscellaneous Filing

Filed by: Intervenor Center for Biological Diversity

[71] Request to Excuse Local Counsel from Status Hearing

10/05/2020



Response

Filed by: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District

[72] Response To CSI Status Report

10/06/2020



Status Check (9:00 AM) (Judicial Officer: Kephart, William D.)

10/06/2020, 11/17/2020

Status Check: Record on Appeal

Parties Present: Attorney Coulthard, William L

Attorney Cargill, Emilia K.

Attorney Robison, Kent R.

Attorney Taggart, Paul G.

Attorney Jayne, Collin

Attorney Bolotin, James N.

Attorney Morrison, Gregory H.

Attorney Herrema, Bradley J

Attorney Caviglia, Justina A.

Attorney Ferguson, Sarah

Attorney Ure, Therese A

10/06/2020




Order Admitting to Practice


Filed By: Intervenor Center for Biological Diversity


[73] Order Admitting to Practice


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10/07/2020  Order
Filed By: Intervenor Center for Biological Diversity
[74] OrderExcusing Local Counsel


10/08/2020 **CANCELED Motion to Intervene** (3:00 AM) (Judicial Officer: Kephart, William D.)
Vacated - per Judge
The Church of Jesus Christ of Latter-Day Saints' Motion to Intervene

10/09/2020  Non Opposition
Filed By: Defendant Nevada State Engineer, Division of Water Resources; Defendant Wilson, Tim
[75] Non-Opposition to Moapa Valley Water District s Motion to Intervene

10/09/2020  Response
Filed by: Intervenor Coyote Springs Investment, LLC
[76] Coyote Springs Investment, LLC's Preliminary Response to Pending Motions to Intervene


10/13/2020  Non Opposition
Filed By: Defendant Nevada State Engineer, Division of Water Resources; Defendant Wilson, Tim
[77] Non-Opposition to NV Energy s Motion to Intervene


10/20/2020  Memorandum
Filed By: Other City of North Las Vegas; Other Western Elite Environmental, Inc.; Other Bedroc Limited, LLC
[78] Joint Memorandum re Scope of Intervention


10/21/2020  Amended Certificate of Service
Party: Other City of North Las Vegas; Other Western Elite Environmental, Inc.; Other Bedroc Limited, LLC
[79] Joint Amended Certificate of Service


10/22/2020 **CANCELED Motion to Intervene** (3:00 AM) (Judicial Officer: Kephart, William D.)
Vacated - per Judge
City of North Las Vegas' Motion to Intervene

10/22/2020 **CANCELED Motion to Intervene** (3:00 AM) (Judicial Officer: Kephart, William D.)
Vacated - per Judge
Western Elite Environmental, Inc. and Bedroc limited, LCC's Motion to Intervene

10/28/2020  Memorandum
Filed By: Other Moapa Valley Water District
[80] Moapa Valley Water District's Memorandum Re Scope of Intervention

10/29/2020  Non Opposition
Filed By: Intervenor Muddy Valley Irrigation Company
[81] Non-Opposition to Coyote Springs Investment, LLC's Motion to Intervene

10/29/2020  Non Opposition
Filed By: Intervenor Muddy Valley Irrigation Company
[82] Non-Opposition to Western Elite Environmental, Inc. and Bedroc Limited, LLC's Motion to Intervene

10/29/2020  Non Opposition
Filed By: Intervenor Muddy Valley Irrigation Company

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[83] Non-Opposition to The Church of Jesus Christ of Latter-Day Saints' Motion to Intervene

10/29/2020



Non Opposition

Filed By: Intervenor Muddy Valley Irrigation Company

[84] Non-Opposition to City of North Las Vegas' Motion to Intervene

10/29/2020



Non Opposition

Filed By: Intervenor Muddy Valley Irrigation Company

[85] Non-Opposition to Moapa Valley Water District's Motion to Intervene

10/29/2020



Non Opposition

Filed By: Intervenor Muddy Valley Irrigation Company

[86] Non-Opposition to Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy's Motion to Intervene

11/02/2020



Brief

Filed By: Intervenor Nevada Power Company; Other Sierra Pacific Power Company

[87] NV Energy's Brief Addressing the Extent Intervenors are Permitted to Participate in Petitions for Judicial Review Under NRS 533.450

11/02/2020



Certificate of Service

Filed by: Intervenor Nevada Power Company; Other Sierra Pacific Power Company

[88] Certificate of Service

11/02/2020



Memorandum

Filed By: Defendant Nevada State Engineer, Division of Water Resources; Defendant Wilson, Tim

[89] Nevada State Engineer's Brief on the Rights of Intervenors

11/02/2020



Brief

Filed By: Intervenor Coyote Springs Investment, LLC

[90] CSI'S Brief RE: Scope of Intervention

11/02/2020



Memorandum

[91] Nevada Cogeneration Associates Nos. 1 and 2's Memorandum Re Scope of Intervention

11/02/2020



Brief

Filed By: Other The Church of Jesus Christ of Latter-day Saints

[92] The Church of Jesus Christ of Latter-Day Saints' Brief Regarding Scope of Intervention

11/02/2020



Memorandum

Filed By: Intervenor Apex Holding Company, LLC; Intervenor Dry Lake Water, LLC

[93] Apex Holding Company, LLC and Dry Lake Water, LLC's Memorandum Regarding Scope of Intervention

11/02/2020



Brief

Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District

[94] on Intervention Issues

11/05/2020

CANCELED Motion to Intervene (3:00 AM) (Judicial Officer: Kephart, William D.)

Vacated - per Judge

11/05/2020


CANCELED Motion to Intervene (3:00 AM) (Judicial Officer: Kephart, William D.)


Vacated - per Judge


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Moapa Valley Water District's Motion to Intervene

11/05/2020 **CANCELED Motion to Associate Counsel** (3:00 AM) (Judicial Officer: Kephart, William D.)
Vacated - per Judge
Intervenor's Motion to Associate Counsel


11/05/2020  **Recorders Transcript of Hearing**
[95] Transcript Re: Status Check: Record on Appeal 10-06-20

11/10/2020  **Record on Appeal**
[96] Summary of Record on Appeal Part 1 of 2


11/12/2020  **Record on Appeal**
[97] Record on Appeal Part 2 of 2

11/17/2020  **Status Check** (9:00 AM) (Judicial Officer: Yeager, Bita)
11/17/2020, 02/25/2021


Status Check: Set Motions to Intervene
Parties Present: Attorney Cargill, Emilia K.
Attorney Flangas, Alex J.
Attorney Knox, Michael D.
Attorney Carlson, Severin A.
Attorney Harrison, Sylvia L.
Attorney Dotson, Robert A.
Attorney Taggart, Paul G.
Attorney Balducci, Christian T.
Attorney Bolotin, James N.
Attorney Herrema, Bradley J
Attorney Caviglia, Justina A.
Attorney Ure, Therese A

11/17/2020  **All Pending Motions** (9:00 AM) (Judicial Officer: Kephart, William D.)

Parties Present: Attorney Coulthard, William L
Attorney Campbell, Richard Glen
Attorney Carlson, Severin A.
Attorney Robison, Kent R.
Attorney Harrison, Sylvia L.
Attorney Kroll, Steven E.
Attorney Dotson, Robert A.
Attorney Taggart, Paul G.
Attorney Cavanaugh-Bill, Julie
Attorney Wilde, Kathleen A.
Attorney Bolotin, James N.
Attorney Morrison, Gregory H.
Attorney Herrema, Bradley J
Attorney St. Jules, Laena
Attorney Caviglia, Justina A.
Attorney Ure, Therese A












11/18/2020  **Errata**
Filed By: Defendant Nevada State Engineer, Division of Water Resources; Defendant
Wilson, Tim
[98] Notice of Errata: Summary of Record on Appeal

01/04/2021 Case Reassigned to Department 1
Judicial Reassignment to Judge Bita Yeager

02/16/2021  **Notice of Change of Hearing**












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[99] Notice of Change of Hearing

- 02/19/2021  Appearance
Filed By: Intervenor Center for Biological Diversity
[100] Request to Excuse Local Counsel from Status Hearing
- 02/23/2021  Status Report
Filed By: Intervenor Coyote Springs Investment, LLC
[101] Coyote Springs Investment, LLC's Status Report
- 02/26/2021  Order Granting Motion
[102] Order Granting Motions to Intervene
- 03/04/2021  Recorders Transcript of Hearing
[103] Recorder's Transcript Re: Status Check: Set Motions to Intervene 02-25-21
- 03/05/2021  Order
[104] Scheduling Order
- 04/28/2021  Status Report
Filed By: Intervenor Coyote Springs Investment, LLC
[105] Coyote Springs Investment, LLC's Status Report
- 04/28/2021  Miscellaneous Filing
Filed by: Intervenor Center for Biological Diversity
[106] Request to Excuse Local Counsel from Status Hearing
- 04/29/2021  **Status Check (9:30 AM)** (Judicial Officer: Yeager, Bitá)
STATUS CHECK: SUPREME COURT REMITTER
Parties Present: Attorney Cargill, Emilia K.
Attorney Flangas, Alex J.
Attorney Carlson, Severin A.
Attorney Robison, Kent R.
Attorney Dotson, Robert A.
Attorney Taggart, Paul G.
Attorney Wilde, Kathleen A.
Attorney Bolotin, James N.
Attorney Morrison, Gregory H.
Attorney Foletta, Lucas M.
Attorney Herrema, Bradley J
Attorney Caviglia, Justina A.
Attorney Ure, Therese A
- 05/26/2021  Stipulation
Filed by: Intervenor Coyote Springs Investment, LLC
[107] Stipulation for Consolidation
- 05/27/2021  **Minute Order (3:00 AM)** (Judicial Officer: Yeager, Bitá)
- 05/27/2021  **Status Check (11:00 AM)** (Judicial Officer: Yeager, Bitá)
STATUS CHECK: BRIEFING SCHEDULE
Parties Present: Attorney Cargill, Emilia K.
Attorney Flangas, Alex J.
Attorney Knox, Michael D.
Attorney Carlson, Severin A.

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Attorney Robison, Kent R.
Attorney Harrison, Sylvia L.
Attorney Dotson, Robert A.
Attorney Taggart, Paul G.
Attorney Wilde, Kathleen A.
Attorney Bolotin, James N.
Attorney Caviglia, Justina A.
Attorney Ure, Therese A

- 06/04/2021  Notice of Motion
Filed By: Intervenor Coyote Springs Investment, LLC
[108] Notice of Coyote Springs Investment, LLC's Motion to Intervene in LCWD/Vidler's Petition for Judicial Review
- 06/10/2021  Notice of Motion
Filed By: Other The Church of Jesus Christ of Latter-day Saints
[109] Church Corporation's Notice of Motion
- 06/11/2021  Notice of Motion
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District; Intervenor Coyote Springs Investment, LLC; Other Moapa Valley Water District; Intervenor Muddy Valley Irrigation Company
[110] Notice of Submitted Motions to Intervene
- 06/11/2021  Appendix
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District; Intervenor Coyote Springs Investment, LLC; Other Moapa Valley Water District; Intervenor Muddy Valley Irrigation Company
[111] Appendix to Notice of Submitted Motions to Intervene
- 06/16/2021  Substitution of Attorney
Filed by: Intervenor Center for Biological Diversity
[112] Substitution of Attorney
- 06/16/2021  Notice of Appearance
Party: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[113] Notice of Appearance
- 06/24/2021  Motion to Withdraw As Counsel
Filed By: Intervenor Center for Biological Diversity
[114] Motion for Withdrawal of Attorney Doug Wolf
- 06/24/2021  Errata
Filed By: Intervenor Center for Biological Diversity
[115] Notice of Errata re: June 16, 2021 Substitution of Attorney
- 06/24/2021  Stipulation and Order
[116] Lincoln, Vidler, Georgia-Pacific Gypsum, and Republic's Stipulation and Order Regarding Intervention and Briefing Schedule
- 06/24/2021  Stipulation and Order
[117] Lincoln, Vidler, and Center for Biological Diversity Stipulation and Order Regarding Intervention and Briefing Schedule
- 06/24/2021  Stipulation and Order
[118] Lincoln, Vidler, Church of Latter-Day Saints Stipulation and Order Regarding

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Intervention and Briefing Schedule

- 06/24/2021  Stipulation and Order
[119] Lincoln, Vidler, City of North Las Vegas, Western Elite Environmental, and Bedroc Limited's Stipulation and Order Regarding Intervention and Briefing Schedule
- 06/25/2021  Clerk's Notice of Nonconforming Document
[120] Clerk's Notice of Nonconforming Document
- 06/25/2021  Notice of Entry of Stipulation and Order
Filed By: Intervenor Vidler Water Company, Inc.
[121] Notice of Entry of LCWD/Vidler and City of North Las Vegas, Western Elite Environmental, Inc. and Bedroc Limited, LLC Stipulation and Order Regarding Intervention and Briefing Schedule
- 06/25/2021  Notice of Entry of Stipulation and Order
Filed By: Intervenor Vidler Water Company, Inc.
[122] Notice of Entry of LCWD/Vidler and The Church of Latter-day Saints Stipulation and Order Regarding Intervention and Briefing Schedule
- 06/25/2021  Notice of Entry of Stipulation and Order
Filed By: Intervenor Vidler Water Company, Inc.
[123] Notice of Entry of LCWD/Vidler and Georgia-Pacific Gypsum LLC and Republic Environmental Technologies, Inc. Stipulation and Order Regarding Intervention and Briefing Schedule
- 06/25/2021  Stipulation and Order
Filed by: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[124] Lincoln County Water District, Vidler Water Company, Inc., and Moapa Valley Water District Stipulation and Order Regarding Intervention and Briefing Schedule
- 06/25/2021  Notice of Entry of Stipulation and Order
Filed By: Intervenor Vidler Water Company, Inc.
[125] Notice of Entry of LCWD/Vidler and Center for Biological Diversity Stipulation and Order Regarding Intervention and Briefing Schedule
- 06/25/2021  Stipulation and Order
Filed by: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[126] Lincoln County Water District, Vidler water company, Inc., and Nevada Cogeneration Associates Nos.1 and 2 Stipulation and Order Regarding Intervention and Briefing Schedule
- 06/28/2021  Clerk's Notice of Nonconforming Document and Curative Action
[127] Clerk's Notice of Curative Action
- 06/28/2021  Clerk's Notice of Hearing
[128] Notice of Hearing
- 06/29/2021  Notice of Entry of Stipulation and Order
Filed By: Intervenor Vidler Water Company, Inc.
[129] Notice of Entry of LCWD/Vidler and Nevada Cogeneration Associates Nos. 1 and 2 Stipulation and Order Regarding Intervention and Briefing Schedule
- 06/29/2021  Notice of Entry of Stipulation and Order
Filed By: Intervenor Vidler Water Company, Inc.
[130] Notice of Entry of LCWD/Vidler and Moapa Valley Water District Stipulation and

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Order Regarding Intervention and Briefing Schedule


07/01/2021

 **Status Check (11:00 AM)** (Judicial Officer: Yeager, Bitá)

STATUS CHECK - ON FULLY BRIEFED MOTIONS


*Parties Present: Attorney Cargill, Emilia K.
Attorney Carlson, Severin A.
Attorney Peterson, Karen A.
Attorney Robison, Kent R.
Attorney Harrison, Sylvia L.
Attorney Dotson, Robert A.
Attorney Taggart, Paul G.
Attorney Wilde, Kathleen A.
Attorney Bolotin, James N.
Attorney Foletta, Lucas M.
Attorney Caviglia, Justina A.
Attorney Ure, Therese A
Attorney Lake, Scott*

07/01/2021

 Stipulation and Order


Filed by: Intervenor Lincoln County Water District
[131] Lincoln County Water District, Vidler Water Company, Inc., State Engineer and Coyote Springs Investment LLC Stipulation and Order Regarding Intervention and Briefing Schedule

07/01/2021

 Stipulation and Order


Filed by: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[132] Lincoln County Water District, Vidler Water Company, Inc., State Engineer and Apex Holding Company, LLC and Dry Lake Water, LLC Stipulation and Order Regarding Intervention and Briefing Schedule

07/01/2021

 Stipulation and Order


Filed by: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[133] Lincoln County Water District, Vidler Water Company, Inc., State Engineer and Nevada Power Company dba NV Energy Stipulation and Order Regarding Intervention and Briefing Schedule

07/01/2021

 Notice of Entry of Stipulation and Order


Filed By: Intervenor Vidler Water Company, Inc.
[134] Notice of Entry of LCWD/Vidler, State Engineer and Nevada Power Company dba NV Energy Stipulation and Order Regarding Intervention and Briefing Schedule

07/01/2021

 Notice of Entry of Stipulation and Order

Filed By: Intervenor Vidler Water Company, Inc.
[135] Notice of Entry of LCWD/Vidler, State Engineer and Apex Holding Company, LLC and Dry Lake Water, LLC Stipulation and Order Regarding Intervention and Briefing Schedule

07/01/2021

 Notice of Entry of Stipulation and Order

Filed By: Intervenor Vidler Water Company, Inc.
[136] Notice of Entry of LCWD/Vidler, State Engineer and Coyote Springs Investment LLC Stipulation and Order Regarding Intervention and Briefing Schedule

07/09/2021

 Order














[137] Order Granting Motion to Intervene

07/14/2021

 Notice of Entry of Order


Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[138] Notice of Entry of Order

CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C


- 07/29/2021  **Recorders Transcript of Hearing**
[139] Recorder's Transcript Re: Status Check: On Fully Briefed Motions 07-01-21
- 07/29/2021  **Notice**
Filed By: Intervenor Coyote Springs Investment, LLC
[140] (A816761, A817765) Notice of Disassociation of Counsel
- 07/29/2021  **Notice of Appearance**
Party: Intervenor Coyote Springs Investment, LLC
[141] (A816761, A817765, A817840, A817876, A817977, A818015, A818069, A833572) Notice of Appearance of Hannah E. Winston, Esq.
- 07/30/2021  **Motion to Withdraw as Counsel (3:00 AM)** (Judicial Officer: Yeager, Bitá)
Intervenor's Motion for Withdrawal of Attorney Doug Wolf
- 08/11/2021  **Substitution of Attorney**
Filed by: Intervenor Lincoln County Water District
[142] Substitution of Counsel
- 08/12/2021  **Notice**
Filed By: Intervenor Center for Biological Diversity
[143] Notice of Exemption from Pretrial Discovery Rules
- 08/27/2021  **Request for Judicial Notice**
Filed By: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc.
[144] Request for Judicial Notice In Support of Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc.'s Opening Brief In Support of Petition for Judicial Review of Order 1309
- 08/27/2021  **Petition for Judicial Review**
Filed by: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc.
[145] Opening Brief In Support of Petition for Judicial Review of Order 1309
- 08/27/2021  **Appendix**
Filed By: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc.
[146] Appendix of Exhibits to Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc.'s Opening Brief In Support of Petition for Judicial Review of Order 1309
- 08/27/2021  **Petitioners Opening Brief**
Filed by: Intervenor Center for Biological Diversity
[147] The Center for Biological Diversity's Opening Brief
- 08/27/2021  **Petitioners Opening Brief**
Filed by: Intervenor Muddy Valley Irrigation Company
[148] Muddy Valley Irrigation Company's Opening Brief
- 08/27/2021  **Notice**
Filed By: Intervenor Muddy Valley Irrigation Company
[149] Muddy Valley Irrigation Company's Notice of Record Citations
- 08/27/2021  **Petitioners Opening Brief**


CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C


Filed by: Intervenor Coyote Springs Investment, LLC
[150] Coyote Springs Investment, LLC's Opening Brief on Petition for Judicial Review


08/27/2021  Exhibits
Filed By: Intervenor Coyote Springs Investment, LLC
[151] Exhibits in Support of Coyote Springs Investment, LLC's Opening Brief on Petition for Judicial Review


08/27/2021  Petitioners Opening Brief
Filed by: Intervenor Apex Holding Company, LLC; Intervenor Dry Lake Water, LLC
[152] Petitioners Apex Holdings Company, LLC and Dry Lake Water, LLC's Opening Brief


08/27/2021  Exhibits
Filed By: Intervenor Apex Holding Company, LLC; Intervenor Dry Lake Water, LLC
[153] Petitioner Apex Holding Company, LLC and Dry Lake Water, LLC's Notice of Record Citations


08/27/2021  Petitioners Opening Brief
Filed by: Intervenor Nevada Cogeneration Associates Nos. 1 and 2.
[154] Petitioners' Nevada Cogeneration Associates No. 1 and 2 Opening Brief


08/27/2021  Appendix
Filed By: Intervenor Nevada Cogeneration Associates Nos. 1 and 2.
[155] Appendix of Exhibits in Support of Petitioners' Nevada Cogeneration Associates No. 1 and 2 Opening Brief


08/27/2021  Petitioners Opening Brief
Filed by: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[156] Opening Brief From Petitioner's Las Vegas Valley Water District and Southern Nevada Water Authority

08/27/2021  Appendix
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[157] Appendix to Opening Brief - LVVWD and SNWA

08/27/2021  Petitioners Opening Brief
Filed by: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[158] Lincoln County Water District and Vidler Water Company, Inc.'s Opening Brief

08/27/2021  Motion
[159] Lincoln County Water District and Vidler Water Company, Inc.'s Motion to File Opening Brief in Excess of Type-Volume Limitation

08/27/2021  Declaration
Filed By: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[160] Declaration of Karen A. Peterson in Support of Motion to File Opening Brief in Excess of Type-Volume Limitation


08/27/2021  Record on Appeal
Party: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[161] Record on Appeal Cited in Lincoln/Vidler's Opening Brief (Volume 1 of 3)

08/27/2021  Record on Appeal

CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C


Party: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[162] Record on Appeal Cited in Lincoln/Vidler's Opening Brief (Volume 2 of 3)

08/27/2021

 Record on Appeal


Party: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[163] Record on Appeal Cited in Lincoln/Vidler's Opening Brief (Volume 3 of 3)

08/30/2021

 Clerk's Notice of Nonconforming Document


[164] Clerk's Notice of Nonconforming Document

09/07/2021

 Clerk's Notice of Nonconforming Document and Curative Action

[165] Clerk's Notice of Curative Action

09/07/2021

 Clerk's Notice of Hearing

[166] Notice of Hearing

09/08/2021

 Notice of Change of Hearing


[167] Notice of Change of Hearing

09/08/2021

 Order

Filed By: Intervenor Lincoln County Water District
[168] Order Granting Lincoln County Water District and Vidler Water Company, Inc.'s Motion to File Opening Brief in Excess of Type-Volume Limitation

09/08/2021

 Notice of Entry of Order

Filed By: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[169] Notice of Entry of Order Granting Lincoln County Water District and Vidler Water Company, Inc.'s Motion to File Opening Brief in Excess of Type-Volume Limitation

09/09/2021

Status Check (11:30 AM) (Judicial Officer: Yeager, Bitá)

09/09/2021, 12/06/2021

STATUS CHECK: OPENING BRIEFS

09/09/2021

Motion (11:30 AM) (Judicial Officer: Yeager, Bitá)

09/09/2021, 12/06/2021

[159] Lincoln County Water District and Vidler Water Company, Inc.'s Motion to File Opening Brief in Excess of Type-Volume Limitation

09/09/2021

 **All Pending Motions (11:30 AM)** (Judicial Officer: Yeager, Bitá)

*Parties Present: Attorney Coulthard, William L
Attorney Cargill, Emilia K.
Attorney Flangas, Alex J.
Attorney FREHNER, DYLAN
Attorney Carlson, Severin A.
Attorney Peterson, Karen A.
Attorney Harrison, Sylvia L.
Attorney Dotson, Robert A.
Attorney Taggart, Paul G.
Attorney Klomp, Wayne O.
Attorney Bolotin, James N.
Attorney Herrema, Bradley J
Attorney Winston, Hannah Elizabeth
Attorney Caviglia, Justina A.
Attorney Ure, Therese A
Attorney Lake, Scott*

09/09/2021

 Opposition

CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C

Filed By: Defendant Nevada State Engineer, Division of Water Resources
[170] State Engineer's Opposition to Request for Judicial Notice in Support of Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc.'s Opening Brief in Support of Petition for Judicial Review of Order 1309

09/09/2021

 Joinder to Opposition to Motion

Filed by: Intervenor Nevada Power Company; Other Sierra Pacific Power Company
[171] Sierra Pacific Power Company and Nevada Power Company's Joinder to the State Engineer's Opposition to Request for Judicial Notice in Support of Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc., Opening Brief in Support of Petition for Judicial Review of Order 1309

09/09/2021

 Joinder to Opposition to Motion

Filed by: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[172] SNWA and LVVWD Joinder to the State Engineer's Opposition to Georgia-Pacific's Request for Judicial Notice

09/10/2021

 Joinder to Opposition to Motion

Filed by: Intervenor Nevada Power Company; Other Sierra Pacific Power Company
[173] Sierra Pacific Power Company and Nevada Power Company's Joinder to the State Engineer's Opposition to Request for Judicial Notice in Support of Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc., Opening Brief in Support of Petition for Judicial Review of Order 1309 and Certificate of Service

09/10/2021

 Joinder to Opposition to Motion

Filed by: Other The Church of Jesus Christ of Latter-day Saints
[174] The Church of Jesus Christ of Latter-Day Saints' Joinder to the State Engineer's Opposition to Georgia Pacific's Request for Judicial Notice

09/10/2021

 Opposition

Filed By: Intervenor Muddy Valley Irrigation Company
[175] Opposition to Request for Judicial Notice in Support of Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc.'s Opening Brief in Support of Petition for Judicial Review of Order 1309

09/10/2021

 Joinder

Filed By: Intervenor Coyote Springs Investment, LLC
[176] Coyote Springs Investment LLC's Joinder to the Request for Judicial Notice in Support of Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc.'s Opening Brief in Support of Petition for Judicial Review of Order 1309

09/13/2021

 Joinder to Opposition to Motion

Filed by: Other Moapa Valley Water District
[177] Moapa Valley Water District's Joinder to the State Engineer's Opposition to Georgia-Pacific's Request for Judicial Notice

09/13/2021

 Order


Filed By: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[178] Order Granting Intervention

09/13/2021

 Notice of Entry of Order

Filed By: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[179] Notice of Entry of Order Granting Intervention


09/15/2021


 Reply to Opposition


Filed by: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental


CASE SUMMARY
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CASE NO. A-20-816761-C


Technologies, Inc.
[180] Reply In Support of Request for Judicial Notice In Support of Georgia Pacific Gypsum LLC and Republic Environmental Technologies, Inc.'s Opening Brief In Support of Petition for Judicial Review of Order 1309


09/22/2021  Exhibits
Filed By: Intervenor Coyote Springs Investment, LLC
[181] Amended Exhibits in Support of Coyote Springs Investment, LLC's Opening Brief on Petition for Judicial Review


09/22/2021  Request for Judicial Notice
Filed By: Intervenor Coyote Springs Investment, LLC
[182] Request for Judicial Notice


10/06/2021  Opposition
Filed By: Defendant Nevada State Engineer, Division of Water Resources
[183] State Engineer s Opposition to Coyote Springs Investment, LLC s Request for Judicial Notice and Objection to Exhibits 1, 12, 13, 14, 15, and 17 in the Amended Exhibits in Support of Coyote Springs Investment, LLC s Opening Brief on Petition for Judicial Review


10/06/2021  Joinder to Opposition to Motion
Filed by: Intervenor Center for Biological Diversity
[184] The Center for Biological Diversity's Joinder to the State Engineer's Opposition to CSI's Request for Judicial Notice


10/06/2021  Opposition
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[185] Opposition from Petitioners Las Vegas Valley Water District and Southern Nevada Water Authority to Coyote Springs Investment, LLC's Request for Judicial Notice


10/12/2021  Notice of Association of Counsel
Filed By: Defendant Nevada State Engineer, Division of Water Resources
[186] Notice of Association of Counsel

10/13/2021  Reply in Support
Filed By: Intervenor Coyote Springs Investment, LLC
[187] Reply in Support of Request for Judicial Notice














11/23/2021  Answering Brief
Filed By: Defendant Nevada State Engineer, Division of Water Resources
[188] Respondents' Answering Brief

11/23/2021  Appendix
Filed By: Defendant Nevada State Engineer, Division of Water Resources
[189] Respondents' Excerpts of Record

11/23/2021  Answering Brief
Filed By: Intervenor Coyote Springs Investment, LLC
[190] Coyote Springs Investment, LLC's Brief in Intervention










11/23/2021  Answering Brief
Filed By: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc.
[191] Answering Brief

CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C

- 11/23/2021  Request for Judicial Notice
Filed By: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc.
[192] Request for Judicial Notice In Support of Answering Brief
- 11/23/2021  Answering Brief
Filed By: Intervenor Center for Biological Diversity
[193] The Center for Biological Diversity's Answering Brief
- 11/23/2021  Appendix
Filed By: Intervenor Center for Biological Diversity
[194] The Center for Biological Diversity's Excerpts of Record in Support of Answering Brief
- 11/24/2021  Answering Brief
Filed By: Intervenor Nevada Power Company; Other Sierra Pacific Power Company
[195] Sierra Pacific Power Company and Nevada Power Company's Answering Brief
- 11/24/2021  Appendix
Filed By: Intervenor Nevada Power Company; Other Sierra Pacific Power Company
[196] Sierra Pacific Power Company and Nevada Power Company's Appendix of Exhibits
- 11/24/2021  Answering Brief
Filed By: Other Moapa Valley Water District
[197] Intervenor-Respondent's Answering Brief
- 11/24/2021  Appendix
Filed By: Other Moapa Valley Water District
[198] Appendix to Answering Brief, Part 1 of 2
- 11/24/2021  Appendix
Filed By: Other Moapa Valley Water District
[199] Appendix to Answering Brief, Part 2 of 2
- 11/24/2021  Respondent's Answering Brief
Filed by: Intervenor Nevada Cogeneration Associates Nos. 1 and 2.
[200] NCA Answering Brief and Joinder
- 11/24/2021  Answering Brief
Filed By: Intervenor Muddy Valley Irrigation Company
[201] Muddy Valley Irrigation Company's Answering Brief
- 11/24/2021  Notice
Filed By: Intervenor Muddy Valley Irrigation Company
[202] Muddy Valley Irrigation Company's Notice of Record Citations in Answering Brief
- 11/24/2021  Answering Brief
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[203] Answering Brief of Petitioners' Las Vegas Valley Water District and Southern Nevada Water Authority
- 11/24/2021  Respondent's Answering Brief
Filed by: Other The Church of Jesus Christ of Latter-day Saints
[204] Answering Brief from Intervenor Respondent The Church of Jesus Christ of Latter-day

CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C

Saints

- 11/24/2021  Appendix
Filed By: Other The Church of Jesus Christ of Latter-day Saints
[205] Appendix of Exhibits and Excerpts of Records
- 11/24/2021  Appendix
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[206] Appendix to Answering Brief, Part 1 of 2
- 11/24/2021  Appendix
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[207] Appendix to Answering Brief, Part 2 of 2
- 11/24/2021  Answering Brief
Filed By: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[208] Lincoln-Vidler Answering Brief to Opening Briefs of LVVWD, SNWA & MVIC
- 11/24/2021  Record on Appeal
[209] Record on Appeal Cited in Lincoln County Water District's and Vidler Water Company Inc's Answering Brief to Opening Briefs of Las Vegas Valley Water District and Southern Nevada Water Authority; and Muddy Valley Irrigation Company
- 11/24/2021  Answering Brief
Filed By: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[210] Lincoln.Vidler Answering Brief to Opening Brief of CBD
- 11/24/2021  Record on Appeal
Party: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[211] Lincoln.Vidler Record on Appeal Cited in Answering Brief to Opening Brief of CBD
- 11/24/2021  Joinder
Filed By: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[212] Lincoln County Water District's and Vidler Water Company, Inc.'s Joinder to Opening Briefs of Georgia Pacific Gypsum, LLC and Republic Environmental Technologies, Inc; Apex Holding Company, LLC and Dry Lake Water LLC; Coyote Springs Investment, LLC; and Limited Joinder to Nevada Cogeneration Associates No. 1 and 2 Opening Brief
- 12/03/2021 **Minute Order** (3:00 AM) (Judicial Officer: Yeager, Bitá)
Georgia-Pacific Gypsum LLC and Republic Environmental Tech, Inc. s Request for Judicial Notice and the related briefing
- 12/03/2021  Opposition
Filed By: Defendant Nevada State Engineer, Division of Water Resources
[213] State Engineer s Opposition to Request for Judicial Notice in Support of Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc. s Answering Brief
- 12/06/2021  **All Pending Motions** (9:00 AM) (Judicial Officer: Yeager, Bitá)
ALL PENDING STATUS CHECK: OPENING BRIEFS..LINCOLN COUNTY WATER DISTRICT AND VIDLER WATER COMPANY, INC. S MOTION TO FILE OPENING BRIEF IN EXCESS OF TYPE-VOLUME LIMITATION
*Parties Present: Attorney Cargill, Emilia K.
Attorney Flangas, Alex J.
Attorney Carlson, Severin A.
Attorney Peterson, Karen A.*














CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C

Attorney Robison, Kent R.
Attorney King, Steven D.
Attorney Dotson, Robert A.
Attorney Taggart, Paul G.
Attorney Klomp, Wayne O.
Attorney Balducci, Christian T.
Attorney Bolotin, James N.
Attorney Morrison, Gregory H.
Attorney Foletta, Lucas M.
Attorney Herrema, Bradley J
Attorney Caviglia, Justina A.
Attorney Ure, Therese A
Attorney Lucero, Ellsie E.
Attorney Lake, Scott

- 12/08/2021  Joinder to Opposition to Motion
Filed by: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[214] Joinder to the State Engineer's Opposition to Georgia Pacific and Republic's Request for Judicial Notice
- 12/09/2021  Reply
Filed by: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc.
[215] Reply In Support of Request For Judicial Notice In Support of Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc. 's Answering Brief
- 12/10/2021  **Decision** (3:00 AM) (Judicial Officer: Yeager, Bitia)
Georgia-Pacific Gypsum, LLC, & Republic Environmental Technologies, Inc. Request for Judicial Notice
- 12/17/2021  Order Denying
[216] Order Denying Georgia-Pacific Gypsum, LLC And Republic Environmental Technologies, INC. 'S Request for Judicial Notice and Coyote Springs Investment, LLC's Request for Judicial Notice Filed In Support Of Their Opening Briefs
- 12/21/2021  Notice of Entry of Order
Filed By: Defendant Nevada State Engineer, Division of Water Resources
[217] Notice of Entry of Order Denying Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc. s Request for Judicial Notice and Coyote Springs Investment, LLC s Request for Judicial Notice Filed in Support of Their Opening Briefs
- 12/23/2021  Order Denying
[218] Proposed Order Denying GP&R's Second Request for Judicial Notice AB
- 12/23/2021  Notice of Entry of Order
Filed By: Defendant Nevada State Engineer, Division of Water Resources
[219] Notice of Entry of Order Denying Request for Judicial Notice in Support of Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc. s Answering Brief
- 01/06/2022  Substitution of Attorney
Filed by: Intervenor Nevada Cogeneration Associates Nos. 1 and 2.
[220] (A816761,A818015, A818069)Petitioners' Nevada Cogeneration Association No. 1 and No. 2 Substitution of Counsel
- 01/07/2022  Amended
Filed By: Defendant Nevada State Engineer, Division of Water Resources

CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C

[221] (2/28/22 Withdrawn) Amended Record on Appeal






- 01/07/2022  Notice
Filed By: Defendant Nevada State Engineer, Division of Water Resources
[222] Notice to the Court Re: Amended Record on Appeal
- 01/11/2022  Petitioner's Reply Brief
Filed by: Intervenor Coyote Springs Investment, LLC
[223] Coyote Springs Investment, LLC's Reply in Support of Opening Brief
- 01/11/2022  Reply
Filed by: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc.
[224] Reply Brief
- 01/11/2022  Reply
Filed by: Intervenor Muddy Valley Irrigation Company
[225] Muddy Valley Irrigation Company's Reply Brief
- 01/11/2022  Notice
Filed By: Intervenor Muddy Valley Irrigation Company
[226] Muddy Valley Irrigation Company's Notice of Record Citations in Reply Brief
- 01/11/2022  Reply
Filed by: Intervenor Nevada Cogeneration Associates Nos. 1 and 2.
[227] Petitioners' Nevada Cogeneration Association No. 1 and No. 2 Reply Brief
- 01/11/2022  Petitioner's Reply Brief
Filed by: Intervenor Center for Biological Diversity
[228] Center for Biological Diversity's Reply in Support of Petition for Judicial Review
- 01/11/2022  Appendix
Filed By: Intervenor Nevada Cogeneration Associates Nos. 1 and 2.
[229] Appendix of Exhibits in Support of Petitioners' Nevada Cogeneration Associates No. 1 and No. 2 Reply Brief
- 01/11/2022  Appendix
Filed By: Intervenor Center for Biological Diversity
[230] The Center for Biological Diversity's Excerpts of Record in Support of Reply Brief
- 01/11/2022  Petitioner's Reply Brief
Filed by: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[231] Lincoln.Vidler Reply Brief 01.11.22
- 01/11/2022  Record on Appeal
Party: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[232] Lincoln.Vidler Master ROA (Vol. 1 of 3) 01.11.22
- 01/11/2022  Record on Appeal
[233] Lincoln.Vidler Master ROA (Vol. 2 of 3) 01.11.22
- 01/11/2022  Record on Appeal
Party: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[234] Lincoln.Vidler Master ROA (Vol. 2 of 3) 01.11.22

CASE SUMMARY
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CASE NO. A-20-816761-C

- 01/11/2022  Petitioner's Reply Brief
Filed by: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[235] Reply Brief of Petitioners Las Vegas Valley Water District and Southern Nevada Water Authority
- 01/11/2022  Record on Appeal
Party: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[236] Lincoln Vidler Master ROA (Vol. 3 of 3) 01.11.22
- 01/11/2022  Appendix
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[237] Appendix to Reply Brief (1 of 3)
- 01/11/2022  Appendix
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[238] Appendix to Reply Brief (2 of 3)
- 01/11/2022  Appendix
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[239] Appendix to Reply Brief (3 of 3)
- 01/11/2022  Reply in Support
Filed By: Intervenor Apex Holding Company, LLC
[240] Apex Holding and Dry Lake Water's Reply in Support of Opening Brief
- 01/19/2022  Amended
Filed By: Defendant Nevada State Engineer, Division of Water Resources
[241] Respondent's Amended Excerpts of Record
- 01/19/2022  Statement
Filed by: Intervenor Coyote Springs Investment, LLC
[242] Status Conference Statement Regarding Protocol and Procedure for Oral Arguments
- 01/19/2022  Notice of Association of Counsel
Filed By: Other City of North Las Vegas; Other Western Elite Environmental, Inc.; Other Bedroc Limited, LLC
[243] Notice of Association of Counsel
- 01/19/2022  Errata
Filed By: Intervenor Coyote Springs Investment, LLC
[244] Errata to Status Conference Statement Regarding Protocol and Procedure for Oral Arguments
- 01/19/2022  Miscellaneous Filing
Filed by: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[245] Las Vegas Valley Water District and Southern Nevada Water Authority's Proposed Oral Argument Procedures
- 01/20/2022  **Status Check (11:00 AM)** (Judicial Officer: Yeager, Bitá)

CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C

STATUS CHECK: ARGUMENT SCHEDULE

- 01/20/2022  Joinder
Filed By: Other The Church of Jesus Christ of Latter-day Saints
[246] Joinder to SNWA-LVVWD Proposed Oral Argument Procedures
- 01/20/2022  Joinder
Filed By: Other Moapa Valley Water District
[247] Joinder to Las Vegas Valley Water District and Southern Nevada Water Authority's Proposed Oral Argument Procedures
- 01/20/2022  Miscellaneous Filing
Filed by: Intervenor Center for Biological Diversity
[248] The Center for Biological Diversity's Proposed Oral Argument Procedures
- 01/20/2022  Joinder
Filed By: Intervenor Muddy Valley Irrigation Company
[249] Muddy Valley Irrigation Company's Joinder to Las Vegas Valley Water District and Southern Nevada Water Authority's Proposed Oral Argument Procedures
- 01/20/2022  Joinder
Filed By: Intervenor Nevada Power Company; Other Sierra Pacific Power Company
[250] Joinder to Las Vegas Valley Water District and Southern Nevada Water Authority's Proposed Oral Argument Procedures

02/14/2022  **Petition for Judicial Review (10:00 AM)** (Judicial Officer: Yeager, Bitá)

02/14/2022-02/17/2022

Parties Present: Attorney Coulthard, William L
Attorney Carlson, Severin A.
Attorney Peterson, Karen A.
Attorney Robison, Kent R.
Attorney Harrison, Sylvia L.
Attorney King, Steven D.
Attorney Dotson, Robert A.
Attorney Taggart, Paul G.
Attorney Muaina, Derek K
Attorney Klomp, Wayne O.
Attorney Balducci, Christian T.
Attorney Bolotin, James N.
Attorney Morrison, Gregory H.
Attorney Foletta, Lucas M.
Attorney Herrema, Bradley J
Attorney Winston, Hannah Elizabeth
Attorney Caviglia, Justina A.
Attorney Lake, Scott
Attorney Coulthard, William L
Attorney Flaherty, Francis C
Attorney Cargill, Emilia K.
Attorney Carlson, Severin A.
Attorney Peterson, Karen A.
Attorney Robison, Kent R.
Attorney Harrison, Sylvia L.
Attorney King, Steven D.
Attorney Dotson, Robert A.
Attorney Taggart, Paul G.
Attorney Muaina, Derek K
Attorney Klomp, Wayne O.
Attorney Balducci, Christian T.
Attorney Bolotin, James N.

CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C

Attorney Morrison, Gregory H.
Attorney Foletta, Lucas M.
Attorney Herrema, Bradley J
Attorney Winston, Hannah Elizabeth
Attorney Caviglia, Justina A.
Attorney Lake, Scott
Attorney Coulthard, William L
Attorney Flaherty, Francis C
Attorney Cargill, Emilia K.
Attorney Carlson, Severin A.
Attorney Peterson, Karen A.
Attorney Robison, Kent R.
Attorney King, Steven D.
Attorney Dotson, Robert A.
Attorney Taggart, Paul G.
Attorney Klomp, Wayne O.
Attorney Balducci, Christian T.
Attorney Bolotin, James N.
Attorney Morrison, Gregory H.
Attorney Foletta, Lucas M.
Attorney Herrema, Bradley J
Attorney Winston, Hannah Elizabeth
Attorney Caviglia, Justina A.
Attorney Lake, Scott
Attorney Flaherty, Francis C
Attorney Cargill, Emilia K.
Attorney FREHNER, DYLAN
Attorney Carlson, Severin A.
Attorney Peterson, Karen A.
Attorney Robison, Kent R.
Attorney King, Steven D.
Attorney Dotson, Robert A.
Attorney Taggart, Paul G.
Attorney Klomp, Wayne O.
Attorney Balducci, Christian T.
Attorney Bolotin, James N.
Attorney Morrison, Gregory H.
Attorney Foletta, Lucas M.
Attorney Herrema, Bradley J
Attorney Winston, Hannah Elizabeth
Attorney Caviglia, Justina A.
Attorney Lake, Scott

02/16/2022



Notice

Filed By: Intervenor Muddy Valley Irrigation Company
[251] Muddy Valley Irrigation Company's Notice of Contents of Slides Shown During Oral Argument

02/17/2022



Notice

Filed By: Intervenor Muddy Valley Irrigation Company
[252] Muddy Valley Irrigation Company's Notice of Contents of Slides Shown During Oral Argument

02/18/2022



Notice

Filed By: Intervenor Muddy Valley Irrigation Company
[253] Muddy Valley Irrigation Company's Notice of Contents of Slides Shown During Oral Argument

02/28/2022



Notice of Withdrawal

Filed by: Defendant Nevada State Engineer, Division of Water Resources

CASE SUMMARY
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CASE NO. A-20-816761-C

[254] Notice of Withdrawal of the State Engineer's Amended Record on Appeal

02/28/2022



Errata

Filed By: Defendant Nevada State Engineer, Division of Water Resources

[255] Notice of Errata: Record on Appeal at ROA 41930-42072

04/19/2022



Decision (3:00 AM) (Judicial Officer: Yeager, Bitá)

04/19/2022



Findings of Fact, Conclusions of Law and Order

[256] Findings of Fact, Conclusions of Law and Order Granting Petitions for Judicial Review

04/19/2022



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District

[257] Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review

04/19/2022

Order Granting Judicial Review (Judicial Officer: Yeager, Bitá)

Debtors: Nevada State Engineer, Division of Water Resources (Defendant)

Creditors: Las Vegas Valley Water District (Plaintiff), The Church of Jesus Christ of Latter-day

Saints (Other), Nevada Power Company (Intervenor), Sierra Pacific Power Company (Other),

Coyote Springs Investment, LLC (Intervenor), City of North Las Vegas (Other), Western Elite

Environmental, Inc. (Other), Bedroc Limited, LLC (Other), Apex Holding Company, LLC

(Intervenor), Georgia-Pacific Gypsum LLC (Intervenor), Republic Environmental Technologies,

Inc. (Other), Center for Biological Diversity (Intervenor), Muddy Valley Irrigation Company

(Intervenor), Nevada Cogeneration Associates Nos. 1 and 2. (Intervenor), Vidler Water Company,

Inc. (Intervenor), Lincoln County Water District (Intervenor), Moapa Valley Water District

(Intervenor), Southern Nevada Water Authority (Intervenor)

Judgment: 04/19/2022, Docketed: 04/21/2022

04/21/2022



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Intervenor Coyote Springs Investment, LLC

[258] Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review

04/21/2022



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Intervenor Nevada Cogeneration Associates Nos. 1 and 2.

[259] Notice of Entry of Findings of Fact, Conclusion of Law, and Order Granting Petitions for Judicial Review

04/22/2022



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc.

[260] Notice of Entry of Findings of Fact, Conclusions of Law and Order Granting Petitions for Judicial Review

04/22/2022



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Intervenor Apex Holding Company, LLC; Intervenor Dry Lake Water, LLC

[261] Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review

04/22/2022



Memorandum of Costs and Disbursements

Filed By: Intervenor Apex Holding Company, LLC; Intervenor Dry Lake Water, LLC

[262] Verified Memorandum of Costs and Disbursements

04/26/2022
















Motion to Retax

Filed By: Defendant Nevada State Engineer, Division of Water Resources













[263] State Engineers Motion to Retax Petitioners Apex Holding Company, LLC and Dry Lake

CASE SUMMARY
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Water, LLCs Costs

- 04/26/2022  Clerk's Notice of Hearing
[264] Notice of Hearing
- 05/02/2022  Motion to Stay
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[265] LVVWD and SNWA's Motion for Stay Pending Appeal
- 05/02/2022  Ex Parte Motion
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[266] LVVWD & SNWA's Ex Parte Motion for Order Shortening Time on Motion for Stay of Order Granting Petitions for Judicial Review of State Engineer Order 1309
- 05/02/2022  Clerk's Notice of Hearing
[267] Notice of Hearing
- 05/03/2022  Order
[268] Proposed Order Shortening Time A-20-816761-C
- 05/03/2022  Joinder To Motion
Filed By: Intervenor Center for Biological Diversity
[269] The Center for Biological Diversity's Joinder to LVVWD and SNWA's Motion to Stay
- 05/05/2022  Motion for Fees
Filed By: Intervenor Coyote Springs Investment, LLC
[270] Coyote Springs Investment, LLC's Motion for Attorney Fees
- 05/05/2022  Appendix
Filed By: Intervenor Coyote Springs Investment, LLC
[271] Appendix of Exhibits to Coyote Springs Investments, LLC'S Motion For Attorney Fees
- 05/05/2022  Clerk's Notice of Hearing
[272] Notice of Hearing
- 05/06/2022  Joinder To Motion
Filed By: Defendant Nevada State Engineer, Division of Water Resources
[273] State Engineers Partial Joinder to LVVWD and SNWAs Motion for Stay Pending Appeal
- 05/06/2022  Notice of Change of Hearing
[274] Notice of Change of Hearing
- 05/09/2022  Opposition to Motion
Filed By: Intervenor Apex Holding Company, LLC; Intervenor Dry Lake Water, LLC
[275] Opposition to State Engineer's Motion to Retax Petitioners, Apex Holding Company, LLC and Dry Lake Water, LLC's Costs
- 05/09/2022  Opposition
Filed By: Intervenor Coyote Springs Investment, LLC
[276] Coyote Springs Investment, LLC's Opposition to LVVWD and SNWA's Motion for Stay Pending Appeal

CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-816761-C

- 05/09/2022  Opposition to Motion
Filed By: Intervenor Apex Holding Company, LLC; Intervenor Dry Lake Water, LLC
[277] Opposition to Las Vegas Valley Water District and Southern Nevada Water Authority's Motion for Stay Pending Appeal
- 05/09/2022  Opposition to Motion
Filed By: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[278] Lincoln County Water District's and Vidler Water Company, Inc.'s Opposition to LVVWD and SNWA's Motion for Stay Pending Appeal
- 05/09/2022  Affidavit in Support
Filed By: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[279] Affidavit of Ryan Hoerth in Support of Lincoln County Water District and Vidler Water Company, Inc.'s Opposition to Motion for Stay Pending Appeal
- 05/09/2022  Opposition to Motion
Filed By: Intervenor Nevada Cogeneration Associates Nos. 1 and 2.
[280] Nevada Cogeneration Associates Nos. 1 and 2 Opposition to LVVWD and SNWA's Motion for Stay Pending Appeal;
- 05/09/2022  Opposition to Motion
Filed By: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc.
[281] Opposition to LVVWD and SNWA's Motion for Stay Pending Appeal
- 05/09/2022  Request for Judicial Notice
Filed By: Intervenor Georgia-Pacific Gypsum LLC; Other Republic Environmental Technologies, Inc.
[282] Request for Judicial Notice In Support of Opposition to LVVWD and SNWA's Motion for Stay Pending Appeal
- 05/10/2022  Motion for Attorney Fees
Filed By: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[283] Lincoln County Water District's and Vidler Water Company, Inc.'s Motion for Attorneys' Fees
- 05/11/2022  Court Recorders Invoice for Transcript
[284]
- 05/11/2022  Errata
Filed By: Intervenor Vidler Water Company, Inc.; Intervenor Lincoln County Water District
[285] Errata Providing Exhibit to Declaration of Karen A. Peterson in Support of Lincoln County Water District's and Vidler Water Company, Inc.'s Motion for Attorneys' Fees
- 05/11/2022  Clerk's Notice of Hearing
[286] Notice of Hearing
- 05/13/2022  Response
Filed by: Intervenor Muddy Valley Irrigation Company
[287] Muddy Valley Irrigation Company's Response to Motion Seeking Stay and to Oppositions to Motion for Stay
- 05/13/2022  Notice of Appeal
Filed By: Defendant Nevada State Engineer, Division of Water Resources
[288] Notice of Appeal

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- 05/13/2022  Case Appeal Statement
Filed By: Defendant Nevada State Engineer, Division of Water Resources
[289] Case Appeal Statement
- 05/13/2022  Findings of Fact, Conclusions of Law and Judgment
[290] ADDENDUM AND CLARIFICATION TO COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PETITIONS FOR JUDICIAL REVIEW FILED ON APRIL 19, 2022
- 05/13/2022  Reply in Support
Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District
[291] SNWA and LVVWD's Reply In Support of Motion for Stay
- 05/13/2022 **Order of Dismissal** (Judicial Officer: Yeager, Bitá)
Debtors: Nevada State Engineer, Division of Water Resources (Defendant)
Creditors: Southern Nevada Water Authority (Plaintiff), Las Vegas Valley Water District (Plaintiff)
Judgment: 05/13/2022, Docketed: 05/16/2022
Comment: remaining portion of the petition that support the position that the Nevada State Engineer did not exceed his statutory authority in issuing Order 1309
- 05/13/2022 **Order of Dismissal** (Judicial Officer: Yeager, Bitá)
Debtors: Center for Biological Diversity (Intervenor), Muddy Valley Irrigation Company (Intervenor), Muddy Valley Irrigation Company (Intervenor)
Creditors: Southern Nevada Water Authority (Plaintiff), Las Vegas Valley Water District (Plaintiff)
Judgment: 05/13/2022, Docketed: 05/16/2022
- 05/16/2022 **Motion For Stay** (9:30 AM) (Judicial Officer: Yeager, Bitá)
Events: 05/02/2022 Ex Parte Motion
05/03/2022 Order
LVVWD and SNWA's Motion for Stay Pending Appeal
- 05/16/2022 **Joinder** (9:30 AM) (Judicial Officer: Yeager, Bitá)
[269] The Center for Biological Diversity's Joinder to LVVWD and SNWA's Motion to Stay
- 05/16/2022 **Joinder** (9:30 AM) (Judicial Officer: Yeager, Bitá)
State Engineers Partial Joinder to LVVWD and SNWAs Motion for Stay Pending Appeal
- 05/16/2022 **All Pending Motions** (9:30 AM) (Judicial Officer: Yeager, Bitá)
ALL PENDING - LVVWD AND SNWA'S MOTION FOR STAY PENDING APPEAL...THE CENTER FOR BIOLOGICAL DIVERSITY'S JOINDER TO LVVWD AND SNWA'S MOTION TO STAY...STATE ENGINEERS PARTIAL JOINDER TO LVVWD AND SNWAS MOTION FOR STAY PENDING APPEAL
- 05/16/2022  Notice of Appeal
Filed By: Intervenor Center for Biological Diversity
[292] Notice of Appeal
- 05/16/2022  Case Appeal Statement
Filed By: Intervenor Center for Biological Diversity
[293] The Center for Biological Diversity's Case Appeal Statement
- 05/16/2022  Reply to Opposition
Filed by: Intervenor Center for Biological Diversity
[294] The Center for Biological Diversity's Reply to APEX's Opposition to the State Engineer's Motion to Re-Tax

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05/16/2022	 Reply in Support Filed By: Defendant Nevada State Engineer, Division of Water Resources [295] Reply in Support of State Engineers Motion to Retax Petitioners Apex Holding Company, LLC and Dry Lake Water, LLCs Costs
05/16/2022	 Response Filed by: Intervenor Moapa Valley Water District [296] Response to Apex's Opposition to Motion to Retax Petitioners' Costs, or in the Alternative, Motion for Leave to File Motion to Retax Costs
05/16/2022	 Reply to Opposition Filed by: Other The Church of Jesus Christ of Latter-day Saints [297] The Church of Jesus Christ of Latter-day Saints Response to Apex Holding Company, LLC's Opposition to State Engineer's Motion to Retax Costs
05/16/2022	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District [298] Notice of Entry of Addendum and Clarification to Court's Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review
05/16/2022	 Response [299] MVIC Response to Opposition to State Engineer's Motion to Retax Petitioners, Apex Holding Company, LLC and Dry Lake Water, LLC's Costs and Joinders
05/16/2022	 Reply to Opposition Filed by: Plaintiff Southern Nevada Water Authority; Plaintiff Las Vegas Valley Water District [300] LVVWD and SNWA's Response to Apex's Opposition to State Engineer's Motion to Retax
07/05/2022	Motion to Retax (8:30 AM) (Judicial Officer: Yeager, Bitá) State Engineers Motion to Retax Petitioners Apex Holding Company, LLC and Dry Lake Water, LLCs Costs
07/05/2022	Motion for Attorney Fees (8:30 AM) (Judicial Officer: Yeager, Bitá) Coyote Springs Investment, LLC s Motion for Attorney Fees
07/05/2022	Motion for Attorney Fees (8:30 AM) (Judicial Officer: Yeager, Bitá) Lincoln County Water District's and Vidler Water Company, Inc.'s Motion for Attorneys' Fees

DATE	FINANCIAL INFORMATION
	Intervenor Center for Biological Diversity Total Charges 24.00 Total Payments and Credits 24.00 Balance Due as of 5/18/2022 0.00
	Defendant Nevada State Engineer, Division of Water Resources Total Charges 24.00 Total Payments and Credits 24.00 Balance Due as of 5/18/2022 0.00
	Intervenor Apex Holding Company, LLC Total Charges 237.00 Total Payments and Credits 237.00 Balance Due as of 5/18/2022 0.00
	Intervenor Coyote Springs Investment, LLC

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Total Charges	223.00
Total Payments and Credits	223.00
Balance Due as of 5/18/2022	0.00
Intervenor Dry Lake Water, LLC	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 5/18/2022	0.00
Intervenor Georgia-Pacific Gypsum LLC	
Total Charges	253.00
Total Payments and Credits	253.00
Balance Due as of 5/18/2022	0.00
Intervenor Nevada Power Company	
Total Charges	253.00
Total Payments and Credits	253.00
Balance Due as of 5/18/2022	0.00
Other City of North Las Vegas	
Total Charges	223.00
Total Payments and Credits	223.00
Balance Due as of 5/18/2022	0.00
Other The Church of Jesus Christ of Latter-day Saints	
Total Charges	8.00
Total Payments and Credits	8.00
Balance Due as of 5/18/2022	0.00
Other Western Elite Environmental, Inc.	
Total Charges	253.00
Total Payments and Credits	253.00
Balance Due as of 5/18/2022	0.00
Plaintiff Southern Nevada Water Authority	
Total Charges	300.00
Total Payments and Credits	300.00
Balance Due as of 5/18/2022	0.00

DISTRICT COURT CIVIL COVER SHEET CASE NO: A-20-816761-C

County, Nevada

Case No. _____

Department 19

(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): Las Vegas Valley Water District, 1001 S. Valley View Blvd., Las Vegas, NV 89153 Southern Nevada Water Authority, PO Box 99956, Las Vegas, NV 89193	Defendant(s) (name/address/phone): Tim Wilson, P.E., Nevada State Engineer Division of Water Resources, Department of Conservation and Natural Resources 901 S. Stewart St. #2002 Carson, City, NV 89701
Attorney (name/address/phone): Paul G. Taggart, Esq, Timothy D. O'Connor, Esq., Taggart & Taggart, Ltd. 108 N. Minnesoty St. Carson City, NV 89703 Steven C. Anderson, Esq., Las Vegas Valley Water District, 1001 S. Valley View Blvd. Las Vegas, NV 89193	Attorney (name/address/phone): James N. Bolotin, Laena St. Jules Office of the Attorney General 100 N. Carson Street Carson City, NV 89701

II. Nature of Controversy *(please select the one most applicable filing type below)*


Civil Case Filing Types

<p align="center">Real Property</p> <p>Landlord/Tenant</p> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <p>Title to Property</p> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <p>Other Real Property</p> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<p align="center">Negligence</p> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <p>Malpractice</p> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<p align="center">Torts</p> <p>Other Torts</p> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<p align="center">Probate</p> <p>Probate <i>(select case type and estate value)</i></p> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <p>Estate Value</p> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<p align="center">Construction Defect & Contract</p> <p>Construction Defect</p> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <p>Contract Case</p> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<p align="center">Judicial Review/Appeal</p> <p>Judicial Review</p> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <p>Nevada State Agency Appeal</p> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input checked="" type="checkbox"/> Other Nevada State Agency <p>Appeal Other</p> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<p align="center">Civil Writ</p> <p>Civil Writ</p> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum		<p align="center">Other Civil Filing</p> <p>Other Civil Filing</p> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

July 20, 2020

Date


Signature of initiating party or representative

See other side for family-related case filings.

Electronically Filed

Nevada AOC - Research Statistics Unit
Pursuant to NRS 3.275

Form PA 201
Rev. 3.1

1 FFCO

2
3 **DISTRICT COURT**
CLARK COUNTY, NEVADA

4 LAS VEGAS VALLEY WATER DISTRICT,
5 and SOUTHERN NEVADA WATER
6 AUTHORITY,

Case No. A-20-816761-C
Dept. No. I

7 Petitioners,

Consolidated with Cases:

8 vs.

- A-20-817765-P
- A-20-818015-P
- A-20-817977-P
- A-20-818069-P
- A-20-817840-P
- A-20-817876-P
- A-21-833572-J

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

11 Respondent.

12 And All Consolidated Cases.

13
14 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PETITIONS**
15 **FOR JUDICIAL REVIEW**

16 This matter comes before this Court on consolidated petitions for judicial review of State
17 Engineer's Order 1309 filed by Petitioners:

- 18 • Southern Nevada Water Authority and Las Vegas Valley Water District
- 19 • Coyote Spring Investment, LLC
- 20 • Apex Holding Co. and Dry Lake Water, LLC
- 21 • The Center for Biological Diversity
- 22 • Muddy Valley Irrigation Company
- 23 • Nevada Cogeneration Associates Nos. 1 and 2
- 24 • Georgia-Pacific Gypsum LLC and Republic Environmental Technologies, Inc.
- 25 • Lincoln County Water District and Vidler Water Company.

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Bita Yeager
Eighth Judicial District Court
Clark County, Nevada
Department I

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The parties stipulated to permit the following Intervenors into this matter:

- Sierra Pacific Power Company d/b/a NV Energy and Nevada Power Company d/b/a NV Energy
- Moapa Valley Water District
- The Church of Jesus Christ of Latter-Day Saints
- City of North Las Vegas
- Western Elite Environmental, Inc. and Bedroc Limited, LLC.

In addition, some Petitioners intervened to respond to other petitions for judicial review. The Parties appeared by and through their respective counsels of record. The Court held oral argument from February 14, 2022 to February 17, 2022.

The Court having considered the evidence, the pleadings, together with opening and closing arguments presented at the hearing for these matters, and good cause appearing therefor, makes the following Findings of Fact, Conclusions of Law, and Order:

I.

PROCEDURAL HISTORY

On June 15, 2020, the Nevada State Engineer issued Order No. 1309 as his latest administrative action regarding the Lower White River Flow System (“LWRFS”)¹.

