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

9 ADAM SULLIVAN, P.E., NEVADA
10 STATE ENGINEER, DIVISION OF
11 WATER RESOURCES,
12 DEPARTMENT OF
13 CONSERVATION AND NATURAL
14 RESOURCES; LAS VEGAS
15 VALLEY WATER DISTRICT;
16 SOUTHERN NEVADA WATER
17 AUTHORITY; and CENTER FOR
18 BIOLOGICAL DIVERSITY,

19 Appellants,

20 vs.

21 LINCOLN VALLEY WATER
22 DISTRICT; VIDLER WATER
23 COMPANY, INC.; COYOTE
SPRINGS INVESTMENT, LLC;
NEVADA COGENERATION
ASSOCIATES NOS 1 AND 2; APEX
HOLDING COMPANY, LLC; DRY
LAKE WATER LLC; GEORGIA-
PACIFIC GYPSUM, LLC;
REPUBLIC ENVIRONMENTAL
TECHNOLOGIES, INC.; MUDDY
VALLEY IRRIGATION COMPANY;
SIERRA PACIFIC POWER
COMPANY, d/b/a NV ENERGY;
NEVADA POWER COMPANY, d/b/a

Supreme Court No. 84739

1 NV ENERGY; THE CHURCH OF
2 JESUS CHRIST OF LATTER-DAY
3 SAINTS; MOAPA VALLEY WATER
4 DISTRICT; WESTERN ELITE
5 ENVIRONMENTAL, INC.; BEDROC
6 LIMITED, LLC; and CITY OF
7 NORTH LAS VEGAS,

8 Respondents.

9 CENTER FOR BIOLOGICAL
10 DIVERSITY; SOUTHERN NEVADA
11 WATER AUTHORITY; LAS VEGAS
12 VALLEY WATER DISTRICT;
13 MUDDY VALLEY IRRIGATION
14 COMPANY; COYOTE SPRINGS
15 INVESTMENT, LLC; LINCOLN
16 COUNTY WATER DISTRICT; APEX
17 HOLDING COMPANY, LLC; DRY
18 LAKE WATER, LLC; NEVADA
19 COGENERATION ASSOCIATES
20 NOS. 1 AND 2; GEORGIA-PACIFIC
21 GYPSUM, LLC; REPUBLIC
22 ENVIRONMENTAL
23 TECHNOLOGIES, INC; and VIDLER
WATER COMPANY, INC.;

Appellants,

vs.

NEVADA STATE ENGINEER; THE
CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS; SIERRA
PACIFIC POWER COMPANY d/b/a
NV ENERGY AND NEVADA
POWER COMPANY d/b/a NV
ENERGY; MOAPA VALLEY
WATER DISTRICT; CITY OF
NORTH LAS VEGAS; WESTERN

Supreme Court No. 84742

1 ELITE ENVIRONMENTAL, INC.;
2 and BEDROC LIMITED, LLC,

3 Respondents.

4 SOUTHERN NEVADA WATER
5 AUTHORITY,

6 Appellant,

7 vs.

8 COYOTE SPRINGS INVESTMENT,
9 LLC; APEX HOLDING COMPANY,
10 LLC; NEVADA COGENERATION
11 ASSOCIATES NOS. 1 AND 2;
12 GEORGIA-PACIFIC GYPSUM, LLC;
13 DRY LAKE WATER, LLC;
14 REPUBLIC ENVIRONMENTAL
15 TECHNOLOGIES, INC.; LINCOLN
16 COUNTY WATER DISTRICT;
17 VIDLER WATER COMPANY, INC.;
18 MUDDY VALLEY IRRIGATION
19 COMPANY; THE CENTER FOR
20 BIOLOGICAL DIVERSITY; SIERRA
21 PACIFIC POWER COMPANY d/b/a
22 NV ENERGY AND NEVADA
23 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.; BEDROC
LIMITED, LLC, and ADAM
SULLIVAN, P.E. NEVADA STATE
ENGINEER,

Respondents.

