

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM SULLIVAN, P.E., NEVADA
STATE ENGINEER, DIVISION OF
WATER RESOURCES,
DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES; LAS VEGAS
VALLEY WATER DISTRICT;
SOUTHERN NEVADA WATER
AUTHORITY; and CENTER FOR
BIOLOGICAL DIVERSITY,

Appellants,

vs.

LINCOLN VALLEY WATER
DISTRICT et al.,

Respondents.

Supreme Court No. 84739

**Consolidated with Nos. 84742,
84741, and 84809** Electronically Filed
Jun 13 2022 08:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**THE CENTER FOR BIOLOGICAL DIVERSITY’S REPLY TO THE
CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS IN SUPPORT
OF EMERGENCY MOTION FOR STAY AND JOINDER**

The Center for Biological Diversity (the “Center”) hereby replies to the Church of Jesus Christ of Latter-Day Saints’ (the “Church”) Opposition to the Center’s Emergency Motion for Stay and Joinder.

The Church opposes the Center’s Emergency Motion for Stay insofar as it seeks to “maintain pumping as it existed prior to the District Court’s Order.” Church’s Opp. at 3. The Church further explains that it has refrained from utilizing its senior water rights throughout these proceedings. Consequently, the Church argues that an Order from this Court “maintain[ing] pumping as it existed prior to

the District Court's Order" would violate the prior appropriation doctrine because under such a hypothetical order, the Church would be prevented from utilizing its senior water rights while certain junior groundwater users would be allowed to continue pumping. *Id.*

The Center lacks sufficient information on which to form a belief as to whether the Church's existing water rights would fall within the State Engineer's 8,000 acre-foot annual pumping cap, and makes no representations regarding how the Church's water rights would be affected by a stay of the District Court's Order. However, to the extent the Church argues that a stay would violate the prior appropriation doctrine by favoring junior groundwater rights over more senior rights, the Church is incorrect.

A stay would protect senior rights holders by maintaining relative priorities across the Lower White River Flow System ("LWRFS"). Senior users would thus be protected from impacts caused by junior users, even if those impacts occur across the boundaries of particular "hydrographic basins." The Center agrees with the Church that under Order 1309 and Nevada law, junior water rights in the LWRFS are subject to senior rights. Order 1309 is silent as to *who* is allowed to pump, so the event of any future curtailment, basic principles of prior appropriation would apply. Senior water users would be protected, while junior users could potentially be curtailed. *See* NRS § 534.110(6). Nothing in Order 1309 alters this basic fact of prior appropriation.

The Center believes it is outside the scope of these proceedings specify who would and would not be allowed to pump under Order 1309's 8,000 acre-foot cap.

The issues on appeal are the scope of the State Engineer’s statutory authority and alleged due process violations. But with respect to any future water-rights conflicts within the LWRFS, a stay that reinstates Order 1309 would not—and could not—allow junior users to prevail over senior users.

Furthermore, a stay would achieve the object of the appeal—to protect senior water rights and the environment. In fact, a stay is critical to protecting rights because the District Court’s Order vacating Order 1309 prevents the State Engineer from addressing impacts to senior rights that manifest across the boundaries of particular hydrographic basins. The District Court held that the basin boundaries established by the State Engineer in 1968 are “immutable” administrative units, and that “the principles of prior appropriation are applied to water uses *within* each basin.” Center’s Emergency Motion for Stay, Exh. 1, at 25-26. Consequently, the Order leaves the State Engineer without recourse to address conflicts between senior users in one basin and junior users in another basin.

A stay is therefore needed to ensure that the principles of prior appropriation continue to function in the LWRFS, where it has been definitively shown that impacts to senior rights occur across basin boundaries. To illustrate: during the Order 1169 pumping test, pumping from wells in Coyote Springs Valley impacted groundwater levels and springflows across a seven-basin, 11,000 square-mile area. Center’s Emergency Motion for Stay, Exh. 2, at SE ROA 7. If future pumping from Coyote Springs Valley were to similarly impact senior water rights in the Muddy River Springs Area, the State Engineer would be powerless to protect the senior

users under the District Court's holding that prior appropriation principles apply only within individual basins.

A stay would also protect the environment because it would prevent any overall increase in pumping and thus prevent further significant declines in springflows, which currently sit near the State Engineer's 3.2 cubic-foot-per-second threshold and, based on the aquifer test results, could decline significantly with any additional groundwater pumping. *See id.* at SE ROA 46, 64; Georgia-Pacific's Opp., Exh. 1 at 6.

For all of these reasons, as well as those discussed in the Center's Reply to Coyote Springs Investment, LLC, Georgia-Pacific Gypsum, LLC, Republic Environmental Technologies, Inc., Lincoln County Water District, Vidler Water Company, Nevada Cogeneration Associates Nos. 1 and 2, Apex Holding Company, LLC, Dry Lake Water, LLC, this Court should grant a stay of the District Court's decision.

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 13th day of June, 2022.

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Center for Biological Diversity, and that on this 13th day of June, 2022 I served a true and correct copy of the foregoing by electronic service to the participants in this case who are registered with the Nevada Supreme Court's efilings system to this matter.

/s/ Scott Lake
Scott Lake