On June 17, 2020, the Las Vegas Valley Water District and the Southern Nevada Water Authority (collectively, “SNWA”) filed a petition for judicial review of Order 1309 in the Eighth Judicial District Court in Clark County, Nevada.² Subsequently, the following petitioners filed petitions for judicial review in the Eighth Judicial District Court: Coyote Spring Investments, LLC (“CSI”); Apex Holding Company, LLC and Dry Lake Water LLC (collectively, “Apex”); the Center Biological Diversity (“CBD”); Muddy Valley Irrigation Company (“MVIC”); Nevada

¹ SE ROA 2 – 69. The LWRFS refers to an area in southern Nevada made up of several hydrological basins that share the same aquifer as their source of groundwater. The Nevada State Engineer determined that this encompasses the area that includes Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, Kane Springs Valley and the northwest portion of the Black Mountains Area.

² LVVWD and SNWA Petition for Judicial Review, filed June 17, 2020.

1 Cogeneration Associates Numbers 1 and 2 (“Nevada Cogen”); and Georgia-Pacific Gypsum LLC,
2 and Republic Technologies, Inc. (collectively, “Georgia-Pacific”). All petitions were consolidated
3 with SNWA’s petition.³

4 Later, Sierra Pacific Power Company d/b/a NV Energy (“Sierra Pacific”) and Nevada
5 Power Company d/b/a NV Energy (“Nevada Power” and, together with Sierra Pacific, “NV
6 Energy”), Moapa Valley Water District (“MVWD”), the Church of Jesus Christ and of Latter-Day
7 Saints (the “Church”), the City of North Las Vegas (“CNLV”), and Western Elite Environmental,
8 Inc. and Bedroc Limited (collectively, “Bedroc”) ⁴ were granted intervention status in the
9 consolidated petitions for judicial review of Order 1309.

10 On July 13, 2020, Lincoln County Water District and Vidler Water Co. (collectively,
11 “Vidler”) timely filed their Petition for Judicial Review of State Engineer Order 1309 in the
12 Seventh Judicial District Court in Lincoln County, Nevada, identified as Case No. CV-0702520.
13 On August 26, 2020, the Seventh Judicial District Court issued an Order Granting Motion to
14 Change Venue, transferring this matter to the Eighth Judicial District Court in Clark County,
15 Nevada. Vidler appealed the Order Granting Motion to Change Venue to the Nevada Supreme
16 Court, and on April 15, 2021, the Nevada Supreme Court entered its Order of Affirmation. On
17 May 27, 2021, per verbal stipulation by the parties, the Court ordered this matter consolidated into
18 Case No. A-20-816761-C. When transferred to the Eighth Judicial District Court, Vidler’s action
19 was assigned Case No. A-21-833572-J. Notwithstanding the consolidation of all of the cases, each
20 case retained its individual and distinct factual and legal issues.

21 Petitioners in all the consolidated actions filed their Opening Briefs on or about August 27,
22 2021. Respondents State Engineer, Intervenors, and Petitioners who were Respondent-Intervenors
23 filed their Answering Briefs on or about November 24, 2021. Petitioners filed their Reply Briefs on
24 or about January 11, 2022.

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27 ³ Stipulation for Consolidation, A-20-816761-C, May 26, 2021.

28 ⁴ Bedroc and CNLV did not file briefs and did not participate in oral argument.

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II.

FACTUAL HISTORY

A. The Carbonate Groundwater Aquifer and the Basins

Much of the bedrock and mountain ranges of Eastern Nevada are formed from a sequence of sedimentary rocks laid down during the Paleozoic Era. These formations are limestones or dolomites, commonly referred to as “carbonates,” due to the chemical composition of the minerals composing the rocks. These formations have been extensively deformed through folding and faulting caused by geologic forces. This deformation has caused extensive fracture and fault systems to form in these carbonate rocks, with permeability enhanced by the gradual solution of minerals. The result is an aquifer system that over time has accumulated large volumes of water with some apparent degree of connection throughout the much of area.⁵ The valley floors in the basins of Eastern Nevada are generally composed of alluvium comprised largely of relatively young (<5 million years) unconsolidated sands, gravels, and clays. This sequence is loosely referred to as the “Alluvial Aquifer,” the aquifer for most shallow wells in the area. Most of the water in the Carbonate Aquifer is present due to infiltration of water thousands of years ago; recent recharge from present day precipitation may represent only a fraction of the water stored.

Approximately 50,000 square miles of Nevada sits atop of this geologic layer of carbonate rock, which contains significant quantities of groundwater.⁶ This carbonate-rock aquifer system contains at least two major “regional flow systems” - continuous, interconnected, and transmissive geologic features through which water flows underground roughly from north to south: the Ash Meadows-Death Valley regional flow system; and the White River-Muddy River Springs system.⁷ These flow systems connect the groundwater beneath dozens of topographic valleys across distances exceeding 200 miles.⁸ The White River-Muddy River Springs flow system, stretching approximately

⁵ State Engineer Record on Appeal (“SE ROA”) 36062-67, Ex. 14; SE ROA 661, Ex. 8.

⁶ SE ROA 659.

⁷ SE ROA 661.

⁸ SE ROA 661.

1 240 miles from southern Elko County in the north to the Muddy River Springs Area in the south,
2 was identified as early as 1966.⁹ The area designated by Order 1309 as the LWRFS consists
3 generally of the southern portion of the White River-Muddy River Springs flow system.¹⁰

4 The Muddy River runs through a portion of the LWRFS before cutting southeast and
5 discharging into Lake Mead.¹¹ Many warm-water springs, including the Muddy River Springs at
6 issue in this litigation, discharge from the regional carbonate groundwater aquifer.¹² The series of
7 springs, collectively referred to as the “Muddy River Springs” in the Muddy River Springs Area
8 hydrographic basin form the headwaters of the Muddy River and provide the only known habitat for
9 the endangered Moapa dace.¹³

10 The Muddy River Springs are directly connected to, and discharge from, the regional
11 carbonate aquifer.¹⁴ Because of this connection, flows from the springs are dependent on the
12 elevation of groundwater within the carbonate aquifer, and can change rapidly in direct response to
13 changes in carbonate groundwater levels.¹⁵ As carbonate groundwater levels decline, spring flows
14 decrease, beginning with the highest-elevation springs.¹⁶

15 As early as 1989, there were concerns that sustained groundwater pumping from the
16 carbonate-rock aquifer would result in water table declines, substantially deplete the water stored in
17 the aquifer, and ultimately reduce or eliminate flow from the warm-water springs that discharge
18 from the aquifer.¹⁷

19 _____
20 ⁹ SE ROA 11349-59.

21 ¹⁰ *See* SE ROA 11350.

22 ¹¹ SE ROA 41943.

23 ¹² SE ROA 660-61, 53056, 53062.

24 ¹³ SE ROA 663-664, 41959, 48680.

25 ¹⁴ SE ROA 73-75, 34545, 53062.

26 ¹⁵ SE ROA 60-61, 34545.

27 ¹⁶ SE ROA 46, 34545.

28 ¹⁷ *See* SE ROA 661.

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The general rule in Nevada is that one acquires a water right by filing an application to appropriate water with the Nevada Division of Water Resources (“DWR”). If the DWR approves the application, a “Permit to Appropriate” issues. Nevada has adopted the principle of “first in time, first in right,” also known as “priority.” The priority of a water right is determined by the date a permit is applied for. Nevada’s water resources are managed through administrative units called “hydrographic basins,” which are generally defined by topography, more or less reflecting boundaries between watersheds. Nevada is divided into 232 hydrographic basins (256 hydrographic basins and sub-basins, combined) based upon the surface geography and subsurface flow.

The priority of groundwater rights is determined relative to the water rights holder within the individual basins. If there is not enough water to serve all water right holders in a particular basin, “senior” appropriators are satisfied first in order of priority: the rights of “junior” appropriators may be curtailed. Historically, The Nevada State Engineer has managed hydrographic basins in a basin-by-basin manner for decades,¹⁸ and administers and manages each basin as a discrete hydrologic unit.¹⁹ The State Engineer keeps and maintains annual pumping inventories and records on a basin-by-basin basis.²⁰

This administrative structure has worked reasonably well for basins where groundwater is pumped from “basin fill” aquifers or alluvium, where the annual recharge of the groundwater historically has been estimated based upon known or estimated precipitation data - establishing the amount of groundwater that is recharged annually and can be extracted sustainably from a basin, known as the “perennial yield.” In reality, many hydrographic basins are severely over-appropriated, due to inaccurate estimates, over pumping, domestic wells, changing climate conditions, etc.

Administration of groundwater rights is made particularly complex when the main source of

¹⁸SE ROA 654, 659, 699, 726, 755.
¹⁹ SE ROA 949-1069.
²⁰ SE ROA 1070-1499.

1 groundwater is not “basin fill” or alluvium, but aquifers found in permeable geologic formations
2 lying beneath the younger basin fill, and which may underlie large regions that are not well defined
3 by the present-day hydrographic basins. This is the case with Nevada’s “Carbonate Aquifer.”

4 When necessary, the State Engineer may manage a basin that has been designated for
5 administration. NRS 534.030 outlines the process by which a particular basin can be designated for
6 administration by the State Engineer. In the instant case, six of the seven basins affected by Order
7 No. 1309 had already been designated for management under NRS 534.030, including:

- 8 a. Coyote Spring Valley Hydrographic Basin (“Coyote Spring Valley”), Basin No. 210, since
9 1985;
- 10 b. Black Mountains Area Hydrographic Basin (“Black Mountains Area”), Basin No. 215, since
11 November 22, 1989;
- 12 c. Garnet Valley Hydrographic Basin (“Garnet Valley”), Basin No. 216, since April 24, 1990;
- 13 d. Hidden Valley Hydrographic Basin (“Hidden Valley”), Basin No. 217, since October 24,
14 1990;
- 15 e. California Wash Hydrographic Basin (“California Wash”), Basin No. 218, since August 24,
16 1990; and
- 17 f. Muddy River Springs Area Hydrographic Basin (“Muddy River Springs Area”), Basin No.
18 219, since July 14, 1971.²¹

19 Kane Springs Valley (“Kane Springs Valley”), Basin 206, which was also affected by
20 Order No. 1309, had not been designated previously for administration.²²
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23 ²¹ See SE ROA 2-3, 71-72.

24 ²² The Court takes judicial notice of Kane Springs Valley Basin’s status of not being designated for administration per
25 NRS 534.030. <http://water.nv.gov/StateEngineersOrdersList.aspx> (available online at the Division of Water Resources.
26 “Mapping& Data” tab, under “Water Rights” tab, “State Engineer’s Orders List and Search”). Facts that are subject to
27 judicial notice “are facts in issue or facts from which they may be inferred.” NRS 47.130(1). To be judicially noticed, a
28 fact must be “[g]enerally known” or “capable of accurate and ready determination by resort to sources whose accuracy
cannot reasonably be questioned.” NRS 47.130(2); *Andolino v. State*, 99 Nev. 346, 351, 662 P.2d 631, 633-34 (1983)
(courts may take judicial notice of official government publications); *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir.
1994) (courts may take judicial notice of documents obtained from administrative agencies); *Greeson v. Imperial Irr.*
Dist., 59 F.2d 529, 531 (9th Cir.1932) (courts may take judicial notice of “public documents”).

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B. The Muddy River Decree

Over one hundred years ago, this Court issued the Muddy River Decree of 1920 (sometimes referred to herein as the “Decree” or “Muddy River Decree”), which established water rights on the Muddy River.²³ The Muddy River Decree recognized specific water rights,²⁴ identified each water right holder on the Muddy River, and quantified each water right.²⁵ MVIC specifically owns certain rights “. . . to divert, convey, and use all of said waters of said River, its head waters, sources of supply and tributaries, save and except the several amounts and rights hereinbefore specified and described . . . and to divert said waters, convey and distribute the same to its present stockholders, and future stockholders, and other persons who may have acquired or who may acquire temporary or permanent rights through said Company. . .”²⁶. The Decree appropriates all water of the Muddy River at the time the Decree was entered, which was prior to any other significant development in the area. The predevelopment flow averaged approximately 33,900 acre feet per annum (“afa”).²⁷ The rights delineated through The Muddy River Decree are the oldest and most senior rights in the LWRFS.

C. The Moapa Dace

The Moapa dace (*Moapa coriacea*) is a thermophilic minnow endemic to the upper spring-fed reaches Muddy River, and has been federally listed as endangered since 1967.²⁸ Between 1933

²³ See Judgment and Decree, *Muddy Valley Irrigation Co. v. Moapa and Salt Lake Produce Co.* (the “Muddy River Decree” or “Decree”) (March 11, 1920) (SE ROA 33770-33816).

²⁴ SE ROA 33770-816. Specifically, the Muddy River Decree finds “[t]hat the aggregate volume of the several amounts and quantities of water awarded and allotted to the parties . . . is the total available flow of the said Muddy River and consumes and exhausts all of the available flow of the said Muddy River, its headwaters, sources of supply and tributaries.” SE ROA 33792-33793.

²⁵ SE ROA 33798-806.

²⁶ SE ROA 33775.

²⁷ See SNWA Report (June 2019) (SE ROA 41930 – 42072) at § 3.4.1 (SE ROA 41962) describing the predevelopment flows as measured in 1946 as 33,900 afa and the average flow measured from July 1, 1913 to June 30, 1915 and October 1, 1916 to September 30, 1917 as 34,000 afa. The NSE further recognizes 33,900 afa as the predevelopment flow. See Order 1309 (SE ROA 2-69) at p. 61 (SE ROA 62).

²⁸ SE ROA 5.

1 and 1950, the Moapa dace was abundant in the Muddy River and was estimated to inhabit as many
2 as 25 individual springs and up to 10 miles of stream habitat. However, by 1983, the species only
3 occurred in springs and two miles of spring outflows. Currently, approximately 95 percent of the
4 total Moapa dace population occurs within 1.78 miles of one major tributary system that flows from
5 three high-elevation spring complexes within the Muddy River Springs Area.²⁹

6 Threats to the Moapa Dace include non-native predatory fishes, habitat loss from water
7 diversions and impoundments, wildfire risk from non-native vegetation, and reductions to surface
8 spring-flows resulting from groundwater development.³⁰ Because the Moapa dace is entirely
9 dependent on spring flow, protecting the dace necessarily involves protecting the warm spring
10 sources of the Muddy River.³¹

11 **D. Order 1169**

12 Significant pumping of the Carbonate Aquifer in the LWRFS began in the 1980s and
13 1990s. Initial assessments of the water available in the Aquifer suggested it would provide a new
14 abundant source of water for Southern Nevada. Because the prospective water resources of the
15 LWRFS carbonate appeared to be substantial, nearly 100 water right applications for over 300,000
16 acre feet were filed in State Engineer's office.³²

17 By 2001, the State Engineer had granted more than 40,000 acre feet of applications in the
18 LWRFS. The State Engineer considered additional applications for groundwater in Coyote Spring
19 Valley and adjacent hydrographic basins. However, concerned over the lack of information
20 regarding the sustainability of water resources from the Carbonate Aquifer, the State Engineer
21 began hearings in July and August 2001 on water right applications.³³

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24 _____
25 ²⁹ SE ROA 47169.

26 ³⁰ SE ROA 47160.

27 ³¹ SE ROA 42087.

28 ³² SE ROA 4, Ex. 1.

³³ *Id.*

1 On March 8, 2002, the State Engineer issued Order 1169 to delay consideration of new
2 water right applications and require the pumping of existing groundwater to determine what impact
3 increased groundwater pumping would have on senior water rights and the environment at the
4 Muddy River (“Aquifer Test”).³⁴ Order 1169 held in abeyance all applications for the
5 appropriation of groundwater from the carbonate-rock aquifer system located in the Coyote Spring
6 Valley Basin (Basin 210), Black Mountains Area Basin (Basin 215), Garnet Valley Basin (Basin
7 216), Hidden Valley Basin (Basin 217), Muddy River Springs aka Upper Moapa Valley Basin
8 (Basin 210), and Lower Moapa Valley Basin (Basin 220).³⁵ California Wash (Basin 218) was
9 subsequently added to this Order.³⁶

10 Notably, Kane Springs was not included in the Order 1169 study area. In Ruling 5712, the
11 State Engineer specifically determined Kane Springs would not be included in the Order 1169
12 study area because there was no substantial evidence that the appropriation of a limited quantity of
13 water in Kane Springs would have any measurable impact on the Muddy River Springs that
14 warranted the inclusion of Kane Springs in Order 1169.³⁷ The State Engineer specifically rejected
15 the argument that the Kane Springs rights could not be appropriated based upon senior
16 appropriated rights in the down gradient basins.³⁸

17 Order 1169A, issued December 21, 2012, set up a test to “stress” the Carbonate Aquifer
18 through two years of aggressive pumping, combined with examination of water levels in monitoring
19 wells located throughout the LWRFS.³⁹ Participants in the Aquifer test were Southern Nevada
20 Water Authority (“SNWA”), Las Vegas Valley Water District (“LVVWD”), Moapa Valley Water
21 District, Coyote Springs Investments, LLC (“Coyote Springs”), Moapa Band of Paiutes, and Nevada
22

23 ³⁴ SE ROA 654-669.

24 ³⁵ See SE ROA 659, 665.

25 ³⁶ SE ROA 659-69, Ex. 8; see also SE ROA 654, Ex. 7.

26 ³⁷ SE ROA 719.

27 ³⁸ SE ROA 713.

28 ³⁹ SE ROA 654-58, Ex. 7.

1 Power Company. Pumping included 5,300 afa in Coyote Spring Valley, 14,535 afa total carbonate
2 pumping, and 3,840 afa alluvial pumping.⁴⁰ Pumping tests effects were examined at 79 monitoring
3 wells and 11 springs and streamflow monitoring sites.⁴¹ The Kane Springs basin was not included in
4 the Order 1169 aquifer testing, and Kane Springs basin water right holders were not involved, not
5 provided notice, and did not participate in the aquifer testing, monitoring or measurements,
6 submission of reports, proceedings and actions taken by the State Engineer pursuant to Order 1169.⁴²

7 The State Engineer’s conclusions from the pump test found an “unprecedented decline” in
8 high-altitude springs, an “unprecedented decline” in water levels, and that additional pumping in
9 the central part of Coyote Spring Valley or the Muddy River Spring Area could not occur without
10 conflict with existing senior rights, including decreed surface water rights on the Muddy River, or
11 the habitat of the Moapa Dace. The State Engineer attributed observed decreases in water levels in
12 other areas of the basins to the pumping during the Order 1169 test and concluded that the test
13 demonstrated connectivity within the Carbonate Aquifer of the LWRFS. On this basis, the State
14 Engineer determined that the five basin LWRFS should be jointly managed.

15 In 2014, and based on the results of the Aquifer Test, the State Engineer issued Rulings
16 6254–6261 on January 29, 2014 denying all the pending groundwater applications in Coyote
17 Springs Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, and
18 certain portions of the Black Mountains Area.⁴³ His rationale in each ruling was the same:
19 “because these basins share a unique and close hydrologic connection and share virtually all of the
20 same source and supply of water, unlike other basins in Nevada, these five basins will be jointly
21 managed.”⁴⁴

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24 ⁴⁰ The Order uses the term acre-foot per year (afy), but for consistency with common usage, this Court uses the
equivalent term acre feet per annum.

25 ⁴¹ SE ROA 6, Ex. 1.

26 ⁴² SE ROA 36230 - 36231.

27 ⁴³ SE ROA 726 – 948.

28 ⁴⁴ See e.g., SE ROA 479.

1 **E. Interim Order 1303 and proceedings**

2 On January 11, 2019 -- nearly 17 years after issuing Order 1169, then-State Engineer Jason
3 King issued Interim Order 1303 to start a two-phased administrative process to resolve the
4 competing interests for water resources in the LWRFS.⁴⁵ He created the LWRFS as a joint
5 administrative unit and invited stakeholders to participate in an administrative hearing to address
6 the factual questions of what the boundary of the LWRFS should be, and what amount of
7 groundwater could be sustainably pumped in the LWRFS.⁴⁶ The LWRFS is the first multi-basin
8 area that the Nevada State Engineer has designated in state history. The ordering provisions in
9 Interim Order 1303 provide in pertinent part:

- 10 1. The Lower White River Flow System consisting of the Coyote Spring Valley,
11 Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley,
12 and the portion of the Black Mountains Area as described in this Order, is
13 herewith designated as a joint administrative unit for purposes of
14 administration of water rights. All water rights within the Lower White River
15 Flow System will be administered based upon their respective date of
16 priorities in relation to other rights within the regional groundwater unit.

17 Any stakeholder with interests that may be affected by water right
18 development within the Lower White River Flow System may file a report in
19 the Office of the State Engineer in Carson City, Nevada, no later than the
20 close of business on Monday, June 3, 2019.

21 Reports filed with the Office of the State Engineer should address the
22 following matters:

- 23 a. The geographic boundary of the hydrologically connected groundwater
24 and surface water systems comprising the Lower White River Flow
25 System;
- 26 b. The information obtained from the Order 1169 aquifer test and
27 subsequent to the aquifer test and Muddy River headwater spring flow as
28 it relates to aquifer recovery since the completion of the aquifer test;
- 29 c. The long-term annual quantity of groundwater that may be pumped
30 from the Lower White River Flow System, including the relationships
31 between the location of pumping on discharge to the Muddy River
32 Springs, and the capture of Muddy River flow;

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34 ⁴⁵ SE ROA 635-53, Ex. 6.

35 ⁴⁶ SE ROA 82-83.

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- d. The effects of movement of water rights between alluvial wells and carbonate wells on deliveries of senior decreed rights to the Muddy River; and,
- e. Any other matter believed to be relevant to the State Engineer's analysis.

SE ROA 647-48, Ex. 6.

The State Engineer identified the LWRFS as including the following hydrographic basins: Coyote Spring Valley, a portion of Black Mountains Area, Garnet Valley, Hidden Valley, California Wash, and the Muddy River Springs Area.⁴⁷ Kane Springs continued to be excluded as part of the LWRFS multi-basin area in Interim Order 1303.⁴⁸

In July and August 2019, reports and rebuttal reports were submitted discussing the four matters set forth in Interim Order 1303. On July 25, 2019, the State Engineer issued a Notice of Pre-Hearing Conference, and on August 9, 2019, the State Engineer held a prehearing conference. On August 23, 2019, the State Engineer issued a Notice of Hearing (which it amended on August 26, 2019), noting that the hearing would be “the first step” in determining how to address future management decisions, including policy decisions, relating to the LWRFS.⁴⁹ He also indicated that the legal question of whether groundwater pumping in the LWRFS conflicts with senior water rights would be addressed in Phase 2 of the LWRFS administrative process.⁵⁰

The Hearing Officer made it clear that “any other matter believed to be relevant” as specified in ordering paragraph 1(e) of Order 1303 would not include discussion of the administrative impacts of consolidating the basins or any policy matters affected by its decision. The State Engineer conducted a hearing on the reports submitted under Order 1303 between September 23, 2019, and October 4, 2019. At the start of the administrative hearing, the State Engineer reminded the parties the public administrative hearing was not a “trial-type” proceeding,

⁴⁷ SE ROA 70-88.
⁴⁸ *Id.*
⁴⁹ SE ROA 263, Ex. 2 (Notice); SE ROA 285, Ex. 3 (Amended Notice).
⁵⁰ SE ROA 522.

1 not a contested adversarial proceeding.⁵¹ Cross-examination was limited to between 4-17 minutes
2 per participant depending on the length of time given to a participant to present its reports.⁵²

3 Following the submission by the participating stakeholders of closing statements at the
4 beginning of December 2019, the State Engineer engaged in no additional public process and
5 solicited no additional input regarding “future management decisions, including policy decisions,
6 relating to the Lower White River Flow System basins.”⁵³

7 **F. Order 1309**

8 On June 15, 2020, the State Engineer issued Order 1309.⁵⁴ The first three ordering
9 paragraphs state as follows:

- 10 1. The Lower White River Flow System consisting of the Kane Springs Valley,
11 Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden
12 Valley, Garnet Valley, and the northwest portion of the Black Mountains Area
13 as described in this Order, is hereby delineated as a single hydrographic basin.
14 The Kane Springs Valley, Coyote Spring Valley, Muddy River Springs Area,
15 California Wash, Hidden Valley, Garnet Valley and the northwest portion of
16 the Black Mountains Area are hereby established as sub-basins within the
17 Lower White River Flow System Hydrographic Basin.
- 18 2. The maximum quantity of groundwater that may be pumped from the Lower
19 White River Flow System Hydrographic Basin on an average annual basis
20 without causing further declines in Warm Springs area spring flow and flow in
21 the Muddy River cannot exceed 8,000 afa and may be less.
- 22 3. The maximum quantity of water that may be pumped from the Lower White
23 River Flow System Hydrographic Basin may be reduced if it is determined
24 that pumping will adversely impact the endangered Moapa dace.

25 SE ROA 66, Ex. 1.

26 The Order does not provide guidance about how the new “single hydrographic basin” will
27 be administered and provided no clear analysis as to the basis for the 8000 afa number for the
28 maximum sustainable yield.

25 ⁵¹ SE ROA 52962, Transcript 6:4-6, 24 to 7:1 (Sept. 23, 2019) (Hearing Officer Fairbank).

26 ⁵² SE ROA 52962, Transcript 7:5-7 (Sept. 23, 2019) (Hearing Officer Fairbank).

27 ⁵³ See SE ROA 285, Ex. 3.

28 ⁵⁴ SE ROA 2-69.

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In its Order, the State Engineer indicated that it “considered this evidence and testimony [regarding basin inclusion and basin boundary] 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.”⁵⁵ However, the State Engineer did not disclose these criteria to the stakeholders before or during the Order 1303 proceedings. Instead, he disclosed them for the first time in Order 1309, after the stakeholders had engaged in extensive investigations, expert reporting, and factual hearing requested by Order 1303. The criteria are:

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

⁵⁵ SE ROA 48-49, Ex. 1.

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After consideration of the above criteria, the State Engineer decided to finalize what was preliminarily determined in Interim Order 1303, and consolidated several administrative units into a single hydrographic basin, designated as the “Lower White River Flow System” or “LWRFS.” The State Engineer also added the previously excluded Kane Springs Hydrographic Basin to the LWRFS,⁵⁶ and modified the portion of the Black Mountains area that is in the LWRFS. Although Order 1309 did not specifically address priorities or conflict of rights, as a result of the consolidation of the basins, the relative priority of all water rights within the seven affected basins will be reordered and the priorities will be considered in relation to all water rights holders in the consolidated basins, rather than in relation only to the other users within the original separate basins.

G. Petitioners and Their Respective Water Rights or Interests

- a. Southern Nevada Water Authority and Las Vegas Valley Water District are government agencies serving Southern Nevada’s water needs, and own water rights in Coyote Springs Valley, Hidden Valley, Garnet Valley, and a significant portion of the Muddy River decreed rights.
- b. Coyote Spring Investments, LLC is a developer who owns water rights in Coyote Spring Valley, Kane Springs Valley, and California Wash;
- c. Apex Holding Company, LLC and Dry Lake Water LLC own real estate and water rights to the area of land commonly referred to as the Apex Industrial Park, in Garnet Valley and Black Mountains Area;
- d. The Center Biological Diversity is a national nonprofit conservation organization which does not hold any water rights, but has educational, scientific, biological, aesthetic and spiritual interests in the survival and recovery of the Moapa Dace;
- e. Muddy Valley Irrigation Company is a private company that owns most of the decreed rights

⁵⁶ The Court notes that the Nevada State Engineer determined that Kane Springs should be included in this joint management area, even though the Kane Springs Basin had not been designated previously for management through the statutory process delineated in under NRS 534.030.

- 1 in the Muddy River;
- 2 f. Nevada Cogeneration Associates Numbers 1 and 2, who operate gas-fired facilities at the
- 3 south end of the LWRFS and have water rights in the Black Mountain Area;
- 4 g. Georgia-Pacific Gypsum LLC, and Republic Technologies, Inc. are industrial companies that
- 5 have water rights in the Garnet Valley Hydrographic Basin;
- 6 h. Lincoln County Water District and Vidler Water Co. are a public water district and a private
- 7 company, respectively, and own water rights in Kane Springs Valley.

8 **III.**

9 **DISCUSSION**

10 **STANDARD OF REVIEW**

11 An aggrieved party may appeal a decision of the State Engineer pursuant to NRS 533.450(1).
12 The proceedings, which are heard by the court, must be informal and summary, but must afford the
13 parties a full opportunity to be heard. NRS 533.450(2). The decision of the State Engineer is
14 considered to be prima facie correct, and the burden of proof is on the party challenging the
15 decision. NRS 533.450(10).

16 **A. Questions of Law**

17 Questions of statutory construction are questions of law which require de novo review.
18 The Nevada Supreme Court has repeatedly held courts have the authority to undertake an
19 independent review of the State Engineer’s statutory construction, without deference to the State
20 Engineer’s determination. *Andersen Family Assoc. v. Ricci*, 124 Nev. 182, 186, 179 P.3d 1201,
21 1203 (2008) (citing *Bacher v. State Engineer*, 122 Nev. 1110, 1115, 146 P.3d 793, 798 (2006) and
22 *Kay v. Nunez*, 122 Nev. 1100, 1103, 146 P.3d 801, 804 (2006)).

23 Any “presumption of correctness” of a decision of the State Engineer as provided by NRS
24 533.450(10), “does not extend to ‘purely legal questions,’ such as ‘the construction of a statute,’
25 as to which ‘the reviewing court may undertake independent review.’” *In re State Engineer*
26 *Ruling No. 5823*, 128 Nev. 232, 238-239, 277 P.3d 449, 453 (2012) (quoting *Town of Eureka v.*
27 *State Engineer*, 108 Nev. 163, 165, 826 P.2d 948, 949 (1992)). At no time will the State
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1 Engineer’s interpretation of a statute control if an alternative reading is compelled by the plain
2 language of the statute. *See Andersen Family Assoc.*, 124 Nev. at 186, 179 P.3d at 1203.

3 Although “[t]he State Engineer’s ruling on questions of law is persuasive... [it is] not
4 entitled to deference.” *Sierra Pac. Indus. v. Wilson*, 135 Nev. Adv. Op. 13, 440 P.3e 37, 40
5 (2019). A reviewing court is free to decide legal questions without deference to an agency
6 determination. *See Jones v. Rosner*, 102 Nev. 215, 216-217, 719 P.2d 805, 806 (1986); *accord*
7 *Pyramid Lake Paiute Tribe v. Ricci*, 126 Nev. 521, 525, 245 P.3d 1145, 1148 (2010) (“[w]e
8 review purely legal questions without deference to the State Engineer’s ruling.”).

9 **B. Questions of Fact**

10 The Court’s review of the Order 1309 is “in the nature of an appeal” and limited to the
11 record before the State Engineer. *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979). On
12 appeal, a reviewing court must “determine whether the evidence upon which the engineer based
13 his decision supports the order.” *State Engineer v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 205
14 (1991) (citing *State Engineer v. Curtis Park*, 101 Nev. 30, 32, 692 P.2d 495, 497 (1985)).