Supreme Court No. 84741

1 MUDDY VALLEY IRRIGATION
2 COMPANY,

3 Appellant,

4 vs.

5 ADAM SULLIVAN, P.E., NEVADA
6 STATE ENGINEER, DIVISION OF
7 WATER RESOURCES,
8 DEPARTMENT OF
9 CONSERVATION AND NATURAL
10 RESOURCES; LAS VEGAS
11 VALLEY WATER DISTRICT;
12 SOUTHERN NEVADA WATER
13 AUTHORITY; COYOTE SPRINGS
14 INVESTMENT, LLC; APEX
15 HOLDING COMPANY, LLC; DRY
16 LAKE WATER, LLC; CENTER FOR
17 BIOLOGICAL DIVERSITY;
18 NEVADA COGENERATION
19 ASSOCIATES NOS. 1 AND 2;
20 GEORGIA-PACIFIC GYPSUM, LLC;
21 REPUBLIC ENVIRONMENTAL
22 TECHNOLOGIES, INC.; LINCOLN
23 COUNTY WATER DISTRICT;
VIDLER WATER COMPANY, INC.;
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,

Respondents.

1 **EMERGENCY MOTION FOR STAY UNDER NRAP 27(E) AND JOINDER**
2 **IMMEDIATE ACTION REQUESTED**

3 Appellant, the Center for Biological Diversity (the “Center”), files this Motion
4 for Stay and Joinder in order to preserve the status quo and prevent imminent,
5 irreparable harm to senior water rights and the public interest pending appeal.

6 The Nevada State Engineer has determined, based on exhaustive data, expert
7 analysis, and stakeholder input, that the seven groundwater basins comprising the
8 Lower White River Flow System (“LWRFS”) in Southeastern Nevada share the
9 same supply of water, and that permitted groundwater rights in the LWRFS exceed
10 the area’s sustainable yield by over 475 percent, or 30,000 acre-feet annually. Exh.
11 2 at SE ROA 66; Exh 3 at SE ROA 70, Exh. 5 at SE ROA 737. An aquifer test
12 conducted from 2010 through 2012 demonstrated that pumping even a fraction of
13 these rights—14,535 acre-feet annually or about 6,000 acre-feet above current
14 pumping levels—caused immediate and severe declines in spring flows at the
15 headwaters of the Muddy River. Exh. 2 at SE ROA 8-12; Exh. 5 at SE ROA 751.
16 The affected springs provide the only known habitat for the highly endangered
17 Moapa dace (*Moapa corciacea*), and their downstream flows are fully appropriated
18 by the 1920 Muddy River Decree. *See* Exh. 6. Any increase in pumping will impact
19 these senior decreed rights and threaten the continued existence of the Moapa dace.
20 Exh. 2 at SE ROA 64.

21 Without a stay from this Court, pumping increases are imminent. The District
22 Court vacated the State Engineer’s Order 1309, which relied on the best available
23 science to establish an area-wide sustainable yield and groundwater pumping limit
within the LWRFS. Exh. 2. Since Order 1309 was issued in June 2020, groundwater

1 pumping has remained at or close to that limit, and while spring flows in the Muddy
2 River’s headwaters have not increased or recovered to pre-aquifer-test levels, there
3 have been no further significant declines. Without the limit in place, however, up to
4 30,000 acre-feet of additional groundwater rights could be pumped without
5 restriction, risking potentially catastrophic impacts to the individuals, communities,
6 species, and ecosystems that depend on Muddy River spring flows and senior
7 decreed rights.

8 The Center therefore joins the Southern Nevada Water Authority (“SNWA”)
9 in requesting that this Court immediately stay the District Court’s decision.

10 **FACTUAL AND PROCEDURAL BACKGROUND**

11 Order 1309 is the most recent installment in the State Engineer’s decades-long
12 effort to study and regulate groundwater resources in Southeastern Nevada. As early
13 as 1983, government agencies and senior water users raised concerns about the
14 potential impacts of groundwater pumping in the LWRFS. Exh. 9 at SE ROA 47837-
15 840; Exh. 10 at SE ROA 48114-30. At the time, the area’s subsurface hydrology was
16 not well understood. Exh. 4 at SE ROA 660. Nevertheless, by 2002 approximately
17 38,000 acre-feet of groundwater rights had been acquired in the LWRFS, and
18 pending applications sought to appropriate thousands more. Exh. 3 at SE ROA 70,
19 Exh. 5 at 726-754.

20 Over time, various studies including the 2010-2012 aquifer test revealed that
21 the seven “hydrologic basins” comprising the LWRFS were not hydrologically
22 separate sources of groundwater, as previously believed, but an interconnected
23 regional groundwater “flow system.” Exh. 5 at SE ROA 749. Put simply, the State

1 Engineer discovered that the seven LWRFS basins and the Muddy River shared the
2 same supply of water. *Id.*

3 In January 2019, the State Engineer “designat[ed]” the LWRFS as “a joint
4 administrative unit for purposes of administration of water rights,” and solicited
5 stakeholder input on four questions: (1) the geographic boundary of the LWRFS, (2)
6 aquifer recovery following the 2010-2012 test; (3) the long-term annual quantity of
7 water that may be pumped from the LWRFS, and (4) the effect of movement of
8 water rights within the LWRFS. Exh. 2 at SE ROA 11. The State Engineer accepted
9 expert reports and testimony from dozens of stakeholders, and following a two-week
10 administrative hearing he issued Order 1309. Exh. 2.

11 In Order 1309 the State Engineer concluded: (1) the geographic extent of the
12 LWRFS covers six previously delineated “hydrographic basins” and a portion of a
13 seventh; (2) the maximum amount of groundwater that may be pumped from the
14 LWRFS without adversely affecting senior rights or the Moapa dace is 8,000 acre-
15 feet annually and may be less; and (3) applications for movement of existing water
16 rights would be considered on a case-by-case basis. *Id.* at SE ROA 66-67.

17 Several parties petitioned the District Court for judicial review of Order 1309.
18 On April 19, 2022, the District Court issued an Order concluding that Order 1309
19 exceeded the State Engineer’s statutory authority and violated the due process rights
20 of the prevailing petitioners. Exh. 1 at 25, 31-32. The District Court based both of
21 these conclusions on a novel and highly restrictive interpretation of the statutory
22 term “basin.” According to the District Court, a groundwater “basin” is an
23 “immutable” administrative unit that must conform to specific topographic

1 boundaries drawn by the State Engineer and the United States Geological Survey
2 over 50 years ago. *Id.* at 25-26. The District Court held that the principles of prior
3 appropriation—under which water rights are acquired and used on a “first in time,
4 first in right” basis—apply only within the boundaries of these “immutable”
5 topographic units. *Id.* at 22-23. Based on this analysis, the District Court concluded
6 that the State Engineer lacks authority to jointly administer multiple groundwater
7 basins; that the State Engineer lacks authority to conjunctively manage ground- and
8 surface-water resources; and that Order 1309 altered the relative priority of water
9 rights within the LWRFS without adequate due process.

10 **ARGUMENT**

11 In determining whether to issue a stay on appeal, this Court considers the
12 following factors: (1) whether the object of the appeal will be defeated if the stay is
13 denied, (2) whether the appellant will suffer irreparable or serious injury if a stay is
14 denied, (3) whether the respondent will suffer irreparable or serious injury if the stay
15 is granted, and (4) whether the appellant is likely to prevail on the merits. *Mikohn*
16 *Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citing NRAP
17 8(c)). This Court does not “ascribe[] particular weight[] to any of the stay factors,”
18 and has “recognized that . . . certain factors may be especially strong and
19 counterbalance other weak factors.” *State v. Robles-Nieves*, 129 Nev. 537, 542, 306
20 P.3d 399, 403 (2013) (citing *Mikohn Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38
21 (2004)).