15 As to questions of fact, the State Engineer’s decision must be supported by “substantial
16 evidence in the record [.]” *Eureka Cty. v. State Engineer*, 131 Nev. 846, 850, 359 P.3d 1114, 1117
17 (2015) (quoting *Town of Eureka*, 108 Nev. at 165, 826 P.2d at 949). Substantial evidence is “that
18 which a reasonable mind might accept as adequate to support a conclusion.” *Bacher*, 122 Nev. at
19 1121, 146 P.3d at 800 (finding that a reasonable person would expect quantification of water
20 rights needed and no evidence of such quantification or calculations by the State Engineer is
21 included in the record). The Court may not substitute its judgment for that of the State Engineer,
22 “pass upon the credibility of the witness nor reweigh the evidence.” *Revert*, 95 Nev. at 786, 603
23 P.2d at 264.

24 Where a decision is arbitrary and capricious it is not supported by substantial evidence.
25 *See Clark Cty. Educ. Ass’n v. Clark Cty. Sch. Dist.*, 122 Nev. 337, 339-40, 131 P.3d 5, 7 (2006)
26 (concluding that an arbitrator’s award was “supported by substantial evidence and therefore not
27 arbitrary, capricious, or unsupported by the arbitration agreement”).

28 In *Revert*, 95 Nev. at 787, 603 P.2d at 264–65, the Nevada Supreme Court noted:

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The applicable standard of review of the decisions of the State Engineer, limited to an inquiry as to substantial evidence, presupposes the fullness and fairness of the administrative proceedings: all interested parties must have had a ‘full opportunity to be heard,’ *See* NRS 533.450(2); the State Engineer must clearly resolve all the crucial issues presented, *See Nolan v. State Dep’t. of Commerce*, 86 Nev. 428, 470 P.2d 124 (1970) (on rehearing); the decisionmaker must prepare findings in sufficient detail to permit judicial review, *Id.*; *Wright v. State Insurance Commissioner*, 449 P.2d 419 (Or.1969); *See also* NRS 233B.125. When these procedures, grounded in basic notions of fairness and due process, are not followed, and the resulting administrative decision is arbitrary, oppressive, or accompanied by a manifest abuse of discretion, this court will not hesitate to intervene. *State ex rel. Johns v. Gragson*, 89 Nev. 478, 515 P.2d 65 (1973).

Thus, in order to survive review, Order 1309 must be statutorily authorized, resolve all crucial issues presented, must include findings in detail to permit judicial review, and must be based on substantial evidence.

CONCLUSIONS OF LAW

A. The State Engineer Did Not Have the Authority to Jointly Administrate Multiple Basins by Creating the LWRFS “Superbasin,” Nor Did He Have the Authority to Conjunctively Manage This Superbasin.

The powers of the State Engineer are limited to those set forth in the law. *See, e.g., City of Henderson v. Kilgore*, 122 Nev. 331, 334, 131 P.3d 11, 13 (2006); *Clark Cty. School Dist. v. Clark Cty. Classroom Teachers Ass’n*, 115 Nev. 98, 102, 977 P.2d 1008, 1011 (1999) (*en banc*) (An administrative agency’s powers “are limited to those powers specifically set forth by statute.”); *Clark Cty. v. State, Equal Rights Comm’n*, 107 Nev. 489, 492, 813 P.2d 1006, 1007 (1991)); *Wilson v. Pahrump Fair Water, LLC*, 137 Nev. Adv. Op. 2, 481 P.3d 853, 856(2021) (The State Engineer’s powers thereunder are limited to “only those . . . which the legislature expressly or implicitly delegates.”); *Andrews v. Nevada State Bd. of Cosmetology*, 86 Nev. 207, 208, 467 P.2d 96, 97 (1970) (“Official powers of an administrative agency cannot be assumed by the agency, nor can they be created by the courts in the exercise of their judicial function. The grant of authority to an agency must be clear.”) (*internal citation omitted*).

The Nevada Supreme Court has made clear that the State Engineer is a creature of statute and his or her actions must be within a statutory grant of authority. *Pahrump Fair Water LLC*, 481 P.3d

1 at 856 (explaining that “[t]he State Engineer’s powers thereunder are limited to ‘only those . . .
2 which the legislature expressly or implicitly delegates’” (quoting *Clark Cty.*, 107 Nev. at 492, 813
3 P.2d at 1007)); *see also Howell v. Ricci*, 124 Nev. 1222, 1230, 197 P.3d 1044, 1050 (2008) (holding
4 that the State engineer cannot act beyond his or her statutory authority).

5 The State Engineer’s authority is outlined in NRS Chapters 532, 533 and 534. Chapter 533
6 deals generally with “water rights,” which addresses surface water as well as groundwater, and
7 chapter 534 is limited to groundwater, dealing specifically with “underground water and wells.”

8 In the instant case, the State Engineer relied on the following specific statutes as authority for
9 combining prior independently designated basins as a superbasin newly named the LWRFS, and
10 then conjunctively managing⁵⁷ this superbasin:

- 11 • NRS 533.024(1)(c), which is a legislative declaration “encourag[ing] the State Engineer to
12 consider the best available science in rendering decisions concerning the available surface
13 and underground sources of water in Nevada.”⁵⁸
- 14 • NRS 534.024(1)(e), another legislative declaration that states the policy of Nevada is “[t]o
15 manage conjunctively the appropriation, use and administration of all waters of this State,
16 regardless of the source of the water.”⁵⁹
- 17 • NRS 534.020, which provides that all waters of the State belong to the public and are subject
18 to all existing rights.⁶⁰
- 19 • NRS 532.120, which allows the State Engineer to “make such reasonable rules and
20 regulations as may be necessary for the proper and orderly execution of the powers conferred
21 by law.”⁶¹

22 ⁵⁷ The Nevada Water Words Dictionary, defines “Conjunctive (Water) Use” in part, as “the integrated use and
23 management of hydrologically connected groundwater and surface water.” *Water Words Dictionary, Nevada Division of
24 Water Planning* (2022) (available online at <http://water.nv.gov/WaterPlanDictionary.aspx>) The same dictionary
25 separately defines “Conjunctive Management” as, “the integrated management and use of two or more water resources,
26 such as a (groundwater) aquifer and a surface body of water.” *Id.*

27 ⁵⁸ SE ROA 43.

28 ⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ SE ROA 44.

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- NRS 534.110(6), which allows the State Engineer to conduct investigations into any basin where average annual replenishment is not adequate for the needs of all water rights holders, and then subsequently restrict withdrawals to conform to priority rights.⁶²
- NRS 534 and specifically NRS 534.120, which allows the State Engineer to make such rules, regulations and orders as are deemed essential for the welfare of an area where the groundwater basin is being depleted.”⁶³

However, as further discussed below, the State Engineer’s reliance on these statutes for authority is misplaced, and his actions upend the bedrock principles of the prior appropriation doctrine.

1. The Prior Appropriation Doctrine

The doctrine of prior appropriation has been part of Nevada’s common law since the 1800’s, and is a fundamental principle of water law in Nevada. *See Lobdell v. Simpson*, 2 Nev. 274, 277-78 (1866). “An appropriative right ‘may be described as a state administrative grant that allows the use of a specific quantity of water for a specific beneficial purpose if water is available in the source free from the claims of others with earlier appropriations.’” *Desert Irr., Ltd. v. State*, 113 Nev. 1049, 1051 n.1, 944 P.2d 835, 837 (1997) (quoting Frank J. Trelease & George A. Gould, *Water Law Cases and Materials* 33 (4th ed. 1986)).

“Water rights are given ‘subject to existing rights,’ NRS 533.430(1), given dates of priority, NRS 533.265(2)(b), and determined based on relative rights, NRS 533.090(1)-(2).” *Mineral Cty. v. Lyon Cty.*, 136 Nev. 503,513, 473 P.3d 418, 426 (2020). Thus, “[i]n Nevada, the doctrine of prior appropriation determines the priority of both pre-1905 vested water rights and modern statutory water law.” *Rand Properties, LLC v. Filippini*, 484 P.3d 275, Docket 78319 at 2 (Nev. 2021) (unpublished disposition). It is universally understood that the priority of a water right is its most valuable component. *See Gregory J. Hobbs, Jr., Priority: The Most Misunderstood Stick in the Bundle*, 32 *Envtl. L.* 37, 43 (2002) (“Priority determines the value of a water right”).

“A priority in a water right is property in itself”; therefore, “to deprive a person of his

⁶² *Id.*

⁶³ *Id.*

1 priority is to deprive him of a most valuable property right.” *Colorado Water Conservation*
2 *Bd. v. City of Cent.*, 125 P.3d 424, 434 (Colo. 2005) (internal quotation marks omitted). “A loss of
3 priority that renders rights useless ‘certainly affects the rights’ value’ and ‘can amount to a de facto
4 loss of rights.”” *Wilson v. Happy Creek, Inc.*, 135 Nev. 301, 313, 448 P.3d 1106, 1115 (2019)
5 (quoting *Andersen Family Assocs.*, 124 Nev. at 190-1, 179 P.3d at 1201).

6 Nevada’s statutory water law reflects the importance of priority. Not only did the
7 Legislature choose not to bestow the State Engineer with discretion to alter priority rights, but it also
8 affirmatively requires the State Engineer to preserve priority rights when performing the State
9 Engineer’s statutory duties. *See, e.g.*, NRS 534.110(6) (providing that any curtailment “be restricted
10 to conform to priority rights”); NRS 534.110(7) (same); NRS 533.040(2) (“If at any time it is
11 impracticable to use water beneficially or economically at the place to which it is appurtenant, the
12 right may be severed from the place of use and be simultaneously transferred and become
13 appurtenant to another place of use, in the manner provided in this chapter, without losing priority of
14 right.”).

15 The prior appropriation doctrine in Nevada, “the driest state in the Nation”⁶⁴ becomes
16 particularly critical when, as in the instant case, there is not enough water to satisfy all of the
17 existing rights of the current water right holders, and the threat of curtailment looms ominously in
18 the near future. One of the greatest values of a senior priority right is the assurance that the holder
19 will be able to use water even during a time of water shortage because junior water right holders will
20 be curtailed first. Thus, senior right holders rely on their senior priority rights when developing
21 businesses, entitling and permitting land development, negotiating agreements, making investments,
22 obtaining permits and various approvals from State and local agencies, and generally making
23 financial and other decisions based on the relative certainty of their right.

24 Priority in time of a right is only as valuable as where the holder stands in relation to others
25 in the same situation, or more specifically in this case, in the same basin. As the statutes are written,
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28 ⁶⁴ *United States v. State Engineer*, 117 Nev. 585, 592, 27 P.3d 51, 55 (2001)(Becker, J., concurring in part and
dissenting in part).

1 water right holders only compete in time for their “place in line” with other water right holders in
2 their same basin. Therefore, the year that one acquires a priority right is only as important as the
3 year that other water right holders in your basin acquired theirs. It is in this setting that State
4 Engineer has issued Order 1309.

5 **2. Joint Administration**

6 The State Engineer’s position is that the “best available science” demonstrates that the
7 seven⁶⁵ named hydrographic basins are so hydrologically interconnected that science dictates they
8 must be managed together in one superbasin. However, NRS 533.024(1)(c) is a policy declaration
9 of the Legislature’s intent that simply “encourages” the State Engineer “to consider the best
10 available science in rendering decisions” that concern water he has authority to manage. NRS
11 533.024(1)(c).

12 Statements of policy from the Legislature do not serve as a basis for government action, but
13 rather inform the interpretation of statutes that authorize specific action. *See, Pawlik v. Deng*, 134
14 Nev. 83, 85, 412 P.3d 68, 71 (2018). In *Pawlik*, the Nevada Supreme Court expressed the relevance
15 of statements of policy in terms as follows: “if the statutory language is subject to two or more
16 reasonable interpretations, the statute is ambiguous, and we then look beyond the statute to the
17 legislative history and interpret the statute in a reasonable manner ‘in light of the policy and the
18 spirit of the law.’” *Id.* (quoting *J.E. Dunn Nw., Inc. v. Corus Constr. Venture, LLC*, 127 Nev. 72, 79,
19 249 P.3d 501, 505 (2011)).

20 While such statements of policy are accorded deference in terms of statutory interpretation,
21 the Nevada Supreme Court has specifically held that they are not binding. *See McLaughlin v. Hous.*
22 *Auth. of the City of Las Vegas*, 227 P.2d 206, 93 (1951) (“It has often been said that the declaration
23 of policy by the legislature, though not necessarily binding or conclusive upon the courts, is entitled
24 to great weight, and that it is neither the duty nor prerogative of the courts to interfere in such
25 legislative finding unless it clearly appears to be erroneous and without reasonable foundation.”); *see*
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⁶⁵ More accurately, the LWRFS is comprised of six hydrographic basins and a portion of a seventh.

1 also *Clean Water Coal. v. M Resort, LLC*, 127 Nev. 301, 313, 255 P.3d 247, 255 (2011) (“The State
2 acknowledges that when legislative findings are expressly included within a statute, those findings
3 should be accorded great weight in interpreting the statute, but it points out that such findings are not
4 binding and this court may, nevertheless, properly conclude that section 18 is a general law despite
5 the Legislature's declaration to the contrary.”).

6 Statements of policy set forth by the Legislature are therefore not operative statutory
7 enactments, but rather tools to be used in interpreting operative statutes—and only then where such
8 statutes are ambiguous on their face. *See Pawlik*, 134 Nev. at 85, 412 P.3d at 71; *see also Cromer v.*
9 *Wilson*, 126 Nev. 106, 109-10, 225 P.3d 788, 790 (2010) (if the plain language of a statute “is
10 susceptible of another reasonable interpretation, we must not give the statute a meaning that will
11 nullify its operation, and we look to policy and reason for guidance”).

12 This statement of policy is not, in and of itself, a grant of authority that allows the State
13 Engineer to change boundaries of established hydrographic basins as science dictates. This Court
14 certainly acknowledges that since the time the 256 hydrographic basins and sub-basins were
15 delineated, that science and technology have made great strides. While certain navigable waters and
16 topography were more easily identifiable at the time the basins were established, the complexity lies
17 in the less obvious interconnectivity and formations of sub-surface structures that were more
18 difficult to detect at that time. There is no doubt that scientific advancements allow experts to more
19 accurately assess sub-surface formations and groundwater than they have in the past, and certainly
20 technology will continue to improve accuracy in the future. However, this Court notes that the
21 Legislature specifically used the word “encourages” to describe how the Nevada State Engineer
22 should utilize the best available science. NRS 533.024(1)(c). The statute does not declare that the
23 best available science should dictate the decisions.

24 Indeed, if science was the sole governing principle to dictate the Nevada State Engineer’s
25 decisions, there would be a slippery slope in the changes that could be made in the boundaries of the
26 basins and how they are managed; each time scientific advancements and discoveries were made
27 regarding how sub-surface water structures are situated or interconnected, under this theory of
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1 authority, the Nevada State Engineer could change the boundaries of the existing basins. Each
2 boundary change would upend the priority of water right holders as they relate to the other water
3 right holders in the new, scientifically-dictated “basin.” This would lead to an absurd result as it
4 relates to the prior appropriation doctrine. Every water right holder would be insecure in their
5 priority, as their relative priority could change at any moment that science advances in determining
6 further interconnectivity of water below the surface. In the administration of water rights, the
7 certainty of those rights is particularly important and prior appropriation is “largely a product of the
8 compelling need for certainty in the holding and use of water rights.” *Mineral Cty. v. Lyon Cty.*, 136
9 Nev. at 518, 473 P.3d at 429 (quoting *Arizona v. California*, 460 U.S. 605, 620 (1983)). Science in
10 and of itself cannot alter common law and statutes. Thus, the State Engineer’s reliance on NRS
11 533.024(1)(c) for giving him authority to create a superbasin out of seven existing basins is
12 misplaced.

13 While NRS 532.120 allows the State Engineer to make reasonable rules and regulations as
14 may be necessary for proper and orderly execution, this authority is not without its limits, and is
15 only authorized for those “powers conferred by law.” Nothing in Chapters 532, 533 or 534 gives the
16 State Engineer direct authority to eliminate, modify, or redraw the boundaries of existing
17 hydrographic basins, or to consolidate multiple, already established, hydrographic basins into a
18 single hydrographic superbasin. For at least 50 years, holders of groundwater rights in Nevada have
19 understood a “hydrographic basin” to be an immutable administrative unit. This has been the case
20 regardless of whether the boundaries of the unit accurately reflected the boundaries of a particular
21 water resource. The Nevada Legislature has adopted a comprehensive scheme that provides the
22 framework for the State Engineer to administer surface water and groundwater. Moreover, the State
23 Engineer has, for decades, administered water on the basis of hydrographic basins identified,
24 described, and released to the public and relied upon by the Legislature, former State Engineers, and
25 the public. Applications to appropriate water are and have been on the basis of each hydrographic
26 basin. Protests, agreements, and resolutions of water applications have been on the basis of each
27 basin. Furthermore, statutes require that the State Engineer consider available water and
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1 appropriations based on the basins already defined.

2 It is interesting to note that in the statutes that *do* confer authority on the Nevada State
3 Engineer to manage water, they specifically mention the management as being done on a basin-by-
4 basin (or a sub-basin within a basin) basis. NRS 534.030 is the original source of authority for the
5 State Engineer’s designation of an “administrative area” by “basin.” NRS 534.030. Through NRS
6 534.030 and NRS 534.011, the State Engineer has authority to designate “any groundwater basin, or
7 portion therein” an “area of active management,” which refers to an area “[i]n which the State
8 Engineer is conducting particularly close monitoring and regulation of the water supply because of
9 heavy use of that supply.” Under the statute’s plain meaning, a *basin* is intended to be an
10 *administrative unit*, defined by boundaries described by “legal subdivision as nearly as possible.”
11 NRS 534.030(1)(b). In other words, a hydrographic basin so designated was synonymous with an
12 administrative unit—a *legal* construct, defined thereafter by a *geographic* boundary. Water rights
13 within these basins are to be administered according to the laws set forth in NRS Chapters 533 and
14 534, and the principles of prior appropriation are applied to water uses *within* each basin.

15 Moreover, the Legislature consistently refers to a singular basin throughout the statute. *See*,
16 *e.g.*, 534.030(1) (describing a petition under NRS Chapter 534 as one that requests the State
17 Engineer “to administer the provisions of this chapter as relating to designated areas, ... in any
18 particular basin or portion therein”); NRS 534.030(2) (“a groundwater basin”); NRS 534.030(2)
19 (“the basin”). In fact, in the State Engineer’s prior rulings and orders, including Order 1169, Order
20 1169A, and Rulings 5712 and 6455, the State Engineer employs a basin-by-basin management
21 approach.

22 NRS 534.110(6) sets forth the State Engineer’s ability to make basin-specific determinations
23 and provides the authority to curtail water rights where investigations into specific basins
24 demonstrate that there is insufficient groundwater to meet the needs of all permittees and all vested-
25 right claimants. NRS 534.110 plainly applies to investigations concerning administration and
26 designation of critical management areas within a basin. If the State Engineer conducts an
27 investigation as set forth in NRS 534.110(6) and determines that the annual replenishment to the
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1 groundwater supply is not adequate for the permittees and vested-right claimants, he has the
2 authority to either (1) order that withdrawals from domestic wells be restricted to conform to priority
3 rights, or (2) designate as a critical management area the basin in which withdrawals of groundwater
4 consistently exceed the perennial yield. NRS 534.110(6)-(7). It is important to note, however, that
5 the statute does not provide authority to change the boundaries of established basins, combine
6 multiple basins into one unit or superbasin, and then modify or curtail groundwater rights based
7 upon restructured priority dates in this newly created superbasin.

8 The Court acknowledges that the State Engineer can and should take into account how water
9 use in one basin may affect the water use in an adjoining or closely related basin when determining
10 how best to “actively manage” a basin. However, this is much different than how the State Engineer
11 defines “joint management”: erasing the borders of seven already established legal administrative
12 units and creating one legal superunit in the LWRFS superbasin. If the Legislature intended for the
13 State Engineer to designate areas across multiple basins for “joint administration,” it would have so
14 stated. *See Slade v. Caesars Entm’t Corp.*, 132 Nev. 374, 380-81, 373 P.3d 74, 78 (2016) (citing
15 Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 107 (2012)
16 (“The expression of one thing implies the exclusion of others.”)). Thus, under NRS 534.030, while
17 the State Engineer can administer basins individually, the statute does not allow the State Engineer
18 to combine basins for joint administration, nor do NRS 532.120, NRS 533.024, or NRS 534.110(6)
19 confer express authority on the State Engineer to do so.

20 **3. Conjunctive Management**

21 The Nevada State Engineer relies on NRS 534.024(1)(e), as the source of authority that
22 allows him to manage both surface and groundwater together through “conjunctive management.”⁶⁶
23 Historically, surface water and ground water have been managed separately. In fact, the term
24 “conjunctive management” was only introduced in the statutes in the 2017 session of the Nevada
25 Legislature when it added subsection 1(e) to NRS 533.024. However, as discussed previously, this
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⁶⁶ SE ROA 43.

1 statute is a declaration of legislative intent, and as a statement of policy, it does not constitute a grant
2 of authority to the State Engineer, nor is it a water management tool in and of itself.

3 In fact, there is no authority or guidance whatsoever in the statutes as to how to go about
4 conjunctively managing water and water rights. While the Court agrees that it makes sense to take
5 into account how certain groundwater rights may affect other surface water rights when managing
6 water overall, as this Court noted previously, the powers of the State Engineer are limited to those
7 set forth in the law. While Nevada law provides certain tools for the management of water rights in,
8 for example, over appropriated basins, *e.g.*, NRS 534.110(7) (authorizing the State Engineer to
9 “designate as a critical management area any basin in which withdrawals of groundwater
10 consistently exceed the perennial yield of the basin”), nothing in Chapters 532, 533 or 534 gives the
11 State Engineer express authority to conjunctively manage, in this proceeding, both the surface and
12 groundwater flows he believes are occurring in the LWRFS superbasin.

13 This Court finds that as a result of the consolidation of the basins, the relative priority of all
14 water rights within the seven affected basins will be reordered and the priorities will be considered
15 in relation to all water rights holders in the consolidated basins, rather than in relation only to the
16 other users within the original separate basins.⁶⁷ By redefining and combining seven established
17 basins for “joint administration,” and “conjunctive management,” the State Engineer essentially
18 strips senior right holders of their priority rights by deciding that all water rights within the LWRFS
19 superbasin should be administered based upon their respective dates of priority in relation to other
20 rights “within the regional groundwater unit.”

21 The State Engineer’s position is that the determination of conflicts and priorities has not yet
22 occurred since that is to occur in the second step of the proceeding. However, by the very nature of
23 erasing the existing basins and putting all of the water rights holders in one superbasin, he has
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26 ⁶⁷ This Court rejects the State Engineer’s argument that Order 1309 did not change priorities merely because it did not
27 change priority dates. His argument conflates the meaning of *priority* as defined by the date of a water right application,
28 and the common meaning of *priority*, as defined by one’s “place in line.” While it is true that the Order does not change
priority dates, this Court finds that it *does* change the relative priorities, as petitioners who previously held the most
senior rights within their singular basin may now be relegated to more junior status within the “superbasin.”

1 already reprioritized certain rights as they relate to one another, even if their priority dates remain
2 the same.⁶⁸ As a result of creating this superbasin, water rights holders with some of the most senior
3 priority rights within their basin are now relegated to a much a lower priority position than some
4 water right holders in basins outside of their own. Such a loss of priority would potentially render
5 certain water rights valueless, given the State Engineer’s restrictions on pumping in the entire
6 LWRFS. The Court concludes that the State Engineer does not have authority to redefine Nevada
7 basins so as to reorder the priority rights of water right holders through conjunctive management
8 within those basins. Accordingly, Order 1309 stands at odds with the prior appropriation doctrine.

9 The Court determines that the question of whether the State Engineer has *authority* to change
10 the boundaries of basins that have been established for decades, or subject that newly created basin
11 to conjunctive management, or not, is a legal question, not a factual one. The State Engineer has
12 failed to identify a statute that authorizes him to alter established basin boundaries or engage in
13 conjunctive management. Based upon the plain language of the applicable statutes, the Court
14 concludes that the State Engineer acted outside the scope of his authority in entering Order 1309.

15 **B. The State Engineer Violated Petitioners’ Due Process Rights in Failing to Provide**
16 **Notice to Petitioners or an Opportunity to Comment on the Administrative Policies Inherent**
17 **in the Basin Consolidation.**

18 The Nevada Constitution protects against the deprivation of property without due process of
19 law. Nev. Const. art. 1, § 8(5). “Procedural due process requires that parties receive notice and an
20 opportunity to be heard.” *Eureka Cty. V. Seventh Jud. Dist. Ct.*, 134 Nev. 275, 279, 417 P.3d 1121,
21 1124 (2018)(internal quotation marks omitted). “In Nevada, water rights are ‘regarded and
22 protected as real property.’” *Id.*(quoting *Application of Filippini*, 66 Nev. 17, 21-22, 202 P.2d 535,
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24 ⁶⁸ Although this Court refrains from analyzing whether or not 1309 is supported by substantial evidence, the Court notes
25 that part of the State Engineer’s 1309 decision of limiting use to 8,000afa or less is based on the concern of adversely
26 impacting the endangered Moapa Dace, located in the Muddy River Springs. This decision does not appear to take into
27 account more nuanced effects of how pumping in each separate basin affects the Muddy River flows, no matter how far
28 away the basin is from the river. In other words, reprioritization of each water rights holder in relation to the other (by
prioritization date in the newly created superbasin) means that their standing (and more importantly, their potential for
curtailment) is only by date. Water use in one basin may not have the same effect as another in reducing Muddy River
flows; however, these distinguishing factors are all erased by combining all of the basins together for joint
administration.

1 537 (1949)). Therefore, holders of water rights in Nevada are entitled to constitutional protections
2 regarding those property rights, including procedural due process. *See id.*

3 The Nevada Supreme Court has held that “[a]lthough proceedings before administrative
4 agencies may be subject to more relaxed procedural and evidentiary rules, due process guarantees of
5 fundamental fairness still apply.” *Dutchess Bus. Serv. ’s, Inc. v. Nev. State Bd. of Pharmacy*, 124
6 Nev. 701, 711, 191 P.3d 1159, 1166 (2008). In *Dutchess*, the Nevada Supreme Court noted further
7 that “[a]dministrative bodies must follow their established procedural guidelines and give notice to
8 the defending party of ‘the issues on which decision will turn and . . . the factual material on which
9 the agency relies for decision so that he may rebut it.” *Id.*

10 With respect to notice and hearing, the Nevada Supreme Court has held that “[i]nherent in
11 any notice and hearing requirement are the propositions that the notice will accurately reflect the
12 subject matter to be addressed and that the hearing will allow full consideration of it.” *Public Serv.*
13 *Comm’n of Nev. v. Southwest Gas Corp.*, 99 Nev. 268, 271, 772 P.2d 624, 626 (1983). “Notice must
14 be given at an appropriate stage in the proceedings to give parties meaningful input in the
15 adjudication of their rights.” *Seventh Jud. Dist. Ct.*, 134 Nev. at 280-81, 417 P.3d at 1125-26 (citing
16 *Hamdi v. Rumsfeld*, 542 U.S. 507, 533, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004) (“It is equally
17 fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful
18 time and in a meaningful manner.”). A party’s due process rights attach at the point at which a
19 proceeding holds the *possibility* of curtailing water rights, and due process necessitates notice of that
20 possibility to the party potentially affected.⁶⁹

21 For the reasons that follow, this Court concludes that (a) the notice and hearing procedure
22 employed by the State Engineer failed to satisfy the requirements of due process because the notice
23 failed to put the parties on notice that the State Engineer would decide on a management protocol for
24

25 ⁶⁹ “[B]ecause the language in the show cause order [indicates that the district court may enter an order forcing curtailment
26 to begin, junior water rights holders must be given an opportunity to make their case for or against the option of
27 curtailment. Notice must be given at an appropriate stage in the proceedings to give parties meaningful input in the
28 adjudication of their rights... Thus, junior water rights holders must be notified before the curtailment decision is made,
even if the specific “how” and “who” of curtailment is decided in a future proceeding.” *Seventh Jud. Dist. Ct.*, 134 Nev.
275, 280–81, 417 P.3d 1121, 1125 (2018).

1 the LWRFS at the conclusion of the proceeding; (b) the hearing itself failed to satisfy due process
2 because the parties were not afforded a full and complete opportunity to address the implications of
3 the State Engineer’s decision to subject the LWRFS to conjunctive management and joint
4 administration, and (c) the State Engineer’s nondisclosure, before or during the Order 1303
5 proceedings of the six criteria he would use in evaluating the connectivity of the basins and
6 determining the new consolidated basin boundary, failed to satisfy the requirements of due process.

7 Specifically, the notice of hearing and amended notice of hearing (“Notice”) noticed an
8 opportunity for the parties that submitted Order 1303 reports to explain their positions and
9 conclusions with respect to the questions posed for consideration in Order 1303.^{70 71} But the
10 questions posed in Order 1303 did not relate to management of the LWRFS, such as issues of
11 conjunctive or joint administration, but rather related to factual inquiries. Instead, Order 1303
12 specifically authorized stakeholders to file reports addressing four specific areas, none of which
13 related to the management of the LWRFS.⁷²

14 In noticing the hearing to consider the reports submitted pursuant to Order 1303, there was
15 no mention of consideration of the prospective management of the LWRFS, *i.e.*, whether it would be
16 appropriately managed conjunctively and as a joint administrative unit. Indeed, this was consistent
17 with the Hearing Officer’s opening remarks at the August 8, 2019, prehearing conference in which
18

19 _____
⁷⁰ See SE ROA 262-82, Ex. 2; SE ROA 284-301, Ex. 3

20 ⁷¹ The Notice included the following summary:

21 On August 9, 2019, the State Engineer held a pre-hearing conference regarding the hearing on the
22 submission of reports and evidence as solicited in Order 1303.... The State Engineer established that
23 the purpose of the hearing on the Order 1303 reports was to provide the participants an opportunity to
24 explain the positions and conclusions expressed in the reports and/or rebuttal reports submitted in
25 response to the Order 1303 solicitation. The State Engineer directed the participants to limit the offer of
26 evidence and testimony to the salient conclusions, including directing the State Engineer and his staff
27 to the relevant data, evidence and other information supporting those conclusions. ***The State Engineer
further noted that the hearing on the Order 1303 reports was the first step in determining to what
extent, if any, and in what manner the State Engineer would address future management decisions,
including policy decisions, relating to the Lower White River Flow System basins. On that basis, the
State Engineer then addressed other related matters pertaining to the hearing on the Order 1303
reports, including addressing the date and sequence of the hearing, as set forth in this Notice of
Hearing.*** SE ROA 285, Ex. 3 (emphasis added).

28 ⁷² SE ROA 647-48. Ex. 6.

1 the State Engineer actively discouraged participants from providing input regarding that very
2 question. The hearing officer stated as follows at the August 8 prehearing conference:

3 And so, and I'm going to talk about this and we've spoken about this before, is
4 that really this is a threshold reporting aspect, that this is part of a multi-tiered
5 process in terms of determining the appropriate management strategy to the
6 Lower River Flow System.

7 This larger substantive policy determination is not part of the particular
8 proceeding. That's part of later proceedings....

9 SE ROA 522, Ex. 5 (Hr'g Tr. at 10:6-20).

10 The hearing officer gave additional consistent guidance at the outset of the September 23
11 hearing, further directing the parties not to address policy issues even in relation to the fact that
12 Order 1303 authorized stakeholders to include in their reports "[a]ny other matter believed to be
13 relevant to the State Engineer's analysis."⁷³ Specifically, the Hearing Officer directed as follows:

14 And while that fifth issue is [as set forth in Ordering Paragraph 1(e) of Order
15 1303] not intended to expand the scope of this hearing into making policy
16 determinations with respect to management of the Lower White River Flow
17 System basin's individual water rights, those different types of things, because
18 those are going to be decisions that would have to be made in subsequent
19 proceedings should they be necessary.

20 SE ROA 52962, Ex. 26 (Hr'g Tr. 6:4-15).

21 Not only did the notice not adequately notify the parties of the possibility of the
22 consideration and resolution of policy issues, but the Hearing Officer consistently
23 directed the parties to avoid the subject, compounding the due process violation.

24 Notwithstanding the Hearing Officer's admonitions and the plain language of the notice, the
25 State Engineer ultimately issued a dramatic determination regarding management of the LWRFS. In
26 doing so, the State Engineer precluded the participants from providing input that would have
27 allowed for the full consideration of the issue. Specifically, participants and experts did not have the
28 opportunity to, and were actively discouraged from addressing policy issues critical to the

⁷³ SE ROA 648, Ex. 6.

1 management of the LWRFS.⁷⁴ The refusal to consider these issues ensured that the State Engineer’s
2 decision was not based on a fully developed record.

3 The State Engineer acknowledged as much in Order 1309 itself. There, the State Engineer
4 noted the fact that Georgia-Pacific and Republic raised concerns over the sufficiency of the scope of
5 the proceedings at hearing but inexplicably asserted that a to-be-determined management scheme
6 would be developed to address “management issues” in the LWRFS:

7 Georgia-Pacific and Republic asserted that boundaries are premature without
8 additional data and without a legally defensible policy and management tools in
9 place. They expressed concern that creating an administrative unit at this time
10 inherently directs policy without providing for due process. The State Engineer
11 has considered these concerns and agrees that additional data and improved
12 understanding of the hydrologic system is critical to the process. He also believes
13 that the data currently available provide enough information to delineate LWRFS
14 boundaries, and that an effective management scheme will provide for the
15 flexibility to adjust boundaries based on additional information, retain the ability
16 to address unique management issues on a sub-basin scale, and maintain
17 partnership with water users who may be affected by management actions
18 throughout the LWRFS.

19 SE ROA 54, Ex. 1.

20 This language reflects a serious misunderstanding of the effect of Order 1309. Insofar as
21 Order 1309 subjects the LWRFS to conjunctive management and joint administration, resulting in
22 effectively reordering of priority of water rights in the LWRFS superbasin, the order effectuates a
23 management scheme with far reaching consequences. Thus, agreeing on the one hand that an
24 “effective management scheme” will be necessary to address challenges in the LWRFS, but
25

26 ⁷⁴ These issues include, but are not limited to: whether Nevada law allows the State Engineer to conjunctively manage
27 multiple hydrographic basins in a manner that modifies the relative priority of water rights due to the administration
28 consolidation of basins; whether the State Engineer would establish a “critical management area” pursuant to NRS
534.110 and, if so, whether he would develop a groundwater management plan or defer to the stakeholders to develop
one; whether Nevada law gives the State Engineer authority to designate a management area that encompasses more than
one basin; whether “safe-yield” discrete management areas should be established within the proposed administrative
unit; whether water rights holders enjoy a “property right” in the relative priority of their water rights such that impairing
that right may constitute a “taking”; whether unused (or only sporadically used) senior water rights take precedence over
certificated or fully used junior rights, particularly where these junior rights are in continuous use to support
economically significant enterprises; whether States compel quantification of federal reserved rights by a date certain;
and whether the State Engineer should approach the legislature to seek different or additional management tools or
authority. See SE ROA 52801-8, Ex. 25 (Georgia Pacific and Republic Closing Argument, outlining policy questions
for consideration by the State Engineer at later proceedings, proceedings that never took place).

1 contending it will be developed in the future, reveals a lack of appreciation of the implications of the
2 order to the detriment of not only the participants but all water rights holders in the LWRFS basins.
3 Without consideration of the implications of the management decision contained in the order, it
4 cannot be based on a full consideration of the issues presented. In affirmatively limiting the scope of
5 the proceeding to include a full consideration of the issues, the State Engineer violated the
6 stakeholders' due process rights. Both the notice and the hearing procedures employed failed to
7 comport with due process.

8 Finally, as noted above, the State Engineer did not give notice or disclose before or during
9 the Order 1303 proceedings, the six specific criteria that he would use in evaluating the connectivity
10 of the basins and determining the new consolidated basin boundary. Although the State Engineer
11 asserted that he considered the evidence and testimony presented in the public hearing "on the basis
12 of a common set of criteria that are consistent with the original characteristics conserved critical in
13 demonstrating a close hydrologic connection requiring joint management in Rulings 6254-6261,"⁷⁵
14 a review of these rulings reveals that none of the six criteria or characteristics were previously
15 identified, examined in the hydrological studies and subsequent hearing that followed the
16 completion of the Order 1169 aquifer test, or expressly disclosed in Rulings 6254-6261.⁷⁶ These
17 criteria were instead explicitly disclosed for the first time in Order 1309, which means the
18 participants had no opportunity to directly address these criteria in their presentations, or critically,
19 to address the appropriateness of these criteria.

20 This Court is unpersuaded by the State Engineer's argument that it could develop the criteria
21 only after it heard all the evidence at the hearing. Even if it did, this does not justify a deprivation of
22 the right to due process. In order to provide the parties due process and a meaningful opportunity to
23 present evidence on these issues, the State Engineer should have included these factors in the Notice
24 of Pre-Hearing Conference. *See Eureka Cty.*, 131 Nev. at 855, 359 P.3d at 1120; *Revert*, 95 Nev. at
25 787, 603 P.2d at 265 (criticizing the state engineer for engaging in post hoc rationalization). This
26

27 ⁷⁵ See SE ROA 48.

28 ⁷⁶ SE ROA 726-948.

1 due process violation is particularly harmful to water rights holders in Kane Springs, the sole basin
2 that had not been previously designated for management under NRS 534.030, had not been included
3 in the Order 1169 aquifer test, and had not been identified as a basin to be included in the LWRFS
4 superbasin in Order 1303.

5 Accordingly, this Court concludes that revealing the criteria only after stakeholders had
6 engaged in the extensive investigations, expert reporting, and the intense factual hearing requested
7 by Order 1303 further violates the participants' due process rights.

8 As this Court has determined that the Nevada State Engineer exceeded his statutory authority
9 and violated the participants' due process rights in issuing Order 1309, it declines to reach further
10 analysis on whether his factual findings in Order 1309 were supported by substantial evidence.

11 **IV.**
12 **CONCLUSION**

13 The Court FINDS that the Nevada State Engineer exceeded his statutory authority and had
14 no authority based in statute to create the LWRFS superbasin out of multiple distinct, already
15 established hydrographic basins. The Nevada State Engineer also lacked the statutory authority to
16 conjunctively manage this LWRFS superbasin.

17 The Court ALSO FINDS that the Nevada State Engineer violated the Petitioners'
18 Constitutional right to due process by failing to provide adequate notice and a meaningful
19 opportunity to be heard.

20 As a result, Order 1309 is arbitrary, capricious, and therefore void.

21 Good cause appearing, based upon the above Findings of Fact and Conclusions of Law, the
22 Court ORDERS, ADJUDGES AND DECREES as follows:

23 IT IS HEREBY ORDERED that the petition for review of the Nevada State Engineer's
24 Order No. 1309 filed by Petitioners Lincoln County Water District and Vidler Water Company, Inc.
25 is GRANTED.

26 IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer's
27 Order No. 1309 filed by Petitioners Coyote Springs Investment, LLC is GRANTED.
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IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer’s Order No. 1309 filed by Petitioners Apex Holding Company, LLC and Dry Lake Water, LLC is GRANTED.

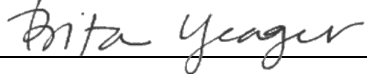
IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer’s Order No. 1309 filed by Petitioners Nevada Cogeneration Associates Nos. 1 and 2 is GRANTED.

IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer’s Order No. 1309 filed by Petitioners Georgia-Pacific Gypsum LLC, and Republic Environmental Technologies, Inc. is GRANTED.

IT IS FURTHER ORDERED that the State Engineer’s Order 1309 is VACATED in its entirety.

IT IS SO ORDERED.

Dated this 19th day of April, 2022



**66B 24A E875 2549
Bitia Yeager
District Court Judge**

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Southern Nevada Water
Authority, Plaintiff(s)

CASE NO: A-20-816761-C

7 vs.

DEPT. NO. Department 1

8
9 Nevada State Engineer, Division
of Water Resources,
10 Defendant(s)

11
12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
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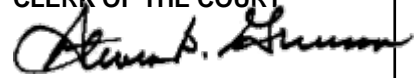
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15 WATER DISTRICT and VIDLER WATER
16 COMPANY, INC.

17 **DISTRICT COURT**
18 **CLARK COUNTY, NEVADA**

19 LAS VEGAS VALLEY WATER DISTRICT,
20 and SOUTHERN NEVADA WATER
AUTHORITY, et al.,

Case No. A-20-816761-C

Dept. No. 1

21 Petitioners,

Consolidated with Cases:

22 vs.

A-20-817765-P

A-20-818015-P

A-20-817977-P

23 ADAM SULLIVAN, P.E., Acting
24 Nevada State Engineer, et al.,

A-20-818069-P

A-20-817840-P

A-20-817876-P

25 Respondent.

A-21-833572-J

26 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW,**
27 **AND ORDER GRANTING PETITIONS FOR JUDICIAL REVIEW**

28 ///

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YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the *Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review* was entered on the 19th day of April, 2022 in the above captioned and consolidated cases, a copy of which is attached hereto.

DATED this 19th day of April, 2022.

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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused a true and correct copy of the foregoing document to be served on all parties to this action by electronic service to the participates in this case who are registered with the Eighth Judicial District Court’s Odyssey eFileNV File & Service system to this matter.

DATED this 19th day of April, 2022.

/s/ Nancy Fontenot
NANCY FONTENOT

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INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	Findings of Fact, Conclusions of Law, And Order Granting Petitions for Judicial Review	40

4857-5859-8684, v. 1

EXHIBIT “1”

FFCO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAS VEGAS VALLEY WATER DISTRICT,
and SOUTHERN NEVADA WATER
AUTHORITY,

Case No. A-20-816761-C
Dept. No. I

Petitioners,

Consolidated with Cases:

vs.

A-20-817765-P
A-20-818015-P
A-20-817977-P
A-20-818069-P
A-20-817840-P
A-20-817876-P
A-21-833572-J

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

Respondent.

And All Consolidated Cases.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PETITIONS
FOR JUDICIAL REVIEW**

This matter comes before this Court on consolidated petitions for judicial review of State Engineer's Order 1309 filed by Petitioners:

- Southern Nevada Water Authority and Las Vegas Valley Water District
- Coyote Spring Investment, LLC
- Apex Holding Co. and Dry Lake Water, LLC
- The Center for Biological Diversity
- Muddy Valley Irrigation Company
- Nevada Cogeneration Associates Nos. 1 and 2
- Georgia-Pacific Gypsum LLC and Republic Environmental Technologies, Inc.
- Lincoln County Water District and Vidler Water Company.

Bitia Yeager
Eighth Judicial District Court
Clark County, Nevada
Department I

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The parties stipulated to permit the following Intervenors into this matter:

- Sierra Pacific Power Company d/b/a NV Energy and Nevada Power Company d/b/a NV Energy
- Moapa Valley Water District
- The Church of Jesus Christ of Latter-Day Saints
- City of North Las Vegas
- Western Elite Environmental, Inc. and Bedroc Limited, LLC.

In addition, some Petitioners intervened to respond to other petitions for judicial review. The Parties appeared by and through their respective counsels of record. The Court held oral argument from February 14, 2022 to February 17, 2022.

The Court having considered the evidence, the pleadings, together with opening and closing arguments presented at the hearing for these matters, and good cause appearing therefor, makes the following Findings of Fact, Conclusions of Law, and Order:

I.

PROCEDURAL HISTORY

On June 15, 2020, the Nevada State Engineer issued Order No. 1309 as his latest administrative action regarding the Lower White River Flow System (“LWRFS”)¹.

On June 17, 2020, the Las Vegas Valley Water District and the Southern Nevada Water Authority (collectively, “SNWA”) filed a petition for judicial review of Order 1309 in the Eighth Judicial District Court in Clark County, Nevada.² Subsequently, the following petitioners filed petitions for judicial review in the Eighth Judicial District Court: Coyote Spring Investments, LLC (“CSI”); Apex Holding Company, LLC and Dry Lake Water LLC (collectively, “Apex”); the Center Biological Diversity (“CBD”); Muddy Valley Irrigation Company (“MVIC”); Nevada

¹ SE ROA 2 – 69. The LWRFS refers to an area in southern Nevada made up of several hydrological basins that share the same aquifer as their source of groundwater. The Nevada State Engineer determined that this encompasses the area that includes Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, Kane Springs Valley and the northwest portion of the Black Mountains Area.

² LVVWD and SNWA Petition for Judicial Review, filed June 17, 2020.

1 Cogeneration Associates Numbers 1 and 2 (“Nevada Cogen”); and Georgia-Pacific Gypsum LLC,
2 and Republic Technologies, Inc. (collectively, “Georgia-Pacific”). All petitions were consolidated
3 with SNWA’s petition.³

4 Later, Sierra Pacific Power Company d/b/a NV Energy (“Sierra Pacific”) and Nevada
5 Power Company d/b/a NV Energy (“Nevada Power” and, together with Sierra Pacific, “NV
6 Energy”), Moapa Valley Water District (“MVWD”), the Church of Jesus Christ and of Latter-Day
7 Saints (the “Church”), the City of North Las Vegas (“CNLV”), and Western Elite Environmental,
8 Inc. and Bedroc Limited (collectively, “Bedroc”) ⁴ were granted intervention status in the
9 consolidated petitions for judicial review of Order 1309.

10 On July 13, 2020, Lincoln County Water District and Vidler Water Co. (collectively,
11 “Vidler”) timely filed their Petition for Judicial Review of State Engineer Order 1309 in the
12 Seventh Judicial District Court in Lincoln County, Nevada, identified as Case No. CV-0702520.
13 On August 26, 2020, the Seventh Judicial District Court issued an Order Granting Motion to
14 Change Venue, transferring this matter to the Eighth Judicial District Court in Clark County,
15 Nevada. Vidler appealed the Order Granting Motion to Change Venue to the Nevada Supreme
16 Court, and on April 15, 2021, the Nevada Supreme Court entered its Order of Affirmation. On
17 May 27, 2021, per verbal stipulation by the parties, the Court ordered this matter consolidated into
18 Case No. A-20-816761-C. When transferred to the Eighth Judicial District Court, Vidler’s action
19 was assigned Case No. A-21-833572-J. Notwithstanding the consolidation of all of the cases, each
20 case retained its individual and distinct factual and legal issues.

21 Petitioners in all the consolidated actions filed their Opening Briefs on or about August 27,
22 2021. Respondents State Engineer, Intervenors, and Petitioners who were Respondent-Intervenors
23 filed their Answering Briefs on or about November 24, 2021. Petitioners filed their Reply Briefs on
24 or about January 11, 2022.

25 _____
26 ³ Stipulation for Consolidation, A-20-816761-C, May 26, 2021.

27 ⁴ Bedroc and CNLV did not file briefs and did not participate in oral argument.
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II.

FACTUAL HISTORY

A. The Carbonate Groundwater Aquifer and the Basins

Much of the bedrock and mountain ranges of Eastern Nevada are formed from a sequence of sedimentary rocks laid down during the Paleozoic Era. These formations are limestones or dolomites, commonly referred to as “carbonates,” due to the chemical composition of the minerals composing the rocks. These formations have been extensively deformed through folding and faulting caused by geologic forces. This deformation has caused extensive fracture and fault systems to form in these carbonate rocks, with permeability enhanced by the gradual solution of minerals. The result is an aquifer system that over time has accumulated large volumes of water with some apparent degree of connection throughout the much of area.⁵ The valley floors in the basins of Eastern Nevada are generally composed of alluvium comprised largely of relatively young (<5 million years) unconsolidated sands, gravels, and clays. This sequence is loosely referred to as the “Alluvial Aquifer,” the aquifer for most shallow wells in the area. Most of the water in the Carbonate Aquifer is present due to infiltration of water thousands of years ago; recent recharge from present day precipitation may represent only a fraction of the water stored.

Approximately 50,000 square miles of Nevada sits atop of this geologic layer of carbonate rock, which contains significant quantities of groundwater.⁶ This carbonate-rock aquifer system contains at least two major “regional flow systems” - continuous, interconnected, and transmissive geologic features through which water flows underground roughly from north to south: the Ash Meadows-Death Valley regional flow system; and the White River-Muddy River Springs system.⁷ These flow systems connect the groundwater beneath dozens of topographic valleys across distances exceeding 200 miles.⁸ The White River-Muddy River Springs flow system, stretching approximately

⁵ State Engineer Record on Appeal (“SE ROA”) 36062-67, Ex. 14; SE ROA 661, Ex. 8.

⁶ SE ROA 659.

⁷ SE ROA 661.

⁸ SE ROA 661.

1 240 miles from southern Elko County in the north to the Muddy River Springs Area in the south,
2 was identified as early as 1966.⁹ The area designated by Order 1309 as the LWRFS consists
3 generally of the southern portion of the White River-Muddy River Springs flow system.¹⁰

4 The Muddy River runs through a portion of the LWRFS before cutting southeast and
5 discharging into Lake Mead.¹¹ Many warm-water springs, including the Muddy River Springs at
6 issue in this litigation, discharge from the regional carbonate groundwater aquifer.¹² The series of
7 springs, collectively referred to as the “Muddy River Springs” in the Muddy River Springs Area
8 hydrographic basin form the headwaters of the Muddy River and provide the only known habitat for
9 the endangered Moapa dace.¹³

10 The Muddy River Springs are directly connected to, and discharge from, the regional
11 carbonate aquifer.¹⁴ Because of this connection, flows from the springs are dependent on the
12 elevation of groundwater within the carbonate aquifer, and can change rapidly in direct response to
13 changes in carbonate groundwater levels.¹⁵ As carbonate groundwater levels decline, spring flows
14 decrease, beginning with the highest-elevation springs.¹⁶

15 As early as 1989, there were concerns that sustained groundwater pumping from the
16 carbonate-rock aquifer would result in water table declines, substantially deplete the water stored in
17 the aquifer, and ultimately reduce or eliminate flow from the warm-water springs that discharge
18 from the aquifer.¹⁷

19 _____
20 ⁹ SE ROA 11349-59.

21 ¹⁰ *See* SE ROA 11350.

22 ¹¹ SE ROA 41943.

23 ¹² SE ROA 660-61, 53056, 53062.

24 ¹³ SE ROA 663-664, 41959, 48680.

25 ¹⁴ SE ROA 73-75, 34545, 53062.

26 ¹⁵ SE ROA 60-61, 34545.

27 ¹⁶ SE ROA 46, 34545.

28 ¹⁷ *See* SE ROA 661.

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The general rule in Nevada is that one acquires a water right by filing an application to appropriate water with the Nevada Division of Water Resources (“DWR”). If the DWR approves the application, a “Permit to Appropriate” issues. Nevada has adopted the principle of “first in time, first in right,” also known as “priority.” The priority of a water right is determined by the date a permit is applied for. Nevada’s water resources are managed through administrative units called “hydrographic basins,” which are generally defined by topography, more or less reflecting boundaries between watersheds. Nevada is divided into 232 hydrographic basins (256 hydrographic basins and sub-basins, combined) based upon the surface geography and subsurface flow.

The priority of groundwater rights is determined relative to the water rights holder within the individual basins. If there is not enough water to serve all water right holders in a particular basin, “senior” appropriators are satisfied first in order of priority: the rights of “junior” appropriators may be curtailed. Historically, The Nevada State Engineer has managed hydrographic basins in a basin-by-basin manner for decades,¹⁸ and administers and manages each basin as a discrete hydrologic unit.¹⁹ The State Engineer keeps and maintains annual pumping inventories and records on a basin-by-basin basis.²⁰

This administrative structure has worked reasonably well for basins where groundwater is pumped from “basin fill” aquifers or alluvium, where the annual recharge of the groundwater historically has been estimated based upon known or estimated precipitation data - establishing the amount of groundwater that is recharged annually and can be extracted sustainably from a basin, known as the “perennial yield.” In reality, many hydrographic basins are severely over-appropriated, due to inaccurate estimates, over pumping, domestic wells, changing climate conditions, etc.

Administration of groundwater rights is made particularly complex when the main source of

¹⁸SE ROA 654, 659, 699, 726, 755.
¹⁹ SE ROA 949-1069.
²⁰ SE ROA 1070-1499.

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groundwater is not “basin fill” or alluvium, but aquifers found in permeable geologic formations lying beneath the younger basin fill, and which may underlie large regions that are not well defined by the present-day hydrographic basins. This is the case with Nevada’s “Carbonate Aquifer.”

When necessary, the State Engineer may manage a basin that has been designated for administration. NRS 534.030 outlines the process by which a particular basin can be designated for administration by the State Engineer. In the instant case, six of the seven basins affected by Order No. 1309 had already been designated for management under NRS 534.030, including:

- a. Coyote Spring Valley Hydrographic Basin (“Coyote Spring Valley”), Basin No. 210, since 1985;
- b. Black Mountains Area Hydrographic Basin (“Black Mountains Area”), Basin No. 215, since November 22, 1989;
- c. Garnet Valley Hydrographic Basin (“Garnet Valley”), Basin No. 216, since April 24, 1990;
- d. Hidden Valley Hydrographic Basin (“Hidden Valley”), Basin No. 217, since October 24, 1990;
- e. California Wash Hydrographic Basin (“California Wash”), Basin No. 218, since August 24, 1990; and
- f. Muddy River Springs Area Hydrographic Basin (“Muddy River Springs Area”), Basin No. 219, since July 14, 1971.²¹

Kane Springs Valley (“Kane Springs Valley”), Basin 206, which was also affected by Order No. 1309, had not been designated previously for administration.²²

²¹ See SE ROA 2-3, 71-72.

²² The Court takes judicial notice of Kane Springs Valley Basin’s status of not being designated for administration per NRS 534.030. <http://water.nv.gov/StateEngineersOrdersList.aspx> (available online at the Division of Water Resources. “Mapping& Data” tab, under “Water Rights” tab, “State Engineer’s Orders List and Search”). Facts that are subject to judicial notice “are facts in issue or facts from which they may be inferred.” NRS 47.130(1). To be judicially noticed, a fact must be “[g]enerally known” or “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” NRS 47.130(2); *Andolino v. State*, 99 Nev. 346, 351, 662 P.2d 631, 633-34 (1983) (courts may take judicial notice of official government publications); *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (courts may take judicial notice of documents obtained from administrative agencies); *Greeson v. Imperial Irr. Dist.*, 59 F.2d 529, 531 (9th Cir.1932) (courts may take judicial notice of “public documents”).

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B. The Muddy River Decree

Over one hundred years ago, this Court issued the Muddy River Decree of 1920 (sometimes referred to herein as the “Decree” or “Muddy River Decree”), which established water rights on the Muddy River.²³ The Muddy River Decree recognized specific water rights,²⁴ identified each water right holder on the Muddy River, and quantified each water right.²⁵ MVIC specifically owns certain rights “. . . to divert, convey, and use all of said waters of said River, its head waters, sources of supply and tributaries, save and except the several amounts and rights hereinbefore specified and described . . . and to divert said waters, convey and distribute the same to its present stockholders, and future stockholders, and other persons who may have acquired or who may acquire temporary or permanent rights through said Company. . .”²⁶. The Decree appropriates all water of the Muddy River at the time the Decree was entered, which was prior to any other significant development in the area. The predevelopment flow averaged approximately 33,900 acre feet per annum (“afa”).²⁷ The rights delineated through The Muddy River Decree are the oldest and most senior rights in the LWRFS.

C. The Moapa Dace

The Moapa dace (*Moapa coriacea*) is a thermophilic minnow endemic to the upper spring-fed reaches Muddy River, and has been federally listed as endangered since 1967.²⁸ Between 1933

²³ See Judgment and Decree, *Muddy Valley Irrigation Co. v. Moapa and Salt Lake Produce Co.* (the “Muddy River Decree” or “Decree”) (March 11, 1920) (SE ROA 33770-33816).

²⁴ SE ROA 33770-816. Specifically, the Muddy River Decree finds “[t]hat the aggregate volume of the several amounts and quantities of water awarded and allotted to the parties . . . is the total available flow of the said Muddy River and consumes and exhausts all of the available flow of the said Muddy River, its headwaters, sources of supply and tributaries.” SE ROA 33792-33793.

²⁵ SE ROA 33798-806.

²⁶ SE ROA 33775.

²⁷ See SNWA Report (June 2019) (SE ROA 41930 – 42072) at § 3.4.1 (SE ROA 41962) describing the predevelopment flows as measured in 1946 as 33,900 afa and the average flow measured from July 1, 1913 to June 30, 1915 and October 1, 1916 to September 30, 1917 as 34,000 afa. The NSE further recognizes 33,900 afa as the predevelopment flow. See Order 1309 (SE ROA 2-69) at p. 61 (SE ROA 62).

²⁸ SE ROA 5.

1 and 1950, the Moapa dace was abundant in the Muddy River and was estimated to inhabit as many
2 as 25 individual springs and up to 10 miles of stream habitat. However, by 1983, the species only
3 occurred in springs and two miles of spring outflows. Currently, approximately 95 percent of the
4 total Moapa dace population occurs within 1.78 miles of one major tributary system that flows from
5 three high-elevation spring complexes within the Muddy River Springs Area.²⁹

6 Threats to the Moapa Dace include non-native predatory fishes, habitat loss from water
7 diversions and impoundments, wildfire risk from non-native vegetation, and reductions to surface
8 spring-flows resulting from groundwater development.³⁰ Because the Moapa dace is entirely
9 dependent on spring flow, protecting the dace necessarily involves protecting the warm spring
10 sources of the Muddy River.³¹

11 **D. Order 1169**

12 Significant pumping of the Carbonate Aquifer in the LWRFS began in the 1980s and
13 1990s. Initial assessments of the water available in the Aquifer suggested it would provide a new
14 abundant source of water for Southern Nevada. Because the prospective water resources of the
15 LWRFS carbonate appeared to be substantial, nearly 100 water right applications for over 300,000
16 acre feet were filed in State Engineer's office.³²

17 By 2001, the State Engineer had granted more than 40,000 acre feet of applications in the
18 LWRFS. The State Engineer considered additional applications for groundwater in Coyote Spring
19 Valley and adjacent hydrographic basins. However, concerned over the lack of information
20 regarding the sustainability of water resources from the Carbonate Aquifer, the State Engineer
21 began hearings in July and August 2001 on water right applications.³³

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24 _____
25 ²⁹ SE ROA 47169.

26 ³⁰ SE ROA 47160.

27 ³¹ SE ROA 42087.

28 ³² SE ROA 4, Ex. 1.

³³ *Id.*

1 On March 8, 2002, the State Engineer issued Order 1169 to delay consideration of new
2 water right applications and require the pumping of existing groundwater to determine what impact
3 increased groundwater pumping would have on senior water rights and the environment at the
4 Muddy River (“Aquifer Test”).³⁴ Order 1169 held in abeyance all applications for the
5 appropriation of groundwater from the carbonate-rock aquifer system located in the Coyote Spring
6 Valley Basin (Basin 210), Black Mountains Area Basin (Basin 215), Garnet Valley Basin (Basin
7 216), Hidden Valley Basin (Basin 217), Muddy River Springs aka Upper Moapa Valley Basin
8 (Basin 210), and Lower Moapa Valley Basin (Basin 220).³⁵ California Wash (Basin 218) was
9 subsequently added to this Order.³⁶

10 Notably, Kane Springs was not included in the Order 1169 study area. In Ruling 5712, the
11 State Engineer specifically determined Kane Springs would not be included in the Order 1169
12 study area because there was no substantial evidence that the appropriation of a limited quantity of
13 water in Kane Springs would have any measurable impact on the Muddy River Springs that
14 warranted the inclusion of Kane Springs in Order 1169.³⁷ The State Engineer specifically rejected
15 the argument that the Kane Springs rights could not be appropriated based upon senior
16 appropriated rights in the down gradient basins.³⁸

17 Order 1169A, issued December 21, 2012, set up a test to “stress” the Carbonate Aquifer
18 through two years of aggressive pumping, combined with examination of water levels in monitoring
19 wells located throughout the LWRFS.³⁹ Participants in the Aquifer test were Southern Nevada
20 Water Authority (“SNWA”), Las Vegas Valley Water District (“LVVWD”), Moapa Valley Water
21 District, Coyote Springs Investments, LLC (“Coyote Springs”), Moapa Band of Paiutes, and Nevada
22

23 ³⁴ SE ROA 654-669.

24 ³⁵ See SE ROA 659, 665.

25 ³⁶ SE ROA 659-69, Ex. 8; see also SE ROA 654, Ex. 7.

26 ³⁷ SE ROA 719.

27 ³⁸ SE ROA 713.

28 ³⁹ SE ROA 654-58, Ex. 7.

1 Power Company. Pumping included 5,300 afa in Coyote Spring Valley, 14,535 afa total carbonate
2 pumping, and 3,840 afa alluvial pumping.⁴⁰ Pumping tests effects were examined at 79 monitoring
3 wells and 11 springs and streamflow monitoring sites.⁴¹ The Kane Springs basin was not included in
4 the Order 1169 aquifer testing, and Kane Springs basin water right holders were not involved, not
5 provided notice, and did not participate in the aquifer testing, monitoring or measurements,
6 submission of reports, proceedings and actions taken by the State Engineer pursuant to Order 1169.⁴²

7 The State Engineer’s conclusions from the pump test found an “unprecedented decline” in
8 high-altitude springs, an “unprecedented decline” in water levels, and that additional pumping in
9 the central part of Coyote Spring Valley or the Muddy River Spring Area could not occur without
10 conflict with existing senior rights, including decreed surface water rights on the Muddy River, or
11 the habitat of the Moapa Dace. The State Engineer attributed observed decreases in water levels in
12 other areas of the basins to the pumping during the Order 1169 test and concluded that the test
13 demonstrated connectivity within the Carbonate Aquifer of the LWRFS. On this basis, the State
14 Engineer determined that the five basin LWRFS should be jointly managed.