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23 ///

1 **I. The Object of These Appeals Will Be Defeated if a Stay is Denied.**

2 The object of these appeals is the protection of senior decreed surface water
3 rights and the endangered Moapa dace. Both the Nevada Legislature and this Court
4 have emphasized the importance of protecting senior decreed water rights. *See* NRS
5 § 533.0245; *Mineral Cty. v. Lyon Cty.*, 473 P.3d 418, 429 (Nev. 2020). Likewise,
6 the federal Endangered Species Act declares the protection and recovery of
7 endangered species to be among the highest national priorities. *Tenn. Valley Auth.*
8 *v. Hill*, 437 U.S. 153, 194, 98 S. Ct. 2279, 2302 (1978). In a similar context, where
9 public policy weighed heavily in favor of protecting the object of an appeal, this
10 Court held that “absent a strong showing that the appeal lacks merit or that
11 irreparable harm will result if a stay is granted, a stay should issue to avoid defeating
12 the object of an appeal.” *Mikohn Gaming Corp.*, 120 Nev. at 250, 89 P.3d at 38.

13 Here, the aquifer test results discussed above demonstrate that any increase in
14 groundwater pumping will directly affect the headwaters of the Muddy River,
15 harming senior decreed rights and degrading the only known habitat of the Moapa
16 dace. As the State Engineer explained in Order 1309, “[t]he best available data at
17 this time indicate that continued groundwater pumping that consistently exceed
18 [8,000 acre-feet annually] will cause conditions that harm the Moapa dace and
19 threaten to conflict with Muddy River decreed rights.” Exh. 2 at SE ROA 64.

20 Respondents will likely argue that other legal means exist to protect senior
21 water rights and the dace, including “curtailment” under NRS § 534.110(6) and a
22 2006 Memorandum of Agreement among the U.S. Fish and Wildlife Service,
23

1 SNWA, Coyote Springs Investment, LLC, the Moapa Valley Water District, and the
2 Moapa Band of Paiutes. However, any such argument is unavailing.

3 Curtailment would require the State Engineer to commence a new
4 administrative process, and thus would not help protect the status quo or prevent
5 irreparable injury in the near-term. Moreover, the District Court’s Order calls into
6 question the State Engineer’s authority to address or even acknowledge water-rights
7 conflicts that occur across basin boundaries, or that involve both surface- and
8 groundwater resources. *See* Exh. 1 at 22-23 (stating that prior appropriation
9 principles apply only among users within individual basins), 27-29 (holding that the
10 State Engineer lacks authority to “conjunctively” manage ground- and surface water
11 resources). Consequently, if the District Court’s Order is not stayed, and
12 groundwater pumping in one basin conflicts with senior decreed surface water rights
13 in another basin, senior users and the State Engineer may be entirely without
14 recourse.

15 The MOA meanwhile, will not prevent harm to the Moapa dace or the Muddy
16 River springs. The State Engineer found, based on extensive expert analysis and
17 testimony, that “it is necessary for spring flow measured at the Warm Springs West
18 gage to flow at a minimum rate of 3.2 [cubic feet per second] in order to maintain
19 habitat for the Moapa dace,” and that “a reduction of flow below this rate may result
20 in a decline in the dace population.” Exh. 2 at SE ROA 46. The MOA, however,
21 permits those same flows to decline to as low as 2.7 cubic feet per second. Exh. 11
22 at SE ROA 9938. The MOA also assumes that any reduction in spring flows can be
23 reversed if pumping is reduced, but the results of the 2010 aquifer test showed this

1 assumption to be false; despite a significant reduction in pumping following the
2 conclusion of the test, spring flows did not recover and continued to decline—albeit
3 slightly—for several years afterward. Exh. 7 at SE ROA 34505; Exh. 8 at 34519,
4 34539-40. Finally, the MOA binds only the signatories, and therefore does not cover
5 several water users in the LWRFS that have signaled an intention to increase
6 pumping, such as Vidler Water Company.

7 Consequently, alternative protective measures do not exist, and this Court
8 should grant a stay in order to ensure that the object of the appeal is not defeated.

9 **II. Irreparable Harm Will Occur if A Stay Is Denied.**

10 Without a stay, there is an imminent threat of irreparable harm to senior water
11 rights and a federally listed endangered species. “To destroy one’s property is
12 sometimes regarded as an irreparable injury, and the particular value of a water
13 supply in the desert is not only unascertainable but its preservation is necessary to
14 the general welfare.” *Czipott v. Fleigh*, 87 Nev. 496, 499, 489 P.2d 681, 683 (1971)
15 (citing *Kane v. Porter*, 235 P. 561 (Colo. 1925)). Moreover, the U.S. Supreme Court
16 has explained that “[e]nvironmental injury, by its nature, can seldom be adequately
17 remedied by money damages and is often permanent or at least of long duration, *i.e.*,
18 irreparable.” *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545, 107 S. Ct.
19 1396, 1404 (1987). This is particularly true where endangered species are involved.
20 *See, e.g., Sierra Club v. Marsh*, 816 F.2d 1376, 1383 (9th Cir. 1987) (explaining that
21 actions that “jeopardize the continued existence of endangered species threaten
22 incalculable harm”). Here, the Record on Appeal and the State Engineer’s factual
23 findings over the course of the previous decade clearly establish that increased

1 groundwater pumping anywhere within the LWRFS will reduce Muddy River
2 Spring flows, thereby harming senior decreed water rights and threatening the
3 continued existence of the dace. Exh. 2 at SE ROA 64-66. Without a stay, there will
4 be nothing to prevent these significant and irreparable harms.

5 **III. Irreparable Harm Will Not Occur if A Stay is Denied.**

6 The District Court found, and Respondents will likely argue here, that
7 Respondents will suffer irreparable harm to their property rights if Order 1309
8 remains in effect. However, this misunderstands the nature of Respondents' rights
9 and the effect of Order 1309. Simply put, Order 1309 does not deprive Respondents
10 of any property right because they *never* enjoyed priority over more senior rights in
11 the LWRFS. All water rights in Nevada—including Respondents'—are acquired
12 “subject to existing rights.” NRS §§ 533.085, 533.430; 534.020. Consequently, no
13 water user has the “right” to impair the rights of a more senior user.

14 **IV. Appellants are Likely to Succeed on the Merits.**

15 “[W]hen moving for a stay pending an appeal or writ proceedings, a movant
16 does not always have to show a probability of success on the merits,” but may instead
17 “present a substantial case on the merits when a serious legal question is involved
18 and show that the balance of equities weighs heavily in favor of granting the stay.”
19 *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 659, 6 P.3d 982, 987
20 (2000) (citing *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)). Nevertheless,
21 Appellants satisfy the more stringent “likelihood of success” standard here because
22 the District Court made several errors in its statutory and due process analyses.
23

1 As noted, the District Court based its decision on a novel interpretation of the
2 statutory term “basin” that finds no support in the statutes themselves. Simply put, a
3 “basin” is not a creature of statute at all—no statute speaks to the creation or
4 delineation of individual “basins,” and no statute even defines the term “basin” as it
5 is used throughout NRS Chapters 533 and 544. Rather, a groundwater “basin” is—
6 and has been throughout Nevada’s history—the product of a factual determination
7 by the State Engineer that a particular geographic area shares a common supply of
8 groundwater, and should be administered accordingly. *See, e.g.*, Exh. 13.

9 The District Court arrived at a contrary result through an analysis that ignores
10 the ample express and implied authority granted to the State Engineer under NRS
11 Chapters 532-534, *see, e.g.*, NRS §§ 532.120, 534.030, and violates several basic
12 rules of statutory construction including, for example, that the singular “basin”
13 includes the plural “basins,” *see* NRS § 0.030(1) (explaining that “[t]he singular
14 number includes the plural number, and the plural includes the singular”), and that
15 statutes should not be construed “harmoniously” within the greater statutory scheme
16 in order to avoid “an unreasonable or absurd result.” *Horizons at Seven Hills*
17 *Homeowners Ass’n v. Ikon Holdings, Ltd. Liab. Co.*, 132 Nev. 362, 368, 373 P.3d
18 66, 70 (2016).