15 In 2014, and based on the results of the Aquifer Test, the State Engineer issued Rulings
16 6254–6261 on January 29, 2014 denying all the pending groundwater applications in Coyote
17 Springs Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, and
18 certain portions of the Black Mountains Area.⁴³ His rationale in each ruling was the same:
19 “because these basins share a unique and close hydrologic connection and share virtually all of the
20 same source and supply of water, unlike other basins in Nevada, these five basins will be jointly
21 managed.”⁴⁴

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24 ⁴⁰ The Order uses the term acre-foot per year (afy), but for consistency with common usage, this Court uses the
equivalent term acre feet per annum.

25 ⁴¹ SE ROA 6, Ex. 1.

26 ⁴² SE ROA 36230 - 36231.

27 ⁴³ SE ROA 726 – 948.

28 ⁴⁴ *See e.g.*, SE ROA 479.

1 **E. Interim Order 1303 and proceedings**

2 On January 11, 2019 -- nearly 17 years after issuing Order 1169, then-State Engineer Jason
3 King issued Interim Order 1303 to start a two-phased administrative process to resolve the
4 competing interests for water resources in the LWRFS.⁴⁵ He created the LWRFS as a joint
5 administrative unit and invited stakeholders to participate in an administrative hearing to address
6 the factual questions of what the boundary of the LWRFS should be, and what amount of
7 groundwater could be sustainably pumped in the LWRFS.⁴⁶ The LWRFS is the first multi-basin
8 area that the Nevada State Engineer has designated in state history. The ordering provisions in
9 Interim Order 1303 provide in pertinent part:

- 10 1. The Lower White River Flow System consisting of the Coyote Spring Valley,
11 Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley,
12 and the portion of the Black Mountains Area as described in this Order, is
13 herewith designated as a joint administrative unit for purposes of
14 administration of water rights. All water rights within the Lower White River
15 Flow System will be administered based upon their respective date of
16 priorities in relation to other rights within the regional groundwater unit.

17 Any stakeholder with interests that may be affected by water right
18 development within the Lower White River Flow System may file a report in
19 the Office of the State Engineer in Carson City, Nevada, no later than the
20 close of business on Monday, June 3, 2019.

21 Reports filed with the Office of the State Engineer should address the
22 following matters:

- 23 a. The geographic boundary of the hydrologically connected groundwater
24 and surface water systems comprising the Lower White River Flow
25 System;
- 26 b. The information obtained from the Order 1169 aquifer test and
27 subsequent to the aquifer test and Muddy River headwater spring flow as
28 it relates to aquifer recovery since the completion of the aquifer test;
- c. The long-term annual quantity of groundwater that may be pumped
from the Lower White River Flow System, including the relationships
between the location of pumping on discharge to the Muddy River
Springs, and the capture of Muddy River flow;

27 ⁴⁵ SE ROA 635-53, Ex. 6.

28 ⁴⁶ SE ROA 82-83.

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- d. The effects of movement of water rights between alluvial wells and carbonate wells on deliveries of senior decreed rights to the Muddy River; and,
- e. Any other matter believed to be relevant to the State Engineer's analysis.

SE ROA 647-48, Ex. 6.

The State Engineer identified the LWRFS as including the following hydrographic basins: Coyote Spring Valley, a portion of Black Mountains Area, Garnet Valley, Hidden Valley, California Wash, and the Muddy River Springs Area.⁴⁷ Kane Springs continued to be excluded as part of the LWRFS multi-basin area in Interim Order 1303.⁴⁸

In July and August 2019, reports and rebuttal reports were submitted discussing the four matters set forth in Interim Order 1303. On July 25, 2019, the State Engineer issued a Notice of Pre-Hearing Conference, and on August 9, 2019, the State Engineer held a prehearing conference. On August 23, 2019, the State Engineer issued a Notice of Hearing (which it amended on August 26, 2019), noting that the hearing would be “the first step” in determining how to address future management decisions, including policy decisions, relating to the LWRFS.⁴⁹ He also indicated that the legal question of whether groundwater pumping in the LWRFS conflicts with senior water rights would be addressed in Phase 2 of the LWRFS administrative process.⁵⁰

The Hearing Officer made it clear that “any other matter believed to be relevant” as specified in ordering paragraph 1(e) of Order 1303 would not include discussion of the administrative impacts of consolidating the basins or any policy matters affected by its decision. The State Engineer conducted a hearing on the reports submitted under Order 1303 between September 23, 2019, and October 4, 2019. At the start of the administrative hearing, the State Engineer reminded the parties the public administrative hearing was not a “trial-type” proceeding,

⁴⁷ SE ROA 70-88.
⁴⁸ *Id.*
⁴⁹ SE ROA 263, Ex. 2 (Notice); SE ROA 285, Ex. 3 (Amended Notice).
⁵⁰ SE ROA 522.

1 not a contested adversarial proceeding.⁵¹ Cross-examination was limited to between 4-17 minutes
2 per participant depending on the length of time given to a participant to present its reports.⁵²

3 Following the submission by the participating stakeholders of closing statements at the
4 beginning of December 2019, the State Engineer engaged in no additional public process and
5 solicited no additional input regarding “future management decisions, including policy decisions,
6 relating to the Lower White River Flow System basins.”⁵³

7 **F. Order 1309**

8 On June 15, 2020, the State Engineer issued Order 1309.⁵⁴ The first three ordering
9 paragraphs state as follows:

- 10 1. The Lower White River Flow System consisting of the Kane Springs Valley,
11 Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden
12 Valley, Garnet Valley, and the northwest portion of the Black Mountains Area
13 as described in this Order, is hereby delineated as a single hydrographic basin.
14 The Kane Springs Valley, Coyote Spring Valley, Muddy River Springs Area,
15 California Wash, Hidden Valley, Garnet Valley and the northwest portion of
16 the Black Mountains Area are hereby established as sub-basins within the
17 Lower White River Flow System Hydrographic Basin.
- 18 2. The maximum quantity of groundwater that may be pumped from the Lower
19 White River Flow System Hydrographic Basin on an average annual basis
20 without causing further declines in Warm Springs area spring flow and flow in
21 the Muddy River cannot exceed 8,000 afa and may be less.
- 22 3. The maximum quantity of water that may be pumped from the Lower White
23 River Flow System Hydrographic Basin may be reduced if it is determined
24 that pumping will adversely impact the endangered Moapa dace.

25 SE ROA 66, Ex. 1.

26 The Order does not provide guidance about how the new “single hydrographic basin” will
27 be administered and provided no clear analysis as to the basis for the 8000 afa number for the
28 maximum sustainable yield.

25 ⁵¹ SE ROA 52962, Transcript 6:4-6, 24 to 7:1 (Sept. 23, 2019) (Hearing Officer Fairbank).

26 ⁵² SE ROA 52962, Transcript 7:5-7 (Sept. 23, 2019) (Hearing Officer Fairbank).

27 ⁵³ See SE ROA 285, Ex. 3.

28 ⁵⁴ SE ROA 2-69.

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In its Order, the State Engineer indicated that it “considered this evidence and testimony [regarding basin inclusion and basin boundary] 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.”⁵⁵ However, the State Engineer did not disclose these criteria to the stakeholders before or during the Order 1303 proceedings. Instead, he disclosed them for the first time in Order 1309, after the stakeholders had engaged in extensive investigations, expert reporting, and factual hearing requested by Order 1303. The criteria are:

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

⁵⁵ SE ROA 48-49, Ex. 1.

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After consideration of the above criteria, the State Engineer decided to finalize what was preliminarily determined in Interim Order 1303, and consolidated several administrative units into a single hydrographic basin, designated as the “Lower White River Flow System” or “LWRFS.” The State Engineer also added the previously excluded Kane Springs Hydrographic Basin to the LWRFS,⁵⁶ and modified the portion of the Black Mountains area that is in the LWRFS. Although Order 1309 did not specifically address priorities or conflict of rights, as a result of the consolidation of the basins, the relative priority of all water rights within the seven affected basins will be reordered and the priorities will be considered in relation to all water rights holders in the consolidated basins, rather than in relation only to the other users within the original separate basins.

G. Petitioners and Their Respective Water Rights or Interests

- a. Southern Nevada Water Authority and Las Vegas Valley Water District are government agencies serving Southern Nevada’s water needs, and own water rights in Coyote Springs Valley, Hidden Valley, Garnet Valley, and a significant portion of the Muddy River decreed rights.
- b. Coyote Spring Investments, LLC is a developer who owns water rights in Coyote Spring Valley, Kane Springs Valley, and California Wash;
- c. Apex Holding Company, LLC and Dry Lake Water LLC own real estate and water rights to the area of land commonly referred to as the Apex Industrial Park, in Garnet Valley and Black Mountains Area;
- d. The Center Biological Diversity is a national nonprofit conservation organization which does not hold any water rights, but has educational, scientific, biological, aesthetic and spiritual interests in the survival and recovery of the Moapa Dace;
- e. Muddy Valley Irrigation Company is a private company that owns most of the decreed rights

⁵⁶ The Court notes that the Nevada State Engineer determined that Kane Springs should be included in this joint management area, even though the Kane Springs Basin had not been designated previously for management through the statutory process delineated in under NRS 534.030.

- 1 in the Muddy River;
- 2 f. Nevada Cogeneration Associates Numbers 1 and 2, who operate gas-fired facilities at the
- 3 south end of the LWRFS and have water rights in the Black Mountain Area;
- 4 g. Georgia-Pacific Gypsum LLC, and Republic Technologies, Inc. are industrial companies that
- 5 have water rights in the Garnet Valley Hydrographic Basin;
- 6 h. Lincoln County Water District and Vidler Water Co. are a public water district and a private
- 7 company, respectively, and own water rights in Kane Springs Valley.

8 **III.**

9 **DISCUSSION**

10 **STANDARD OF REVIEW**

11 An aggrieved party may appeal a decision of the State Engineer pursuant to NRS 533.450(1).
12 The proceedings, which are heard by the court, must be informal and summary, but must afford the
13 parties a full opportunity to be heard. NRS 533.450(2). The decision of the State Engineer is
14 considered to be prima facie correct, and the burden of proof is on the party challenging the
15 decision. NRS 533.450(10).

16 **A. Questions of Law**

17 Questions of statutory construction are questions of law which require de novo review.
18 The Nevada Supreme Court has repeatedly held courts have the authority to undertake an
19 independent review of the State Engineer’s statutory construction, without deference to the State
20 Engineer’s determination. *Andersen Family Assoc. v. Ricci*, 124 Nev. 182, 186, 179 P.3d 1201,
21 1203 (2008) (citing *Bacher v. State Engineer*, 122 Nev. 1110, 1115, 146 P.3d 793, 798 (2006) and
22 *Kay v. Nunez*, 122 Nev. 1100, 1103, 146 P.3d 801, 804 (2006)).

23 Any “presumption of correctness” of a decision of the State Engineer as provided by NRS
24 533.450(10), “does not extend to ‘purely legal questions,’ such as ‘the construction of a statute,’
25 as to which ‘the reviewing court may undertake independent review.’” *In re State Engineer*
26 *Ruling No. 5823*, 128 Nev. 232, 238-239, 277 P.3d 449, 453 (2012) (quoting *Town of Eureka v.*
27 *State Engineer*, 108 Nev. 163, 165, 826 P.2d 948, 949 (1992)). At no time will the State
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1 Engineer’s interpretation of a statute control if an alternative reading is compelled by the plain
2 language of the statute. *See Andersen Family Assoc.*, 124 Nev. at 186, 179 P.3d at 1203.

3 Although “[t]he State Engineer’s ruling on questions of law is persuasive... [it is] not
4 entitled to deference.” *Sierra Pac. Indus. v. Wilson*, 135 Nev. Adv. Op. 13, 440 P.3e 37, 40
5 (2019). A reviewing court is free to decide legal questions without deference to an agency
6 determination. *See Jones v. Rosner*, 102 Nev. 215, 216-217, 719 P.2d 805, 806 (1986); *accord*
7 *Pyramid Lake Paiute Tribe v. Ricci*, 126 Nev. 521, 525, 245 P.3d 1145, 1148 (2010) (“[w]e
8 review purely legal questions without deference to the State Engineer’s ruling.”).

9 **B. Questions of Fact**

10 The Court’s review of the Order 1309 is “in the nature of an appeal” and limited to the
11 record before the State Engineer. *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979). On
12 appeal, a reviewing court must “determine whether the evidence upon which the engineer based
13 his decision supports the order.” *State Engineer v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 205
14 (1991) (citing *State Engineer v. Curtis Park*, 101 Nev. 30, 32, 692 P.2d 495, 497 (1985)).

15 As to questions of fact, the State Engineer’s decision must be supported by “substantial
16 evidence in the record [.]” *Eureka Cty. v. State Engineer*, 131 Nev. 846, 850, 359 P.3d 1114, 1117
17 (2015) (quoting *Town of Eureka*, 108 Nev. at 165, 826 P.2d at 949). Substantial evidence is “that
18 which a reasonable mind might accept as adequate to support a conclusion.” *Bacher*, 122 Nev. at
19 1121, 146 P.3d at 800 (finding that a reasonable person would expect quantification of water
20 rights needed and no evidence of such quantification or calculations by the State Engineer is
21 included in the record). The Court may not substitute its judgment for that of the State Engineer,
22 “pass upon the credibility of the witness nor reweigh the evidence.” *Revert*, 95 Nev. at 786, 603
23 P.2d at 264.

24 Where a decision is arbitrary and capricious it is not supported by substantial evidence.
25 *See Clark Cty. Educ. Ass’n v. Clark Cty. Sch. Dist.*, 122 Nev. 337, 339-40, 131 P.3d 5, 7 (2006)
26 (concluding that an arbitrator’s award was “supported by substantial evidence and therefore not
27 arbitrary, capricious, or unsupported by the arbitration agreement”).

28 In *Revert*, 95 Nev. at 787, 603 P.2d at 264–65, the Nevada Supreme Court noted:

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The applicable standard of review of the decisions of the State Engineer, limited to an inquiry as to substantial evidence, presupposes the fullness and fairness of the administrative proceedings: all interested parties must have had a ‘full opportunity to be heard,’ *See* NRS 533.450(2); the State Engineer must clearly resolve all the crucial issues presented, *See Nolan v. State Dep’t. of Commerce*, 86 Nev. 428, 470 P.2d 124 (1970) (on rehearing); the decisionmaker must prepare findings in sufficient detail to permit judicial review, *Id.*; *Wright v. State Insurance Commissioner*, 449 P.2d 419 (Or.1969); *See also* NRS 233B.125. When these procedures, grounded in basic notions of fairness and due process, are not followed, and the resulting administrative decision is arbitrary, oppressive, or accompanied by a manifest abuse of discretion, this court will not hesitate to intervene. *State ex rel. Johns v. Gragson*, 89 Nev. 478, 515 P.2d 65 (1973).

Thus, in order to survive review, Order 1309 must be statutorily authorized, resolve all crucial issues presented, must include findings in detail to permit judicial review, and must be based on substantial evidence.

CONCLUSIONS OF LAW

A. The State Engineer Did Not Have the Authority to Jointly Administrate Multiple Basins by Creating the LWRFS “Superbasin,” Nor Did He Have the Authority to Conjunctively Manage This Superbasin.

The powers of the State Engineer are limited to those set forth in the law. *See, e.g., City of Henderson v. Kilgore*, 122 Nev. 331, 334, 131 P.3d 11, 13 (2006); *Clark Cty. School Dist. v. Clark Cty. Classroom Teachers Ass’n*, 115 Nev. 98, 102, 977 P.2d 1008, 1011 (1999) (*en banc*) (An administrative agency’s powers “are limited to those powers specifically set forth by statute.”); *Clark Cty. v. State, Equal Rights Comm’n*, 107 Nev. 489, 492, 813 P.2d 1006, 1007 (1991)); *Wilson v. Pahrump Fair Water, LLC*, 137 Nev. Adv. Op. 2, 481 P.3d 853, 856(2021) (The State Engineer’s powers thereunder are limited to “only those . . . which the legislature expressly or implicitly delegates.”); *Andrews v. Nevada State Bd. of Cosmetology*, 86 Nev. 207, 208, 467 P.2d 96, 97 (1970) (“Official powers of an administrative agency cannot be assumed by the agency, nor can they be created by the courts in the exercise of their judicial function. The grant of authority to an agency must be clear.”) (*internal citation omitted*).

The Nevada Supreme Court has made clear that the State Engineer is a creature of statute and his or her actions must be within a statutory grant of authority. *Pahrump Fair Water LLC*, 481 P.3d

1 at 856 (explaining that “[t]he State Engineer’s powers thereunder are limited to ‘only those . . .
2 which the legislature expressly or implicitly delegates’” (quoting *Clark Cty.*, 107 Nev. at 492, 813
3 P.2d at 1007)); *see also Howell v. Ricci*, 124 Nev. 1222, 1230, 197 P.3d 1044, 1050 (2008) (holding
4 that the State engineer cannot act beyond his or her statutory authority).

5 The State Engineer’s authority is outlined in NRS Chapters 532, 533 and 534. Chapter 533
6 deals generally with “water rights,” which addresses surface water as well as groundwater, and
7 chapter 534 is limited to groundwater, dealing specifically with “underground water and wells.”

8 In the instant case, the State Engineer relied on the following specific statutes as authority for
9 combining prior independently designated basins as a superbasin newly named the LWRFS, and
10 then conjunctively managing⁵⁷ this superbasin:

- 11 • NRS 533.024(1)(c), which is a legislative declaration “encourag[ing] the State Engineer to
12 consider the best available science in rendering decisions concerning the available surface
13 and underground sources of water in Nevada.”⁵⁸
- 14 • NRS 534.024(1)(e), another legislative declaration that states the policy of Nevada is “[t]o
15 manage conjunctively the appropriation, use and administration of all waters of this State,
16 regardless of the source of the water.”⁵⁹
- 17 • NRS 534.020, which provides that all waters of the State belong to the public and are subject
18 to all existing rights.⁶⁰
- 19 • NRS 532.120, which allows the State Engineer to “make such reasonable rules and
20 regulations as may be necessary for the proper and orderly execution of the powers conferred
21 by law.”⁶¹

22 ⁵⁷ The Nevada Water Words Dictionary, defines “Conjunctive (Water) Use” in part, as “the integrated use and
23 management of hydrologically connected groundwater and surface water.” *Water Words Dictionary, Nevada Division of
24 Water Planning* (2022) (available online at <http://water.nv.gov/WaterPlanDictionary.aspx>) The same dictionary
25 separately defines “Conjunctive Management” as, “the integrated management and use of two or more water resources,
26 such as a (groundwater) aquifer and a surface body of water.” *Id.*

27 ⁵⁸ SE ROA 43.

28 ⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ SE ROA 44.

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- NRS 534.110(6), which allows the State Engineer to conduct investigations into any basin where average annual replenishment is not adequate for the needs of all water rights holders, and then subsequently restrict withdrawals to conform to priority rights.⁶²
- NRS 534 and specifically NRS 534.120, which allows the State Engineer to make such rules, regulations and orders as are deemed essential for the welfare of an area where the groundwater basin is being depleted.”⁶³

However, as further discussed below, the State Engineer’s reliance on these statutes for authority is misplaced, and his actions upend the bedrock principles of the prior appropriation doctrine.

1. The Prior Appropriation Doctrine

The doctrine of prior appropriation has been part of Nevada’s common law since the 1800’s, and is a fundamental principle of water law in Nevada. *See Lobdell v. Simpson*, 2 Nev. 274, 277-78 (1866). “An appropriative right ‘may be described as a state administrative grant that allows the use of a specific quantity of water for a specific beneficial purpose if water is available in the source free from the claims of others with earlier appropriations.’” *Desert Irr., Ltd. v. State*, 113 Nev. 1049, 1051 n.1, 944 P.2d 835, 837 (1997) (quoting Frank J. Trelease & George A. Gould, *Water Law Cases and Materials* 33 (4th ed. 1986)).

“Water rights are given ‘subject to existing rights,’ NRS 533.430(1), given dates of priority, NRS 533.265(2)(b), and determined based on relative rights, NRS 533.090(1)-(2).” *Mineral Cty. v. Lyon Cty.*, 136 Nev. 503,513, 473 P.3d 418, 426 (2020). Thus, “[i]n Nevada, the doctrine of prior appropriation determines the priority of both pre-1905 vested water rights and modern statutory water law.” *Rand Properties, LLC v. Filippini*, 484 P.3d 275, Docket 78319 at 2 (Nev. 2021) (unpublished disposition). It is universally understood that the priority of a water right is its most valuable component. *See Gregory J. Hobbs, Jr., Priority: The Most Misunderstood Stick in the Bundle*, 32 *Envtl. L.* 37, 43 (2002) (“Priority determines the value of a water right”).

“A priority in a water right is property in itself”; therefore, “to deprive a person of his

⁶² *Id.*

⁶³ *Id.*

1 priority is to deprive him of a most valuable property right.” *Colorado Water Conservation*
2 *Bd. v. City of Cent.*, 125 P.3d 424, 434 (Colo. 2005) (internal quotation marks omitted). “A loss of
3 priority that renders rights useless ‘certainly affects the rights’ value’ and ‘can amount to a de facto
4 loss of rights.”” *Wilson v. Happy Creek, Inc.*, 135 Nev. 301, 313, 448 P.3d 1106, 1115 (2019)
5 (quoting *Andersen Family Assocs.*, 124 Nev. at 190-1, 179 P.3d at 1201).

6 Nevada’s statutory water law reflects the importance of priority. Not only did the
7 Legislature choose not to bestow the State Engineer with discretion to alter priority rights, but it also
8 affirmatively requires the State Engineer to preserve priority rights when performing the State
9 Engineer’s statutory duties. *See, e.g.*, NRS 534.110(6) (providing that any curtailment “be restricted
10 to conform to priority rights”); NRS 534.110(7) (same); NRS 533.040(2) (“If at any time it is
11 impracticable to use water beneficially or economically at the place to which it is appurtenant, the
12 right may be severed from the place of use and be simultaneously transferred and become
13 appurtenant to another place of use, in the manner provided in this chapter, without losing priority of
14 right.”).

15 The prior appropriation doctrine in Nevada, “the driest state in the Nation”⁶⁴ becomes
16 particularly critical when, as in the instant case, there is not enough water to satisfy all of the
17 existing rights of the current water right holders, and the threat of curtailment looms ominously in
18 the near future. One of the greatest values of a senior priority right is the assurance that the holder
19 will be able to use water even during a time of water shortage because junior water right holders will
20 be curtailed first. Thus, senior right holders rely on their senior priority rights when developing
21 businesses, entitling and permitting land development, negotiating agreements, making investments,
22 obtaining permits and various approvals from State and local agencies, and generally making
23 financial and other decisions based on the relative certainty of their right.

24 Priority in time of a right is only as valuable as where the holder stands in relation to others
25 in the same situation, or more specifically in this case, in the same basin. As the statutes are written,
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28 ⁶⁴ *United States v. State Engineer*, 117 Nev. 585, 592, 27 P.3d 51, 55 (2001)(Becker, J., concurring in part and
dissenting in part).

1 water right holders only compete in time for their “place in line” with other water right holders in
2 their same basin. Therefore, the year that one acquires a priority right is only as important as the
3 year that other water right holders in your basin acquired theirs. It is in this setting that State
4 Engineer has issued Order 1309.

5 **2. Joint Administration**

6 The State Engineer’s position is that the “best available science” demonstrates that the
7 seven⁶⁵ named hydrographic basins are so hydrologically interconnected that science dictates they
8 must be managed together in one superbasin. However, NRS 533.024(1)(c) is a policy declaration
9 of the Legislature’s intent that simply “encourages” the State Engineer “to consider the best
10 available science in rendering decisions” that concern water he has authority to manage. NRS
11 533.024(1)(c).

12 Statements of policy from the Legislature do not serve as a basis for government action, but
13 rather inform the interpretation of statutes that authorize specific action. *See, Pawlik v. Deng*, 134
14 Nev. 83, 85, 412 P.3d 68, 71 (2018). In *Pawlik*, the Nevada Supreme Court expressed the relevance
15 of statements of policy in terms as follows: “if the statutory language is subject to two or more
16 reasonable interpretations, the statute is ambiguous, and we then look beyond the statute to the
17 legislative history and interpret the statute in a reasonable manner ‘in light of the policy and the
18 spirit of the law.’” *Id.* (quoting *J.E. Dunn Nw., Inc. v. Corus Constr. Venture, LLC*, 127 Nev. 72, 79,
19 249 P.3d 501, 505 (2011)).

20 While such statements of policy are accorded deference in terms of statutory interpretation,
21 the Nevada Supreme Court has specifically held that they are not binding. *See McLaughlin v. Hous.*
22 *Auth. of the City of Las Vegas*, 227 P.2d 206, 93 (1951) (“It has often been said that the declaration
23 of policy by the legislature, though not necessarily binding or conclusive upon the courts, is entitled
24 to great weight, and that it is neither the duty nor prerogative of the courts to interfere in such
25 legislative finding unless it clearly appears to be erroneous and without reasonable foundation.”); *see*
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⁶⁵ More accurately, the LWRFS is comprised of six hydrographic basins and a portion of a seventh.

1 also *Clean Water Coal. v. M Resort, LLC*, 127 Nev. 301, 313, 255 P.3d 247, 255 (2011) (“The State
2 acknowledges that when legislative findings are expressly included within a statute, those findings
3 should be accorded great weight in interpreting the statute, but it points out that such findings are not
4 binding and this court may, nevertheless, properly conclude that section 18 is a general law despite
5 the Legislature's declaration to the contrary.”).

6 Statements of policy set forth by the Legislature are therefore not operative statutory
7 enactments, but rather tools to be used in interpreting operative statutes—and only then where such
8 statutes are ambiguous on their face. *See Pawlik*, 134 Nev. at 85, 412 P.3d at 71; *see also Cromer v.*
9 *Wilson*, 126 Nev. 106, 109-10, 225 P.3d 788, 790 (2010) (if the plain language of a statute “is
10 susceptible of another reasonable interpretation, we must not give the statute a meaning that will
11 nullify its operation, and we look to policy and reason for guidance”).

12 This statement of policy is not, in and of itself, a grant of authority that allows the State
13 Engineer to change boundaries of established hydrographic basins as science dictates. This Court
14 certainly acknowledges that since the time the 256 hydrographic basins and sub-basins were
15 delineated, that science and technology have made great strides. While certain navigable waters and
16 topography were more easily identifiable at the time the basins were established, the complexity lies
17 in the less obvious interconnectivity and formations of sub-surface structures that were more
18 difficult to detect at that time. There is no doubt that scientific advancements allow experts to more
19 accurately assess sub-surface formations and groundwater than they have in the past, and certainly
20 technology will continue to improve accuracy in the future. However, this Court notes that the
21 Legislature specifically used the word “encourages” to describe how the Nevada State Engineer
22 should utilize the best available science. NRS 533.024(1)(c). The statute does not declare that the
23 best available science should dictate the decisions.

24 Indeed, if science was the sole governing principle to dictate the Nevada State Engineer’s
25 decisions, there would be a slippery slope in the changes that could be made in the boundaries of the
26 basins and how they are managed; each time scientific advancements and discoveries were made
27 regarding how sub-surface water structures are situated or interconnected, under this theory of
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authority, the Nevada State Engineer could change the boundaries of the existing basins. Each boundary change would upend the priority of water right holders as they relate to the other water right holders in the new, scientifically-dictated “basin.” This would lead to an absurd result as it relates to the prior appropriation doctrine. Every water right holder would be insecure in their priority, as their relative priority could change at any moment that science advances in determining further interconnectivity of water below the surface. In the administration of water rights, the certainty of those rights is particularly important and prior appropriation is “largely a product of the compelling need for certainty in the holding and use of water rights.” *Mineral Cty. v. Lyon Cty.*, 136 Nev. at 518, 473 P.3d at 429 (quoting *Arizona v. California*, 460 U.S. 605, 620 (1983)). Science in and of itself cannot alter common law and statutes. Thus, the State Engineer’s reliance on NRS 533.024(1)(c) for giving him authority to create a superbasin out of seven existing basins is misplaced.

While NRS 532.120 allows the State Engineer to make reasonable rules and regulations as may be necessary for proper and orderly execution, this authority is not without its limits, and is only authorized for those “powers conferred by law.” Nothing in Chapters 532, 533 or 534 gives the State Engineer direct authority to eliminate, modify, or redraw the boundaries of existing hydrographic basins, or to consolidate multiple, already established, hydrographic basins into a single hydrographic superbasin. For at least 50 years, holders of groundwater rights in Nevada have understood a “hydrographic basin” to be an immutable administrative unit. This has been the case regardless of whether the boundaries of the unit accurately reflected the boundaries of a particular water resource. The Nevada Legislature has adopted a comprehensive scheme that provides the framework for the State Engineer to administer surface water and groundwater. Moreover, the State Engineer has, for decades, administered water on the basis of hydrographic basins identified, described, and released to the public and relied upon by the Legislature, former State Engineers, and the public. Applications to appropriate water are and have been on the basis of each hydrographic basin. Protests, agreements, and resolutions of water applications have been on the basis of each basin. Furthermore, statutes require that the State Engineer consider available water and

1 appropriations based on the basins already defined.

2 It is interesting to note that in the statutes that *do* confer authority on the Nevada State
3 Engineer to manage water, they specifically mention the management as being done on a basin-by-
4 basin (or a sub-basin within a basin) basis. NRS 534.030 is the original source of authority for the
5 State Engineer’s designation of an “administrative area” by “basin.” NRS 534.030. Through NRS
6 534.030 and NRS 534.011, the State Engineer has authority to designate “any groundwater basin, or
7 portion therein” an “area of active management,” which refers to an area “[i]n which the State
8 Engineer is conducting particularly close monitoring and regulation of the water supply because of
9 heavy use of that supply.” Under the statute’s plain meaning, a *basin* is intended to be an
10 *administrative unit*, defined by boundaries described by “legal subdivision as nearly as possible.”
11 NRS 534.030(1)(b). In other words, a hydrographic basin so designated was synonymous with an
12 administrative unit—a *legal* construct, defined thereafter by a *geographic* boundary. Water rights
13 within these basins are to be administered according to the laws set forth in NRS Chapters 533 and
14 534, and the principles of prior appropriation are applied to water uses *within* each basin.

15 Moreover, the Legislature consistently refers to a singular basin throughout the statute. *See*,
16 *e.g.*, 534.030(1) (describing a petition under NRS Chapter 534 as one that requests the State
17 Engineer “to administer the provisions of this chapter as relating to designated areas, ... in any
18 particular basin or portion therein”); NRS 534.030(2) (“a groundwater basin”); NRS 534.030(2)
19 (“the basin”). In fact, in the State Engineer’s prior rulings and orders, including Order 1169, Order
20 1169A, and Rulings 5712 and 6455, the State Engineer employs a basin-by-basin management
21 approach.