19 Here, the absurd and unreasonable consequences of the District Court’s
20 decision are readily apparent. For example, the State Engineer is expressly
21 prohibited from “carry[ing] out his or her duties . . . in a manner that conflicts with
22 any applicable provision of a decree.” NRS § 533.0245. Yet according to the District
23 Court’s Order, the State Engineer must allow conflicts with Muddy River decreed

1 rights when those conflicts occur across certain topographically defined boundaries
2 that have no clear basis in statute and no rational relationship to the actual hydrology
3 of the water source.

4 Contrary to the District Court’s restrictive analysis, Nevada courts and
5 groundwater users have long recognized the need to regulate groundwater pumping
6 across basin boundaries to prevent impacts to surface water resources and the
7 environment. For example, in *White Pine County et al. v. King*, the Seventh Judicial
8 District Court held that applications to appropriate groundwater must be denied
9 where they would conflict with senior rights in downgradient basins within
10 “hundreds” of years. Exh. 14 at 20. To hold otherwise, the court explained, would
11 permit “double appropriation of the same water” and unlawfully “defer serious water
12 problems and conflict to later generations.” *Id.* The same will be true here if this
13 Court permits the District Court’s decision to remain effective.

14 The District Court’s due process analysis, moreover, rests on the same flawed
15 definition of “basin” as its statutory authority analysis, and ignores the ample notice
16 and opportunity for hearing provided for all stakeholders below. Indeed, several
17 Respondents provided detailed technical input on the very issues for which they now
18 claim lack of notice—namely, the amount of hydrologic interconnection within the
19 LWRFS and the appropriate criteria for designating a joint administrative unit. *See,*
20 *e.g.*, Exh. 12. Appellants are therefore likely to succeed on the merits.

21 CONCLUSION

22 The Center requests that the Court immediately stay the District Court’s
23 decision and joins in the arguments of SNWA.

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

Dated this 2nd day of June, 2022.

/s/ Scott Lake

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1 **NRAP 26.1 DISCLOSURE STATEMENT**

2 The undersigned counsel of record certifies that the Center for Biological
3 Diversity is a nonprofit organization that has no parent corporation, and that no
4 publicly held corporation owns 10% or more of its stock. The following counsel
5 have appeared on behalf of the Center in this matter:

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1 Dated this 2nd day of June, 2022.

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1 **NRAP 27(E) CERTIFICATE**

2 I, Scott Lake, as counsel for Appellant, Center for Biological Diversity,
3 certifies the following pursuant to NRAP 27(e):

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5 attorneys for the other parties and telephone numbers for any pro se parties are listed
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20 2. The Center is filing its Motion to Stay on an emergency basis to ensure
21 the Court considers and decides the motion as soon as possible. The 30-day
22 automatic stay of the district court's Findings of Fact, Conclusions of Law, and
23 Order Granting Petitions for Judicial Review ("Order") afforded by NRCP 62(a)(1),

1 in which judgment may not be enforced, expired on May 19, 2022. The 30-day
2 period under NRCP 62(a)(1) began running from April 19, 2022, when the Center
3 was served with Notice of Entry of the District Court’s Order. Consequently, the
4 8,000 acre-foot annual groundwater pumping limit established for the Lower White
5 River Flow System (“LWRFS”) in the State Engineer’s Order 1309 is no longer in
6 effect. The State Engineer is now unable to use Order 1309’s groundwater pumping
7 limit to protect senior water rights and the endangered Moapa dace. However, as the
8 State Engineer found in Order 1309—which findings have not been evaluated or
9 disturbed by the District Court—pumping that consistently exceeds 8,000 will harm
10 senior water rights and the endangered dace.

11 3. Emergency relief under NRAP 27(e) is necessary in these
12 circumstances to protect senior water right holders and the Moapa dace from
13 increased groundwater pumping in the LWRFS which, without the 8,000 acre-foot
14 pumping cap, may commence immediately. There are approximately 38,000 acre-
15 feet annually of permitted groundwater rights in the LWRFS and only around 8,000
16 acre-feet annually is currently being pumped. However, without Order 1309’s
17 pumping cap in effect, existing water rights holders can increase the amount of
18 pumping without seeking authorization from the State Engineer. Furthermore,
19 without the 8,000 acre-foot limit, the State Engineer may be forced to approve
20 subdivision maps supported by water rights that would exceed the 8,000 acre-foot
21 limit.

22 4. I have made every practicable effort to notify the Supreme Court and
23 opposing counsel of the filing of this Motion. I alerted opposing counsel of this

1 Motion via email shortly before it was submitted. I also called the Clerk of Court's
2 office for the Nevada Supreme Court before filing. A courtesy copy was emailed to
3 all parties.

4
5 Dated this 2nd day of June, 2022.

6 /s/ Scott Lake
7 SCOTT LAKE, NV Bar No. 15765
8 CENTER FOR BIOLOGICAL DIVERSITY
9 P.O. Box 6205
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11 (802) 299-7495
12 slake@biologicaldiversity.org
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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Center for Biological Diversity, and that
3 on this 2nd day of June, 2022 I served a true and correct copy of the foregoing by
4 electronic service to the participants in this case who are registered with the Nevada
5 Supreme Court’s efilg system to this matter.

6
7 /s/ Scott Lake
8 Scott Lake
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1 **INDEX OF EXHIBITS/EXCERPTS OF RECORD**

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Exhibit No.	Description	Number of Pages
1	Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review (April 19, 2022).	40
2	Nevada State Engineer Order 1309 (June 15, 2020) (SE ROA 2-69)	66
3	Nevada State Engineer Interim Order 1303 (Jan. 11, 2019) (SE ROA 70-88)	19
4	Nevada State Engineer Order 1169 (March 8, 2002) (SE ROA 659-669)	11
5	Nevada State Engineer Ruling 6254 (Jan. 29, 2014) (SE ROA 726-754)	29
6	Muddy River Decree (March 12, 1920) (SE ROA 33770-33816)	47
7	Dr. Tom Myers, Technical Memorandum Submitted in Response to State Engineer Interim Order 1303 (June 1, 2019) (SE ROA 33490-34516)	27
8	Dr. Tom Myers, Rebuttal Report Submitted in Response to Stakeholder Reports and State Engineer Interim Order 1303 (August 16, 2019) (SE ROA 34517-34546)	30
9	Application No. 46777 to Appropriate the Public Waters of the State of Nevada (March 31, 1983) (SE ROA 47837-47840)	4
10	Nevada State Engineer's Ruling 4542, Conditionally Granting Application No. 46777 (June 19, 1997) (SE ROA 48114-48130)	17
11	Memorandum of Agreement Among Southern Nevada Water Authority, U.S. Fish and Wildlife Service, Coyote Springs Investment LLC, the Moapa Band of Paiute Indians, and the Moapa Valley Water District (April 20, 2006) (SE ROA 9921-9946)	26
12	Stetson Engineers, Inc., Evaluation of Basin Hydrogeology and Assessment of the Sustainable Yield of the Lower White River Flow System, Southeastern Nevada, Prepared for Coyote Springs	113

	Investment, LLC (July 3, 2019) (SE ROA 35600-35712)	
13	F. Eugene Rush, Index of Hydrographic Areas (Sept. 1968) ¹	43
14	Decision, <i>White Pine County et al. v. King</i> , No. CV1204049, (7 th Jud. Dist. Ct. 2013).	23

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¹ This technical report published by the Nevada Division of Water Resources and the U.S. Geological Survey was not designated by the State Engineer as part of the Record on Appeal, but was introduced in briefing by Appellant Coyote Springs Investment, LLC, and appears to have been implicitly relied upon by the District Court. *See Order* at 24-26.