22 NRS 534.110(6) sets forth the State Engineer’s ability to make basin-specific determinations
23 and provides the authority to curtail water rights where investigations into specific basins
24 demonstrate that there is insufficient groundwater to meet the needs of all permittees and all vested-
25 right claimants. NRS 534.110 plainly applies to investigations concerning administration and
26 designation of critical management areas within a basin. If the State Engineer conducts an
27 investigation as set forth in NRS 534.110(6) and determines that the annual replenishment to the
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1 groundwater supply is not adequate for the permittees and vested-right claimants, he has the
2 authority to either (1) order that withdrawals from domestic wells be restricted to conform to priority
3 rights, or (2) designate as a critical management area the basin in which withdrawals of groundwater
4 consistently exceed the perennial yield. NRS 534.110(6)-(7). It is important to note, however, that
5 the statute does not provide authority to change the boundaries of established basins, combine
6 multiple basins into one unit or superbasin, and then modify or curtail groundwater rights based
7 upon restructured priority dates in this newly created superbasin.

8 The Court acknowledges that the State Engineer can and should take into account how water
9 use in one basin may affect the water use in an adjoining or closely related basin when determining
10 how best to “actively manage” a basin. However, this is much different than how the State Engineer
11 defines “joint management”: erasing the borders of seven already established legal administrative
12 units and creating one legal superunit in the LWRFS superbasin. If the Legislature intended for the
13 State Engineer to designate areas across multiple basins for “joint administration,” it would have so
14 stated. *See Slade v. Caesars Entm’t Corp.*, 132 Nev. 374, 380-81, 373 P.3d 74, 78 (2016) (citing
15 Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 107 (2012)
16 (“The expression of one thing implies the exclusion of others.”)). Thus, under NRS 534.030, while
17 the State Engineer can administer basins individually, the statute does not allow the State Engineer
18 to combine basins for joint administration, nor do NRS 532.120, NRS 533.024, or NRS 534.110(6)
19 confer express authority on the State Engineer to do so.

20 **3. Conjunctive Management**

21 The Nevada State Engineer relies on NRS 534.024(1)(e), as the source of authority that
22 allows him to manage both surface and groundwater together through “conjunctive management.”⁶⁶
23 Historically, surface water and ground water have been managed separately. In fact, the term
24 “conjunctive management” was only introduced in the statutes in the 2017 session of the Nevada
25 Legislature when it added subsection 1(e) to NRS 533.024. However, as discussed previously, this
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⁶⁶ SE ROA 43.

1 statute is a declaration of legislative intent, and as a statement of policy, it does not constitute a grant
2 of authority to the State Engineer, nor is it a water management tool in and of itself.

3 In fact, there is no authority or guidance whatsoever in the statutes as to how to go about
4 conjunctively managing water and water rights. While the Court agrees that it makes sense to take
5 into account how certain groundwater rights may affect other surface water rights when managing
6 water overall, as this Court noted previously, the powers of the State Engineer are limited to those
7 set forth in the law. While Nevada law provides certain tools for the management of water rights in,
8 for example, over appropriated basins, *e.g.*, NRS 534.110(7) (authorizing the State Engineer to
9 “designate as a critical management area any basin in which withdrawals of groundwater
10 consistently exceed the perennial yield of the basin”), nothing in Chapters 532, 533 or 534 gives the
11 State Engineer express authority to conjunctively manage, in this proceeding, both the surface and
12 groundwater flows he believes are occurring in the LWRFS superbasin.

13 This Court finds that as a result of the consolidation of the basins, the relative priority of all
14 water rights within the seven affected basins will be reordered and the priorities will be considered
15 in relation to all water rights holders in the consolidated basins, rather than in relation only to the
16 other users within the original separate basins.⁶⁷ By redefining and combining seven established
17 basins for “joint administration,” and “conjunctive management,” the State Engineer essentially
18 strips senior right holders of their priority rights by deciding that all water rights within the LWRFS
19 superbasin should be administered based upon their respective dates of priority in relation to other
20 rights “within the regional groundwater unit.”

21 The State Engineer’s position is that the determination of conflicts and priorities has not yet
22 occurred since that is to occur in the second step of the proceeding. However, by the very nature of
23 erasing the existing basins and putting all of the water rights holders in one superbasin, he has
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26 ⁶⁷ This Court rejects the State Engineer’s argument that Order 1309 did not change priorities merely because it did not
27 change priority dates. His argument conflates the meaning of *priority* as defined by the date of a water right application,
28 and the common meaning of *priority*, as defined by one’s “place in line.” While it is true that the Order does not change
priority dates, this Court finds that it *does* change the relative priorities, as petitioners who previously held the most
senior rights within their singular basin may now be relegated to more junior status within the “superbasin.”

1 already reprioritized certain rights as they relate to one another, even if their priority dates remain
2 the same.⁶⁸ As a result of creating this superbasin, water rights holders with some of the most senior
3 priority rights within their basin are now relegated to a much a lower priority position than some
4 water right holders in basins outside of their own. Such a loss of priority would potentially render
5 certain water rights valueless, given the State Engineer’s restrictions on pumping in the entire
6 LWRFS. The Court concludes that the State Engineer does not have authority to redefine Nevada
7 basins so as to reorder the priority rights of water right holders through conjunctive management
8 within those basins. Accordingly, Order 1309 stands at odds with the prior appropriation doctrine.

9 The Court determines that the question of whether the State Engineer has *authority* to change
10 the boundaries of basins that have been established for decades, or subject that newly created basin
11 to conjunctive management, or not, is a legal question, not a factual one. The State Engineer has
12 failed to identify a statute that authorizes him to alter established basin boundaries or engage in
13 conjunctive management. Based upon the plain language of the applicable statutes, the Court
14 concludes that the State Engineer acted outside the scope of his authority in entering Order 1309.

15 **B. The State Engineer Violated Petitioners’ Due Process Rights in Failing to Provide**
16 **Notice to Petitioners or an Opportunity to Comment on the Administrative Policies Inherent**
17 **in the Basin Consolidation.**

18 The Nevada Constitution protects against the deprivation of property without due process of
19 law. Nev. Const. art. 1, § 8(5). “Procedural due process requires that parties receive notice and an
20 opportunity to be heard.” *Eureka Cty. V. Seventh Jud. Dist. Ct.*, 134 Nev. 275, 279, 417 P.3d 1121,
21 1124 (2018)(internal quotation marks omitted). “In Nevada, water rights are ‘regarded and
22 protected as real property.’” *Id.*(quoting *Application of Filippini*, 66 Nev. 17, 21-22, 202 P.2d 535,
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24 ⁶⁸ Although this Court refrains from analyzing whether or not 1309 is supported by substantial evidence, the Court notes
25 that part of the State Engineer’s 1309 decision of limiting use to 8,000afa or less is based on the concern of adversely
26 impacting the endangered Moapa Dace, located in the Muddy River Springs. This decision does not appear to take into
27 account more nuanced effects of how pumping in each separate basin affects the Muddy River flows, no matter how far
28 away the basin is from the river. In other words, reprioritization of each water rights holder in relation to the other (by
prioritization date in the newly created superbasin) means that their standing (and more importantly, their potential for
curtailment) is only by date. Water use in one basin may not have the same effect as another in reducing Muddy River
flows; however, these distinguishing factors are all erased by combining all of the basins together for joint
administration.

1 537 (1949)). Therefore, holders of water rights in Nevada are entitled to constitutional protections
2 regarding those property rights, including procedural due process. *See id.*

3 The Nevada Supreme Court has held that “[a]lthough proceedings before administrative
4 agencies may be subject to more relaxed procedural and evidentiary rules, due process guarantees of
5 fundamental fairness still apply.” *Dutchess Bus. Serv. ’s, Inc. v. Nev. State Bd. of Pharmacy*, 124
6 Nev. 701, 711, 191 P.3d 1159, 1166 (2008). In *Dutchess*, the Nevada Supreme Court noted further
7 that “[a]dministrative bodies must follow their established procedural guidelines and give notice to
8 the defending party of ‘the issues on which decision will turn and . . . the factual material on which
9 the agency relies for decision so that he may rebut it.” *Id.*

10 With respect to notice and hearing, the Nevada Supreme Court has held that “[i]nherent in
11 any notice and hearing requirement are the propositions that the notice will accurately reflect the
12 subject matter to be addressed and that the hearing will allow full consideration of it.” *Public Serv.*
13 *Comm’n of Nev. v. Southwest Gas Corp.*, 99 Nev. 268, 271, 772 P.2d 624, 626 (1983). “Notice must
14 be given at an appropriate stage in the proceedings to give parties meaningful input in the
15 adjudication of their rights.” *Seventh Jud. Dist. Ct.*, 134 Nev. at 280-81, 417 P.3d at 1125-26 (citing
16 *Hamdi v. Rumsfeld*, 542 U.S. 507, 533, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004) (“It is equally
17 fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful
18 time and in a meaningful manner.”). A party’s due process rights attach at the point at which a
19 proceeding holds the *possibility* of curtailing water rights, and due process necessitates notice of that
20 possibility to the party potentially affected.⁶⁹

21 For the reasons that follow, this Court concludes that (a) the notice and hearing procedure
22 employed by the State Engineer failed to satisfy the requirements of due process because the notice
23 failed to put the parties on notice that the State Engineer would decide on a management protocol for
24

25 ⁶⁹ “[B]ecause the language in the show cause order [indicates that the district court may enter an order forcing curtailment
26 to begin, junior water rights holders must be given an opportunity to make their case for or against the option of
27 curtailment. Notice must be given at an appropriate stage in the proceedings to give parties meaningful input in the
28 adjudication of their rights... Thus, junior water rights holders must be notified before the curtailment decision is made,
even if the specific “how” and “who” of curtailment is decided in a future proceeding.” *Seventh Jud. Dist. Ct.*, 134 Nev.
275, 280–81, 417 P.3d 1121, 1125 (2018).

1 the LWRFS at the conclusion of the proceeding; (b) the hearing itself failed to satisfy due process
2 because the parties were not afforded a full and complete opportunity to address the implications of
3 the State Engineer’s decision to subject the LWRFS to conjunctive management and joint
4 administration, and (c) the State Engineer’s nondisclosure, before or during the Order 1303
5 proceedings of the six criteria he would use in evaluating the connectivity of the basins and
6 determining the new consolidated basin boundary, failed to satisfy the requirements of due process.

7 Specifically, the notice of hearing and amended notice of hearing (“Notice”) noticed an
8 opportunity for the parties that submitted Order 1303 reports to explain their positions and
9 conclusions with respect to the questions posed for consideration in Order 1303.^{70 71} But the
10 questions posed in Order 1303 did not relate to management of the LWRFS, such as issues of
11 conjunctive or joint administration, but rather related to factual inquiries. Instead, Order 1303
12 specifically authorized stakeholders to file reports addressing four specific areas, none of which
13 related to the management of the LWRFS.⁷²

14 In noticing the hearing to consider the reports submitted pursuant to Order 1303, there was
15 no mention of consideration of the prospective management of the LWRFS, *i.e.*, whether it would be
16 appropriately managed conjunctively and as a joint administrative unit. Indeed, this was consistent
17 with the Hearing Officer’s opening remarks at the August 8, 2019, prehearing conference in which
18

19 _____
⁷⁰ See SE ROA 262-82, Ex. 2; SE ROA 284-301, Ex. 3

20 ⁷¹ The Notice included the following summary:

21 On August 9, 2019, the State Engineer held a pre-hearing conference regarding the hearing on the
22 submission of reports and evidence as solicited in Order 1303.... The State Engineer established that
23 the purpose of the hearing on the Order 1303 reports was to provide the participants an opportunity to
24 explain the positions and conclusions expressed in the reports and/or rebuttal reports submitted in
25 response to the Order 1303 solicitation. The State Engineer directed the participants to limit the offer of
26 evidence and testimony to the salient conclusions, including directing the State Engineer and his staff
27 to the relevant data, evidence and other information supporting those conclusions. ***The State Engineer
further noted that the hearing on the Order 1303 reports was the first step in determining to what
extent, if any, and in what manner the State Engineer would address future management decisions,
including policy decisions, relating to the Lower White River Flow System basins. On that basis, the
State Engineer then addressed other related matters pertaining to the hearing on the Order 1303
reports, including addressing the date and sequence of the hearing, as set forth in this Notice of
Hearing.*** SE ROA 285, Ex. 3 (emphasis added).

28 ⁷² SE ROA 647-48. Ex. 6.

1 the State Engineer actively discouraged participants from providing input regarding that very
2 question. The hearing officer stated as follows at the August 8 prehearing conference:

3 And so, and I'm going to talk about this and we've spoken about this before, is
4 that really this is a threshold reporting aspect, that this is part of a multi-tiered
5 process in terms of determining the appropriate management strategy to the
6 Lower River Flow System.

7 This larger substantive policy determination is not part of the particular
8 proceeding. That's part of later proceedings....

9 SE ROA 522, Ex. 5 (Hr'g Tr. at 10:6-20).

10 The hearing officer gave additional consistent guidance at the outset of the September 23
11 hearing, further directing the parties not to address policy issues even in relation to the fact that
12 Order 1303 authorized stakeholders to include in their reports "[a]ny other matter believed to be
13 relevant to the State Engineer's analysis."⁷³ Specifically, the Hearing Officer directed as follows:

14 And while that fifth issue is [as set forth in Ordering Paragraph 1(e) of Order
15 1303] not intended to expand the scope of this hearing into making policy
16 determinations with respect to management of the Lower White River Flow
17 System basin's individual water rights, those different types of things, because
18 those are going to be decisions that would have to be made in subsequent
19 proceedings should they be necessary.

20 SE ROA 52962, Ex. 26 (Hr'g Tr. 6:4-15).

21 Not only did the notice not adequately notify the parties of the possibility of the
22 consideration and resolution of policy issues, but the Hearing Officer consistently
23 directed the parties to avoid the subject, compounding the due process violation.

24 Notwithstanding the Hearing Officer's admonitions and the plain language of the notice, the
25 State Engineer ultimately issued a dramatic determination regarding management of the LWRFS. In
26 doing so, the State Engineer precluded the participants from providing input that would have
27 allowed for the full consideration of the issue. Specifically, participants and experts did not have the
28 opportunity to, and were actively discouraged from addressing policy issues critical to the

⁷³ SE ROA 648, Ex. 6.

1 management of the LWRFS.⁷⁴ The refusal to consider these issues ensured that the State Engineer’s
2 decision was not based on a fully developed record.

3 The State Engineer acknowledged as much in Order 1309 itself. There, the State Engineer
4 noted the fact that Georgia-Pacific and Republic raised concerns over the sufficiency of the scope of
5 the proceedings at hearing but inexplicably asserted that a to-be-determined management scheme
6 would be developed to address “management issues” in the LWRFS:

7 Georgia-Pacific and Republic asserted that boundaries are premature without
8 additional data and without a legally defensible policy and management tools in
9 place. They expressed concern that creating an administrative unit at this time
10 inherently directs policy without providing for due process. The State Engineer
11 has considered these concerns and agrees that additional data and improved
12 understanding of the hydrologic system is critical to the process. He also believes
13 that the data currently available provide enough information to delineate LWRFS
14 boundaries, and that an effective management scheme will provide for the
15 flexibility to adjust boundaries based on additional information, retain the ability
16 to address unique management issues on a sub-basin scale, and maintain
17 partnership with water users who may be affected by management actions
18 throughout the LWRFS.

19 SE ROA 54, Ex. 1.

20 This language reflects a serious misunderstanding of the effect of Order 1309. Insofar as
21 Order 1309 subjects the LWRFS to conjunctive management and joint administration, resulting in
22 effectively reordering of priority of water rights in the LWRFS superbasin, the order effectuates a
23 management scheme with far reaching consequences. Thus, agreeing on the one hand that an
24 “effective management scheme” will be necessary to address challenges in the LWRFS, but
25

26 ⁷⁴ These issues include, but are not limited to: whether Nevada law allows the State Engineer to conjunctively manage
27 multiple hydrographic basins in a manner that modifies the relative priority of water rights due to the administration
28 consolidation of basins; whether the State Engineer would establish a “critical management area” pursuant to NRS
534.110 and, if so, whether he would develop a groundwater management plan or defer to the stakeholders to develop
one; whether Nevada law gives the State Engineer authority to designate a management area that encompasses more than
one basin; whether “safe-yield” discrete management areas should be established within the proposed administrative
unit; whether water rights holders enjoy a “property right” in the relative priority of their water rights such that impairing
that right may constitute a “taking”; whether unused (or only sporadically used) senior water rights take precedence over
certificated or fully used junior rights, particularly where these junior rights are in continuous use to support
economically significant enterprises; whether States compel quantification of federal reserved rights by a date certain;
and whether the State Engineer should approach the legislature to seek different or additional management tools or
authority. See SE ROA 52801-8, Ex. 25 (Georgia Pacific and Republic Closing Argument, outlining policy questions
for consideration by the State Engineer at later proceedings, proceedings that never took place).

1 contending it will be developed in the future, reveals a lack of appreciation of the implications of the
2 order to the detriment of not only the participants but all water rights holders in the LWRFS basins.
3 Without consideration of the implications of the management decision contained in the order, it
4 cannot be based on a full consideration of the issues presented. In affirmatively limiting the scope of
5 the proceeding to include a full consideration of the issues, the State Engineer violated the
6 stakeholders' due process rights. Both the notice and the hearing procedures employed failed to
7 comport with due process.

8 Finally, as noted above, the State Engineer did not give notice or disclose before or during
9 the Order 1303 proceedings, the six specific criteria that he would use in evaluating the connectivity
10 of the basins and determining the new consolidated basin boundary. Although the State Engineer
11 asserted that he considered the evidence and testimony presented in the public hearing "on the basis
12 of a common set of criteria that are consistent with the original characteristics conserved critical in
13 demonstrating a close hydrologic connection requiring joint management in Rulings 6254-6261,"⁷⁵
14 a review of these rulings reveals that none of the six criteria or characteristics were previously
15 identified, examined in the hydrological studies and subsequent hearing that followed the
16 completion of the Order 1169 aquifer test, or expressly disclosed in Rulings 6254-6261.⁷⁶ These
17 criteria were instead explicitly disclosed for the first time in Order 1309, which means the
18 participants had no opportunity to directly address these criteria in their presentations, or critically,
19 to address the appropriateness of these criteria.

20 This Court is unpersuaded by the State Engineer's argument that it could develop the criteria
21 only after it heard all the evidence at the hearing. Even if it did, this does not justify a deprivation of
22 the right to due process. In order to provide the parties due process and a meaningful opportunity to
23 present evidence on these issues, the State Engineer should have included these factors in the Notice
24 of Pre-Hearing Conference. *See Eureka Cty.*, 131 Nev. at 855, 359 P.3d at 1120; *Revert*, 95 Nev. at
25 787, 603 P.2d at 265 (criticizing the state engineer for engaging in post hoc rationalization). This

27 ⁷⁵ See SE ROA 48.

28 ⁷⁶ SE ROA 726-948.

1 due process violation is particularly harmful to water rights holders in Kane Springs, the sole basin
2 that had not been previously designated for management under NRS 534.030, had not been included
3 in the Order 1169 aquifer test, and had not been identified as a basin to be included in the LWRFS
4 superbasin in Order 1303.

5 Accordingly, this Court concludes that revealing the criteria only after stakeholders had
6 engaged in the extensive investigations, expert reporting, and the intense factual hearing requested
7 by Order 1303 further violates the participants' due process rights.

8 As this Court has determined that the Nevada State Engineer exceeded his statutory authority
9 and violated the participants' due process rights in issuing Order 1309, it declines to reach further
10 analysis on whether his factual findings in Order 1309 were supported by substantial evidence.

11 **IV.**
12 **CONCLUSION**

13 The Court FINDS that the Nevada State Engineer exceeded his statutory authority and had
14 no authority based in statute to create the LWRFS superbasin out of multiple distinct, already
15 established hydrographic basins. The Nevada State Engineer also lacked the statutory authority to
16 conjunctively manage this LWRFS superbasin.

17 The Court ALSO FINDS that the Nevada State Engineer violated the Petitioners'
18 Constitutional right to due process by failing to provide adequate notice and a meaningful
19 opportunity to be heard.

20 As a result, Order 1309 is arbitrary, capricious, and therefore void.

21 Good cause appearing, based upon the above Findings of Fact and Conclusions of Law, the
22 Court ORDERS, ADJUDGES AND DECREES as follows:

23 IT IS HEREBY ORDERED that the petition for review of the Nevada State Engineer's
24 Order No. 1309 filed by Petitioners Lincoln County Water District and Vidler Water Company, Inc.
25 is GRANTED.

26 IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer's
27 Order No. 1309 filed by Petitioners Coyote Springs Investment, LLC is GRANTED.
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IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer’s Order No. 1309 filed by Petitioners Apex Holding Company, LLC and Dry Lake Water, LLC is GRANTED.

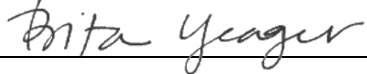
IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer’s Order No. 1309 filed by Petitioners Nevada Cogeneration Associates Nos. 1 and 2 is GRANTED.

IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer’s Order No. 1309 filed by Petitioners Georgia-Pacific Gypsum LLC, and Republic Environmental Technologies, Inc. is GRANTED.

IT IS FURTHER ORDERED that the State Engineer’s Order 1309 is VACATED in its entirety.

IT IS SO ORDERED.

Dated this 19th day of April, 2022



**66B 24A E875 2549
Bitia Yeager
District Court Judge**

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Southern Nevada Water
7 Authority, Plaintiff(s)

8 vs.

9 Nevada State Engineer, Division
10 of Water Resources,
11 Defendant(s)

CASE NO: A-20-816761-C

DEPT. NO. Department 1

12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
16 case as listed below:

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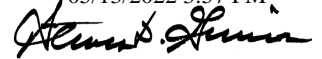
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CLERK OF THE COURT

FFCO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAS VEGAS VALLEY WATER DISTRICT,
and SOUTHERN NEVADA WATER
AUTHORITY,

Case No. A-20-816761-C
Dept. No. I

Petitioners,

Consolidated with Cases:

vs.

A-20-817765-P
A-20-818015-P
A-20-817977-P
A-20-818069-P
A-20-817840-P
A-20-817876-P
A-21-833572-J

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

Respondent.

And All Consolidated Cases.

**ADDENDUM AND CLARIFICATION TO COURT'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER GRANTING PETITIONS FOR JUDICIAL
REVIEW FILED ON APRIL 19, 2022**

This matter came before this Court on consolidated petitions for judicial review of State Engineer's Order 1309 filed by Petitioners:

- Southern Nevada Water Authority and Las Vegas Valley Water District
- Coyote Spring Investment, LLC
- Apex Holding Co. and Dry Lake Water, LLC
- The Center for Biological Diversity
- Muddy Valley Irrigation Company
- Nevada Cogeneration Associates Nos. 1 and 2
- Georgia-Pacific Gypsum LLC and Republic Environmental Technologies, Inc.
- Lincoln County Water District and Vidler Water Company.

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In the Order filed April 19, 2022, the Court determined that the Nevada State Engineer exceeded his statutory authority and violated the participants' due process rights in issuing Order 1309, and declined to reach further analysis on whether his factual findings in Order 1309 were supported by substantial evidence.

The Petitions filed by petitioners Southern Nevada Water Authority and Las Vegas Valley Water District, Muddy Valley Irrigation Company, and The Center for Biological Diversity supported the Nevada State Engineer's position that Order 1309 did not exceed the State Engineer's statutory authority nor violated participant's due process rights in issuing Order 1309. However, each of these three petitioners challenged the factual findings as not being supported by substantial evidence.

IV.
CONCLUSION

To the extent that the petition for review of the Nevada State Engineer's Order No. 1309 filed by Southern Nevada Water Authority and Las Vegas Valley Water District seeks relief for violating their due process rights, IT IS HEREBY ORDERED that the petition is GRANTED IN PART. The remaining portion of the petition that support the position that the Nevada State Engineer did not exceed his statutory authority in issuing Order 1309 is DISMISSED.

To the extent that the remaining petitions support the position that Nevada State Engineer did not exceed his statutory authority and provided due process in issuing Order 1309;

IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer's Order No. 1309 filed by Petitioner Muddy Valley Irrigation Company is DISMISSED.

IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer's Order No. 1309 filed by Petitioner The Center for Biological Diversity is DISMISSED.

IT IS SO ORDERED.

Dated this 13th day of May, 2022

Bitu Yeager

EE8 27A A594 AF7E
Bitu Yeager
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Southern Nevada Water
Authority, Plaintiff(s)

CASE NO: A-20-816761-C

7 vs.

DEPT. NO. Department 1

8
9 Nevada State Engineer, Division
of Water Resources,
10 Defendant(s)

11
12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
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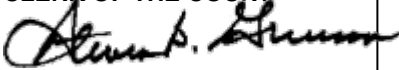
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

14 LAS VEGAS VALLEY WATER DISTRICT,
15 and SOUTHERN NEVADA WATER
16 AUTHORITY, et al.

16 Petitioners,

17 vs.

18 ADAM SULLIVAN, P.E., Acting Nevada State
19 Engineer, DIVISION OF WATER RESOURCES,
20 DEPARTMENT OF CONSERVATION AND
21 NATURAL RESOURCES,

21 Respondents,

Case No. A-20-816761-C

Dept. No. 1

Consolidated with Cases:

- A-20-817765-P
- A-20-818015-P
- A-20-817977-P
- A-20-818069-P
- A-20-817840-P
- A-20-817876-P
- A-21-833572-J

**NOTICE OF ENTRY OF ADDENDUM
AND CLARIFICATION TO COURT'S
FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER GRANTING
PETITIONS FOR JUDICIAL REVIEW**

26 //

27 //

28

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YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the *Addendum and Clarification to Court’s Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review* was entered on the 13th day of May 2022 in the above captioned and consolidated cases, a copy of which is attached hereto as **Exhibit 1**, which specifically granted the Petition for Judicial Review filed by Las Vegas Valley Water District (LVVWD) and Southern Nevada Water Authority (SNWA) in part and dismissed in part.

DATED this 16th day of May 2022

TAGGART & TAGGART, LTD.

/s/ Paul G. Taggart
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IN ASSOCIATION WITH:
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1001 S. Valley View Blvd.,
Las Vegas, NV 89153

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

Dated this 16th day of May 2022.

TAGGART & TAGGART, LTD.

By: /s/ Paul G. Taggart
PAUL G. TAGGART, ESQ.
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Southern Nevada Water Authority*

IN ASSOCIATION WITH:
STEVEN C. ANDERSON, ESQ.,
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1001 S. Valley View Blvd.,
Las Vegas, NV 89153

CERTIFICATE OF SERVICE

I certify that I am an employee of Taggart & Taggart, LTD, and that on this 13th day of May 2022, I served a true and correct copy of the foregoing document by electronic service to the participants in this case who are registered with the Eighth Judicial District Court’s Odyssey eFile NV File & Serve system to this matter:

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/s/ Thomas Duensing
Employee of Taggart & Taggart, LTD.

EXHIBIT INDEX

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<u>Exhibit</u>	<u>Description</u>	<u>Pages</u>
1.	Addendum and Clarification to Court’s Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review Filed on April 19, 2022	6

EXHIBIT 1

EXHIBIT 1

FFCO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAS VEGAS VALLEY WATER DISTRICT,
and SOUTHERN NEVADA WATER
AUTHORITY,

Case No. A-20-816761-C
Dept. No. I

Petitioners,

Consolidated with Cases:

vs.

- A-20-817765-P
- A-20-818015-P
- A-20-817977-P
- A-20-818069-P
- A-20-817840-P
- A-20-817876-P
- A-21-833572-J

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

Respondent.

And All Consolidated Cases.

**ADDENDUM AND CLARIFICATION TO COURT'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER GRANTING PETITIONS FOR JUDICIAL
REVIEW FILED ON APRIL 19, 2022**

This matter came before this Court on consolidated petitions for judicial review of State Engineer's Order 1309 filed by Petitioners:

- Southern Nevada Water Authority and Las Vegas Valley Water District
- Coyote Spring Investment, LLC
- Apex Holding Co. and Dry Lake Water, LLC
- The Center for Biological Diversity
- Muddy Valley Irrigation Company
- Nevada Cogeneration Associates Nos. 1 and 2
- Georgia-Pacific Gypsum LLC and Republic Environmental Technologies, Inc.
- Lincoln County Water District and Vidler Water Company.

Bita Yeager
Eighth Judicial District Court
Clark County, Nevada
Department I

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In the Order filed April 19, 2022, the Court determined that the Nevada State Engineer exceeded his statutory authority and violated the participants' due process rights in issuing Order 1309, and declined to reach further analysis on whether his factual findings in Order 1309 were supported by substantial evidence.

The Petitions filed by petitioners Southern Nevada Water Authority and Las Vegas Valley Water District, Muddy Valley Irrigation Company, and The Center for Biological Diversity supported the Nevada State Engineer's position that Order 1309 did not exceed the State Engineer's statutory authority nor violated participant's due process rights in issuing Order 1309. However, each of these three petitioners challenged the factual findings as not being supported by substantial evidence.

IV.
CONCLUSION

To the extent that the petition for review of the Nevada State Engineer's Order No. 1309 filed by Southern Nevada Water Authority and Las Vegas Valley Water District seeks relief for violating their due process rights, IT IS HEREBY ORDERED that the petition is GRANTED IN PART. The remaining portion of the petition that support the position that the Nevada State Engineer did not exceed his statutory authority in issuing Order 1309 is DISMISSED.

To the extent that the remaining petitions support the position that Nevada State Engineer did not exceed his statutory authority and provided due process in issuing Order 1309;

IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer's Order No. 1309 filed by Petitioner Muddy Valley Irrigation Company is DISMISSED.

IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer's Order No. 1309 filed by Petitioner The Center for Biological Diversity is DISMISSED.

IT IS SO ORDERED.

Dated this 13th day of May, 2022

Bitu Yeager

EE8 27A A594 AF7E
Bitu Yeager
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Southern Nevada Water
7 Authority, Plaintiff(s)

CASE NO: A-20-816761-C

8 vs.

DEPT. NO. Department 1

9 Nevada State Engineer, Division
10 of Water Resources,
11 Defendant(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
16 case as listed below:

17 Service Date: 5/13/2022

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

September 17, 2020

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

**September 17, 2020 3:00 AM Motion to Associate
Counsel**

HEARD BY: Kephart, William D. **COURTROOM:** No Location

COURT CLERK: Tia Everett

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, Plaintiff Center for Biological Diversity s Motion to Associate Counsel Lisa Belenky is GRANTED pursuant to EDCR 2.20 and Nevada Supreme Court Rule 42. Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. te 9/17/2020

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

October 06, 2020

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

October 06, 2020 9:00 AM Status Check

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	Bolotin, James N.	Attorney
	Cargill, Emilia K.	Attorney
	Caviglia, Justina A.	Attorney
	Coulthard, William L	Attorney
	Ferguson, Sarah	Attorney
	Herrema, Bradley J	Attorney
	Jayne, Collin	Attorney
	Morrison, Gregory H.	Attorney
	Robison, Kent R.	Attorney
	Taggart, Paul G.	Attorney
	Ure, Therese A	Attorney

JOURNAL ENTRIES

- Court stated he believes parties need to provide briefing regarding the issue if parties are permitted to intervene in a case which is appealed from a lower court as the Court is confined to the record made in the lower court. Further, Court noted there is a pending appeal regarding a change of venue decision out of Lincoln County. Upon Court's inquiry, Mr. Taggart advised he has no opposition to the motions to intervene and that it would be best to wait for the decision from the pending appeal before setting any briefing schedules. Mr. Robison advised parties have stipulated to consolidate the cases for judicial economy; although, each case has its unique issues. Further, Mr. Robison advised Coyote Springs has essentially been shut down pending a decision on this issue and he has been in

contact with the Supreme Court to has indicated an expedited decision should be out within 30 days. Upon Court's inquiry, Mr. Robison advised he would like an opportunity to brief the issue of intervenor. Additional discussion regarding motions to intervene. COURT ORDERED, parties shall provide blind briefs due on or before 11/02/2020 regarding the issue today and matter CONTINUED. Additionally, Court instructed Mr. Bolotin to move forward with the record of appeal and to provide the Court will an update on the next date.

CONTINUED TO: 11/17/2020 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

November 17, 2020

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

November 17, 2020 9:00 AM All Pending Motions

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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	Cavanaugh-Bill, Julie	Attorney
	Caviglia, Justina A.	Attorney
	Coulthard, William L	Attorney
	Dotson, Robert A.	Attorney
	Harrison, Sylvia L.	Attorney
	Herrema, Bradley J	Attorney
	Kroll, Steven E.	Attorney
	Morrison, Gregory H.	Attorney
	Robison, Kent R.	Attorney
	St. Jules, Laena	Attorney
	Taggart, Paul G.	Attorney
	Ure, Therese A	Attorney
	Wilde, Kathleen A.	Attorney

JOURNAL ENTRIES

- STATUS CHECK: RECORD ON APPEAL:

A-20-816761-C

Court noted the record on appeal has been filed.

STATUS CHECK: SET MOTIONS TO INTERVENE:

Colloquy regarding parties positions on motions to intervene. COURT ORDERED, Motions to Intervene shall be GRANTED and matter SET for Status Check in 90 days.

CONTINUED TO: 2/23/2021 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

February 25, 2021

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

February 25, 2021 9:30 AM Status Check

HEARD BY: Yeager, Bitu **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Balducci, Christian T.	Attorney
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	Carlson, Severin A.	Attorney
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	Dotson, Robert A.	Attorney
	Flangas, Alex J.	Attorney
	Harrison, Sylvia L.	Attorney
	Herrema, Bradley J	Attorney
	Knox, Michael D.	Attorney
	Taggart, Paul G.	Attorney
	Ure, Therese A	Attorney

JOURNAL ENTRIES

- Appearances made via BlueJeans Videoconferencing Application.

Court NOTED at the last hearing Judge Kephart granted the motion to intervene and gave summary of previous hearings. Colloquy regarding how the intervener will proceed and its participation. Mr. Taggart suggested after the remitter is issued setting a briefing schedule 60 days for the opening brief, 90 days for answer, 45 days for reply brief and stipulate to consolidating the Vidler case. Mr. Robison requested the Court consider the prejudice.

Court STATED it recognizes the hardship for Robison's client, however, in the interest of everyone's economy the Court is going to agree and have the scheduling order triggered by the date of the remitter. However, the Court is going to set a status check in 60 days. Court requested Mr. Taggart prepare the scheduling as it has been outlined. If the remitter comes in between now and the next 60 day status check everyone can start on their briefs. If the remitter has not come out the status check will stand. Statements by the Court as to the record on appeal being 48,000 pages in two parts and takes several minutes to open up one of the parts. Court request any references to the appeal there be a more expeditions way to review it. Mr. Taggart suggested attaching an appendix to the briefs that has the pages from the record they have cited to or have the parties agree as to what a joint appendix should be, but may be difficult with all the parties. Court STATED the first option is more workable. Bolotin suggested providing the Court with a using USB drive. Court agreed. Mr. Bolotin advised he would work with his assistant in getting it together and delivered to the Court.

Court clarified the briefing schedule as follows:

60 days for the opening brief;
90 days for answer and interveners brief; and
45 days for reply.

If the remitter is filed before the status check date of 4/29/21 it will be vacated.

Mr. Flangas inquired if there is a stipulation by the parties at this hearing there is a consolidation of the Lincoln Vidler parties into this matter if they do not object. Court inquired if there was an objection. Mr. Robison stated they have agreed to not oppose or to promote their own motion to consolidate and agree Vidler and Lincoln County Water should be consolidated with their actions.

Mr. Taggart to prepare the Order, distribute a copy to all parties, and submit to Chambers within 10 days.

All orders are to be submitted to DC1Inbox@ClarkCountyCourts.us

4/29/21 9:30 AM STATUS HECK: REMITTER

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

April 29, 2021

A-20-816761-C	Southern Nevada Water Authority, Plaintiff(s) vs. Nevada State Engineer, Division of Water Resources, Defendant(s)
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April 29, 2021	9:30 AM	Status Check
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HEARD BY: Yeager, Bitá	COURTROOM: RJC Courtroom 16A
-------------------------------	-------------------------------------

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Bolotin, James N.	Attorney
	Cargill, Emilia K.	Attorney
	Carlson, Severin A.	Attorney
	Caviglia, Justina A.	Attorney
	Dotson, Robert A.	Attorney
	Flangas, Alex J.	Attorney
	Foletta, Lucas M.	Attorney
	Herrema, Bradley J	Attorney
	Morrison, Gregory H.	Attorney
	Robison, Kent R.	Attorney
	Taggart, Paul G.	Attorney
	Ure, Therese A	Attorney
	Wilde, Kathleen A.	Attorney

JOURNAL ENTRIES

- CONTINUED APPEARANCES: Karen Peterson, on behalf of Vidler, Dylan Frehner, on behalf of Lincoln County, and Lisa Belenky, on behalf of Center for Biological Diversity.

Colloquy and discussions regarding remittitur. COURT ORDERED, Matter SET for Status Check regarding setting briefing schedule.

5/27/21 11:00 AM STATUS CHECK: SETTING BRIEFING SCHEDULE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

May 27, 2021

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

May 27, 2021

3:00 AM

Minute Order

HEARD BY: Yeager, Bitu

COURTROOM: No Location

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Per verbal stipulation by the parties on 5/27/21 COURT ORDERED, A-20-816761-C and A-21-833572-J CONSOLIDATED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

May 27, 2021

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

May 27, 2021 11:00 AM Status Check

HEARD BY: Yeager, Bitu **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Bolotin, James N.	Attorney
	Cargill, Emilia K.	Attorney
	Carlson, Severin A.	Attorney
	Caviglia, Justina A.	Attorney
	Dotson, Robert A.	Attorney
	Flangas, Alex J.	Attorney
	Harrison, Sylvia L.	Attorney
	Knox, Michael D.	Attorney
	Robison, Kent R.	Attorney
	Taggart, Paul G.	Attorney
	Ure, Therese A	Attorney
	Wilde, Kathleen A.	Attorney

JOURNAL ENTRIES

- CONTINUED appearances. Adam Sullivan, Esq. on behalf of Tim Wilson, Steven King, on behalf of Muddy Valley Irrigation Co., L. Blenkey, CA counsel on behalf of Center for Biological Diversity, Gregory Morrison, Esq. on behalf of Moapa Valley Water District, and Ms. Peterson, Esq. on behalf of Vidler.

Arguments and colloquy. COURT ORDERED, Matter CONSOLIDATED with A833572.

Court NOTED there are five outstanding motions in the Lincoln County case and DIRECTED counsel to re-file with joint notices by June 17, 2021.

COURT ORDERED, Status Check regarding fully briefed motions.

COURT FURTHER ORDERED, Briefing Schedule SET.

Opening Brief due 8/27/21;
Response Brief due 11/24/21; and
Reply Brief due 1/07/22.

7/01/21 11:00 AM STATUS CHECK: FULLY BRIEFED MOTIONS

CLERK'S NOTE: Minutes corrected to reflect the correct time of the status check on 7/01/21 and the Reply Brief due date of 1/07/22. /mlt (7/01/21)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

July 01, 2021

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

July 01, 2021 11:00 AM Status Check

HEARD BY: Yeager, Bitia **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Bolotin, James N.	Attorney
	Cargill, Emilia K.	Attorney
	Carlson, Severin A.	Attorney
	Caviglia, Justina A.	Attorney
	Dotson, Robert A.	Attorney
	Foletta, Lucas M.	Attorney
	Harrison, Sylvia L.	Attorney
	Lake, Scott	Attorney
	Peterson, Karen A.	Attorney
	Robison, Kent R.	Attorney
	Taggart, Paul G.	Attorney
	Ure, Therese A	Attorney
	Wilde, Kathleen A.	Attorney

JOURNAL ENTRIES

- Statements by the Court as to the scheduling order and requested courtesy copies of all briefs. Further statements by the Court regarding the pumping test. Mr. Robison advised they would be addressing the pumping test in the briefs. Court stated it was considering a status check after the reply briefs are submitted to discuss the order of the arguments. Statements Mr. Flangas regarding stipulation in place on the interveners. Mr. Flangas inquired if the answering brief would be a single brief or a brief as to what they decide to answer. Mr. Taggart suggested setting a status check after

the opening briefs are filed to decide how to answer. Mr. Robison stated what his understanding of how they would be responding. Court agreed a status check after the opening briefs would be helpful. COURT ORDERED, Status Check: Opening Briefs SET. Court DIRECTED counsel to submit a proposed findings of facts and conclusions of law in a word document by January 27, 2021. Court inquired how many days for argument on the briefs. Mr. Taggart and Ms. Peterson requested two weeks. COURT ORDERED, Arguments on the Petition for Judicial Review SET February 14-February 25, 2022. COURT FURTHER ORDERED, Status Check: Argument Schedule SET for January 20, 2022. Ms. Peterson advised Vidler was not included in the State Engineer's stipulation and would like it stated on the record they are included in the stipulation. Mr. Bolotin stated on the record Vidler is included in the stipulation and order.

Arguments by counsel.

COURT ORDERED, Moapa Valley Water District's Motion to Intervene DISPOSED OF BY STIPULATION.

COURT ORDERED, Coyote Springs Investments' Motion to Intervene MOOT.

COURT STATED ITS FINDINGS and FURTHER ORDERED, Southern Nevada Water Authorities, Las Vegas Valley Water District and Muddy Valley Irrigation Company's Motion to Intervene GRANTED.

Mr. Taggart to prepare the Order.

9/09/21 11:00 AM STATUS CHECK: OPENING BRIEFS

1/20/22 11:00 AM STATUS CHECK: ARGUMENT SCHEDULE

1/27/21 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW DUE

2/14/21 - 2/25/21 9:00 AM PETITION FOR JUDICIAL REVIEW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

July 30, 2021

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

**July 30, 2021 3:00 AM Motion to Withdraw as
Counsel**

HEARD BY: Yeager, Bitia **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e) the Motion to Withdraw is deemed unopposed. Therefore, good cause appearing, COURT ORDERED, motion is GRANTED.

Moving Counsel is to prepare and submit an order including the last known address, email address, and all dates for service/pretrial compliance with NRCP 16.1 within fourteen (14) days and distribute a filed copy to all parties involved in this matter.

All orders are to be submitted to DC1Inbox@ClarkCountyCourts.us

CLERK'S NOTE: A copy of this minute order was distributed via the E-Service list. / mlt

Volume Limitation CONTINUED to December 6, 2021 at 9:00 am.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

December 06, 2021

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

December 06, 2021 9:00 AM All Pending Motions

HEARD BY: Yeager, Bitu **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Balducci, Christian T.	Attorney
	Bolotin, James N.	Attorney
	Cargill, Emilia K.	Attorney
	Carlson, Severin A.	Attorney
	Caviglia, Justina A.	Attorney
	Dotson, Robert A.	Attorney
	Flangas, Alex J.	Attorney
	Foletta, Lucas M.	Attorney
	Herrema, Bradley J	Attorney
	King, Steven D.	Attorney
	Klomp, Wayne O.	Attorney
	Lake, Scott	Attorney
	Lucero, Ellsie E.	Attorney
	Morrison, Gregory H.	Attorney
	Peterson, Karen A.	Attorney
	Robison, Kent R.	Attorney
	Taggart, Paul G.	Attorney
	Ure, Therese A	Attorney

JOURNAL ENTRIES

- ALL PENDING STATUS CHECK: OPENING BRIEFS..LINCOLN COUNTY WATER DISTRICT

AND VIDLER WATER COMPANY, INC. S MOTION TO FILE OPENING BRIEF IN EXCESS OF
TYPE-VOLUME LIMITATION

Statements by the Court as to who has provided opening briefs and answering briefs. Statements by Mr. Taggart as to how to file, organize and circulate to all parties as to formulate the reply briefs. Statements by Mr. Robinson as to structuring by argument. Court STATED it would be helpful if all the parties submit proposed findings of facts, and conclusions of law address it by topic. Mr. Flangas inquired if the findings would be complete findings as to each party or as to their particular position. Mr. Flangas suggested submitting findings as to each parties position and reserve the right for responses to the findings. Court clarified that these are proposed findings that would not be going to each party for objections. The Court is asking that each party prepare findings as to their own specific position on each of those issues. Colloquy regarding the findings of facts and conclusions of law. COURT ORDERED, Findings of Fact and Conclusions of Law be submitted in word format to the law clerk by January 27, 2022.

Statements by the Court as to how the arguments should be done at the time of the hearings and having the three major topics done at the beginning. Ms. Peterson advised there is an issue as to whether the State Engineer has statutory authority to create the super basin. If the Court determines the State Engineer does not have statutory authority then Order 1309 would be vacated and none of the other issues would need to be addressed. Ms. Peterson stated she believes this issue should be addressed first. Mr. Taggart agreed and if the State does have authority then the next issue should be is there substantial evidence to support the decision. Mr. Taggart stated he does not support having a threshold ruling by the Court on that issue and then having to go up on appeal, because he believes all the issues should be decided in the event the State Engineer does have authority. Court inquired of Mr. Taggart if he had an opposition to that issue being done on the first day of argument. Mr. Taggart stated no and believe it should be the first argument but all the other issues should be ruled on in case it goes up on appeal. Court agrees. Court suggested counsel speak among themselves and come up with schedule as to arguments. Mr. Robinson agreed they should meet and confer and schedule topics and allocate time for the arguments. Court requested counsel prepare something that is written out as to this is the topic, these are the entities we anticipate doing argument, how much time they anticipate is needed to be heard on the issue and go topic by topic. Mr. Robinson advised they should meet and confer as to the topics within the next two weeks.

Colloquy regarding having two weeks blocked out for argument from 9-5 and whether to appear in person rather than via BlueJeans.

Court advised a minute order would be issued by December 10, 2021 as to Georgia-Pacific Gypsum, LLC, & Republic Environmental Technologies, Inc. Request for Judicial Notice.

Mr. Taggart requested the reply briefs due date be moved to January 11, 2022 due to the holidays. Mr. Robinson advised no objection as long as it doesn't affect the argument dates. All other counsel agreed to move the due date as to the reply brief. COURT ORDERED, reply brief due January 11, 2022.

Colloquy regarding organizing the appendix of the briefs.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

December 10, 2021

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

December 10, 2021 3:00 AM Decision

HEARD BY: Yeager, Bitu **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court having reviewed Georgia-Pacific Gypsum LLC and Republic Environmental Tech, Inc. s Request for Judicial Notice, filed 11/23/21, and the related briefing and being fully informed, DENIES the request. Further, the Court GRANTS Respondent State Engineer s request to strike the portion of Georgia-Pacific Gypsum LLC and Republic Environmental Tech, Inc Opening Brief as set forth in their pleadings.

On appeal, a court can only consider those matters that are contained in the record made by the court below and the necessary inferences that can be drawn therefrom. *Toigo v. Toigo*, 109 Nev. 350, 350, 849 P.2d 259, 259 (1993) (citing *Lindauer v. Allen*, 85 Nev. 430, 433, 456 P.2d 851, 853 (1969)). *Mack v. Est. of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009).

Under NRS 47.150, a court must take judicial notice if requested by a party and supplied with the necessary information. NRS 47.150(2). Under NRS 47.130(1), The facts subject to judicial notice are facts in issue or facts from which they may be inferred. If a fact is judicially noticed, it must be capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. NRS 47.130(2)(b).

Upon review of a final judgment, a court generally . . .will not take judicial notice of records in another and different case, even though the cases are connected. *Occhiuto v. Occhiuto*, 97 Nev. 143,

145, 625 P.2d 568, 569 (1981) (citing *Giannopoulos v. Chachas*, 50 Nev. 269, 270, 257 P.618, 618 (1927)).
Mack v. Est. of Mack, 125 Nev. 80, 91-92, 206 P.3d 98, 106 (2009).

Georgia-Pacific Gypsum LLC and Republic Environmental Tech, Inc. seek judicial notice for two items: excerpts from 2021 Annual Determination Report, prepared by Hydrologic Review Team (August 2021) and a newspaper article titled: Moapa Dace Numbers Tick Up Once Again. Both items post-date Order #1309, which is the subject of review in this case. As these exhibits postdate the issuance of Order 1309, they are not . . . facts in issue under NRS 47.130(1). In addition, these exhibits do not meet the requirements of NRS 47.130(1) or (2). The Court notes that the newspaper article contains assertions or opinions of facts made by a third-party unrelated to this case.

Petitioner cites to *Mack* in arguing that judicial notice of other state court and administrative proceedings [is warranted] when a valid reason present[s] itself. *Mack*, 125 Nev. at 91-92, 206 P.3d at 106. Petitioner argues that these exhibits support their argument that data are continuing to evolve. The Court does not find the Petitioner's argument persuasive that there is a valid reason to make these exhibits appropriate for judicial notice.

Respondent State Engineer is to be directed to submit a proposed order approved by moving counsel consistent with the foregoing within fourteen (14) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in their briefing. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order.

CLERK'S NOTE: A copy of this minute order was distributed via the E-Service list. / mlt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

January 20, 2022

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

January 20, 2022 11:00 AM Status Check

HEARD BY: Yeager, Bitia **COURTROOM:** RJC Courtroom 05C

COURT CLERK: Maricela Grant

RECORDER: Lisa Lizotte

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Hearing held by BlueJeans remote conferencing. Arguments by counsel pertaining oral argument procedure. Court noted who would be appearing live vs. appearing virtual through BlueJeans. Court noted order of presenting arguments base on the order documents where filed into the Eighth Judicial District Court date and time stamp. Colloquy regarding time of oral arguments. Court noted the time allotted for oral argument.

CLERK'S NOTE: Minutes corrected to indicate the correct Courtroom Clerk, Maricela Grant. /mlt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

February 14, 2022

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

February 14, 2022 10:00 AM Petition for Judicial Review

HEARD BY: Yeager, Bitia **COURTROOM:** RJC Courtroom 05C

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Balducci, Christian T.	Attorney
	Bolotin, James N.	Attorney
	Carlson, Severin A.	Attorney
	Caviglia, Justina A.	Attorney
	Coulthard, William L	Attorney
	Dotson, Robert A.	Attorney
	Foletta, Lucas M.	Attorney
	Harrison, Sylvia L.	Attorney
	Herrema, Bradley J	Attorney
	King, Steven D.	Attorney
	Klomp, Wayne O.	Attorney
	Lake, Scott	Attorney
	Morrison, Gregory H.	Attorney
	Muaina, Derek K	Attorney
	Peterson, Karen A.	Attorney
	Robison, Kent R.	Attorney
	Taggart, Paul G.	Attorney
	Winston, Hannah Elizabeth	Attorney

JOURNAL ENTRIES

- Mr. Taggart argued as to Las Vegas Valley Water Districts and Southern Nevada Water Authorities

A-20-816761-C

respective position as to Order 1309. Mr. Robinson, Mr. Herrema, Mr. Balducci, Mr. Lake and Mr. Dotson argued as to the respective positions.

COURT ORDERED, Matter CONTINUED.

CONTINUED TO: 2/15/22 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

February 15, 2022

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

February 15, 2022 8:30 AM Petition for Judicial Review

HEARD BY: Yeager, Bitu **COURTROOM:** RJC Courtroom 05C

COURT CLERK: Michele Tucker
Madalyn Kearney

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Balducci, Christian T.	Attorney
	Bolotin, James N.	Attorney
	Cargill, Emilia K.	Attorney
	Carlson, Severin A.	Attorney
	Caviglia, Justina A.	Attorney
	Coulthard, William L	Attorney
	Dotson, Robert A.	Attorney
	Flaherty, Francis C	Attorney
	Foletta, Lucas M.	Attorney
	Harrison, Sylvia L.	Attorney
	Herrema, Bradley J	Attorney
	King, Steven D.	Attorney
	Klomp, Wayne O.	Attorney
	Lake, Scott	Attorney
	Morrison, Gregory H.	Attorney
	Muaina, Derek K	Attorney
	Peterson, Karen A.	Attorney
	Robison, Kent R.	Attorney
	Taggart, Paul G.	Attorney
	Winston, Hannah Elizabeth	Attorney

JOURNAL ENTRIES

- Arguments by Mr. Flaherty, Mr. Foletta, Mr. Klomp, Ms. Peterson, Mr. Bolotin, Mr. Carlson, Ms. Caviglia, Mr. Morrison, and Mr. Taggart. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 2/16/22 8:30 AM

CLERK'S NOTE: At the hour of 2:40 pm Courtroom Clerk, Madalyn Kearney, present. /mk 2/15/22

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

February 16, 2022

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

February 16, 2022 8:30 AM Petition for Judicial Review

HEARD BY: Yeager, Bitia **COURTROOM:** RJC Courtroom 05C

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Balducci, Christian T.	Attorney
	Bolotin, James N.	Attorney
	Cargill, Emilia K.	Attorney
	Carlson, Severin A.	Attorney
	Caviglia, Justina A.	Attorney
	Coulthard, William L	Attorney
	Dotson, Robert A.	Attorney
	Flaherty, Francis C	Attorney
	Foletta, Lucas M.	Attorney
	Herrema, Bradley J	Attorney
	King, Steven D.	Attorney
	Klomp, Wayne O.	Attorney
	Lake, Scott	Attorney
	Morrison, Gregory H.	Attorney
	Peterson, Karen A.	Attorney
	Robison, Kent R.	Attorney
	Taggart, Paul G.	Attorney
	Winston, Hannah Elizabeth	Attorney

JOURNAL ENTRIES

- Arguments by Mr. Taggart, Ms. Winston, Mr. Lake, Mr. Dotson, Mr. Foletta, Ms. Peterson, Mr.

A-20-816761-C

Robinson, and Mr. Morrison. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 2/17/22 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

February 17, 2022

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

February 17, 2022 8:30 AM Petition for Judicial Review

HEARD BY: Yeager, Bitia **COURTROOM:** RJC Courtroom 05C

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Balducci, Christian T.	Attorney
	Bolotin, James N.	Attorney
	Cargill, Emilia K.	Attorney
	Carlson, Severin A.	Attorney
	Caviglia, Justina A.	Attorney
	Dotson, Robert A.	Attorney
	Flaherty, Francis C	Attorney
	Foletta, Lucas M.	Attorney
	FREHNER, DYLAN	Attorney
	Herrema, Bradley J	Attorney
	King, Steven D.	Attorney
	Klomp, Wayne O.	Attorney
	Lake, Scott	Attorney
	Morrison, Gregory H.	Attorney
	Peterson, Karen A.	Attorney
	Robison, Kent R.	Attorney
	Taggart, Paul G.	Attorney
	Winston, Hannah Elizabeth	Attorney

JOURNAL ENTRIES

- Mr. Dotson advised there is a tentative settlement with his client Muddy Valley Irrigation and the

Nevada State Engineer. Argument by Mr. Robison regarding it being placed on the record would make it binding. Court STATED it would allow it to be put on the record only and it WOULD NOT BE BINDING. Mr. Taggart concurred with Mr. Dotson and advised they also have a settlement. Court STATED it believes the transparency is apparent. Mr. Balducci argued his client needs to know the terms of the settlement to know whether if they are still in the case. Arguments by Ms. Peterson Statements by the Court. Mr. Robison advised after conferring with other counsel they will agree to have the terms of the settlement placed on the record with the understanding it is not binding. Court STATED it will be placed on the record for informational purposes ONLY and it will not be binding. Mr. Dotson stated the terms of the tentative settlement. States by Mr. Bolotin.

Arguments by Mr. Robison, Mr. Balducci, Mr. Lake, Mr. Dotson, Mr. Flaherty, Mr. Foletta, Mr. Klomp, and Ms. Peterson as to their respective positions.

Colloquy regarding possible supplemental briefing. Parties agreed to not do any supplemental briefing.

Mr. Lake advised the Center for Biological Diversity (CBD) and the State Engineer have reached an agreement in concept. CBD would dismiss their petition for judicial review subject to certain terms and maintaining their intervening status in the remaining appeals. The specifics of the terms are still under negotiations.

COURT ORDERED, Matter TAKEN UNDER ADVISEMENT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

April 19, 2022

A-20-816761-C Southern Nevada Water Authority, Plaintiff(s)
vs.
Nevada State Engineer, Division of Water Resources, Defendant(s)

April 19, 2022 3:00 AM Decision

HEARD BY: Yeager, Bitu **COURTROOM:** Chambers

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Court having considered the evidence, the pleadings, together with opening and closing arguments presented at the hearing for these matters, and good cause appearing therefor, makes the following Findings of Fact, Conclusions of Law, and Order:

The Court FINDS that the Nevada State Engineer exceeded his statutory authority and had no authority based in statute to create the LWRFS superbasin out of multiple distinct, already established hydrographic basins. The Nevada State Engineer also lacked the statutory authority to conjunctively manage this LWRFS superbasin.

The Court ALSO FINDS that the Nevada State Engineer violated the Petitioners Constitutional right to due process by failing to provide adequate notice and a meaningful opportunity to be heard. As a result, Order 1309 is arbitrary, capricious, and therefore void.

Good cause appearing, based upon the above Findings of Fact and Conclusions of Law, the Court ORDERS, ADJUDGES AND DECREES as follows:

IT IS HEREBY ORDERED that the petition for review of the Nevada State Engineer s Order No. 1309 filed by Petitioners Lincoln County Water District and Vidler Water Company, Inc. is GRANTED.

IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer s Order No. 1309 filed by Petitioners Coyote Springs Investment, LLC is GRANTED.

IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer s Order No. 1309 filed by Petitioners Apex Holding Company, LLC and Dry Lake Water, LLC is GRANTED.

IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer s Order No. 1309 filed by Petitioners Nevada Cogeneration Associates Nos. 1 and 2 is GRANTED.

IT IS FURTHER ORDERED that the petition for review of the Nevada State Engineer s Order No. 1309 filed by Petitioners Georgia-Pacific Gypsum LLC, and Republic Environmental Technologies, Inc. is GRANTED.

IT IS FURTHER ORDERED that the State Engineer s Order 1309 is VACATED in its entirety.

IT IS SO ORDERED.

CLERK'S NOTE: A copy of this minute order was distributed via the E-Service list. / mlt

EXHIBIT(S) LIST

Case No.: <u>A816761</u>	Hearing Date: <u>2.14.22</u>
Dept. No.: <u>1</u>	Judge: <u>BITA YEAGER</u>
Plaintiff: SOUTHERN NEVADA WATER AUTHORITY	Court Clerk: <u>Michele Tucker</u>
	Recorder: <u>Lisa Lizotte</u>
	Counsel for Plaintiff: <u>PAUL TAGGART</u>
vs.	
Defendant: NEVADA STATE ENGINEER, DIVISION OF WATER RESOURCES	Counsel for Defendant: <u>MULTIPLE COUNSEL</u>

HEARING BEFORE THE COURT

COURT'S EXHIBITS

1
2
3
4
5
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7
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10
11
12
13
13A
14
15
16

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1	LVWD/SNWA Opening Power Point			2.14.22
2	CSI vs. ORDER 1309 POWER POINT			2.14.22
3	CSI – MAP			2.14.22
4	CBD – POWER POINT			2.15.22
5	MVIC POWER POINT			2.15.22
6	NV COGEN 1&2 – POWER POINT			2.15.22
7	LINCOLN COUNTY WATER DISTRICT (double sided)			2.15.22
8	VIDLER WATER COMPANY, INC.			2.15.22
9	NV STATE ENGINEER – MAP			2.15.22
10	LVWD/SNWA – RESPONENT-INTERVONOR' ORAL ARGUMENT POWERPOINT			2.15.22
11	LVWD/SNWA - ANSWERING ORAL ARGUMENTS			2.16.22
12	CSI – ORDER (some pages double sided)			2.16.22
13	MVIC – ARGUMENTS IN SUPPORT OF ORDER 1309			2.16.22
13A	MVIC – DRAWING			2.16.22
14	VIDLER – United States Dept. of the Interior (double sided)			2.16.22
15	LVWD/SNWA – REQUEST TO INVESTIGATE			2.16.22
16	CSI – NRS 533.120 (double sided)			2.16.22



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

SCOTT LAKE
P.O. BOX 6205
RENO, NV 89513

DATE: May 18, 2022
CASE: A-20-816761-C
CONSOLIDATED

RE CASE: LAS VEGAS VALLEY WATER DISTRICT; SOUTHERN NEVADA WATER AUTHORITY vs. TIM WILSON, P.E, Nevada State Engineer; DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NOTICE OF APPEAL FILED: May 16, 2022

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- Order
- Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PETITIONS FOR JUDICIAL REVIEW; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PETITIONS FOR JUDICIAL REVIEW; ADDENDUM AND CLARIFICATION TO COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PETITIONS FOR JUDICIAL REVIEW FILED ON APRIL 19, 2022; NOTICE OF ENTRY OF ADDENDUM AND CLARIFICATION TO COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PETITIONS FOR JUDICIAL REVIEW; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

LAS VEGAS VALLEY WATER DISTRICT;
SOUTHERN NEVADA WATER
AUTHORITY,

Plaintiff(s),

vs.

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

Defendant(s),

Case No: A-20-816761-C

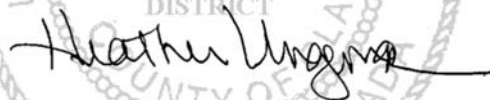
*Consolidated with A-20-817765-P,
A-20-817840-P, A-20-817876-P,
A-20-817977-P, A-20-818015-P,
A-20-818069-P, A-21-833572-J*

Dept No: I

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 18 day of May 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

