

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM SULLIVAN, P.E., NEVADA
STATE ENGINEER, et al.

Appellants,

vs.

LINCOLN COUNTY WATER
DISTRICT, et al.

Respondents.

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Elizabeth A. Brown
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**SOUTHERN NEVADA WATER AUTHORITY’S REPLY TO APEX
HOLDING COMPANY, LLC AND DRY LAKE WATER, LLC’S
RESPONSE TO ITS EMERGENCY MOTION FOR STAY**

Appellant, SOUTHERN NEVADA WATER AUTHORITY (“SNWA”) hereby files this Reply to Apex Holding Company, LLC and Dry Lake Water, LLC’s (“Apex”) Response to its Emergency Motion for Stay Under NRAP 27(e) of the district court's Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review (“District Court’s Order” or “Order Vacating Order 1309”) based on the following memorandum of points and authorities, and all papers on file in this case.¹

¹ SNWA incorporates the arguments made in its Replies to the Responses to its Motion for Stay filed by Coyote Springs Investments, LLC; Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc.; Nevada Cogeneration Associates Nos. 1 and 2; Lincoln County Water District and Vidler Water Company, Inc.; and the Church of Jesus Christ of Latter-Day Saints.

MEMORANDUM OF POINTS AND AUTHORITIES

A stay of the Order Vacating Order 1309 will ensure that senior water right holders and the Moapa dace are not irreparably harmed during the pendency of SNWA's appeal. By maintaining the status quo, this Court will allow the State Engineer to use the 8,000 acre-foot annum ("afa") pumping cap, established in Order 1309, to protect senior water right holders and the endangered Moapa dace in the Lower White River Flow System ("LWRFS"). The threat of irreparable harm is imminent. Coyote Springs Investments, LLC ("CSI") has made clear that during the pendency of this appeal, it intends to use an additional 536 afa of groundwater to support new residential development. To prevent this unsustainable development, and protect senior water right holders and the Moapa dace, this Court should stay the District Court's Order.

I. A Stay Will Maintain The Status Quo In The LWRFS.

A stay of the District Court's Order will maintain the status quo in the LWRFS. Curiously, Apex argues that a stay would disturb the status quo because Order 1309 upended the status quo water rights holders had been operating under for decades.² This is false. The status quo before the District Court's Order is a pumping regime with a limit of 8,000 afa as established in Order 1309.³

² Apex's Response to SNWA's Mot. for Stay at 3.

³ Appendix for SNWA's Motion for Stay ("APP MFS") at 34, 55, 59, 61, and 63 (Order 1309 at 34, 55, 59, 61, and 63).

II. The Object Of The Appeal Will Be Defeated If This Court Denies SNWA's Motion For Stay.

The object of the appeal, the protection of senior water rights and the Moapa dace, will be defeated if this Court denies SNWA's Motion for Stay. Apex argues that the object of the appeal will not be defeated if this Court denies SNWA's Motion for Stay because the State Engineer does not know how he would manage the LWRFS.⁴ This argument fails. While the State Engineer intends to have further administrative hearings to address management issues in the LWRFS, those hearings will focus on how the 8,000 afa pumping cap will be divided among stakeholders. The 8,000 afa cap was in place to protect senior water rights and the Moapa dace. Regardless of any unanswered questions regarding future management, Order 1309 must remain in place during the SNWA's appeal so the State Engineer can continue to protect senior water rights and the Moapa dace.

III. SNWA, Not The Respondents, Will Suffer Irreparable Harm If This Court Denies SNWA's Motion For Stay.

SNWA, as a senior water right holder and the main stakeholder in the preservation of the Moapa dace, will suffer irreparable harm if this Court does not issue a stay of the District Court's Order. Apex argues that SNWA will not suffer irreparable harm due to pumping has occurred for decades in the LWRFS and a few

⁴ Apex's Resp. to SNWA's Mot. for Stay at 4.

more years of pumping will not cause irreparable harm.⁵ Apex ignores the State Engineer’s finding in Order 1309 that groundwater pumping in excess of 8,000 afa “will cause conditions that harm the Moapa dace and threaten to conflict with Muddy River decreed rights.”⁶ Apex appears to have the faulty assumption that groundwater pumping in the LWRFS will remain at 8,000 afa without the 8,000 afa pumping cap. This assumption is especially naïve because CSI has admitted it intends to use an additional 536 afa of groundwater during the SNWA’s appeal of the District Court’s Order.⁷ CSI has also attempted, before the District Court’s Order was enforceable, to have its subdivision maps approved by the State Engineer to proceed with its residential development supported by increased groundwater pumping.⁸ Therefore, SNWA faces an imminent threat of harm by increased groundwater pumping in the LWRFS that can only be prevented by a stay of the District Court’s Order.

Apex also argues that entering a stay will eliminate the water rights of many parties. No party will lose their water right as Apex claims. A stay will maintain groundwater pumping at its current level of 8,000 afa. Furthermore, any party who is unable to pump groundwater because of the 8,000 afa pumping cap has not lost

⁵ Apex’s Resp. to SNWA’s Mot. for Stay at 5.

⁶ APP MFS at 63 (Order 1309 at 63).

⁷ APP MFS at 144 (Transcript from District Court Hearing on SNWA’s Motion for Stay at 41:4-12).

⁸ APP MFS at 95-95 (CSI Opposition to Motion for Stay at 8:28-9:2).

their water right because no water right holder has a right to use water to the detriment of senior water rights holders.⁹ Therefore, as junior water right holders, Apex and any other respondents will not suffer irreparable harm if this Court grants SNWA's Motion for Stay.

IV. SNWA Did Not Settle Its Petition With The State Engineer.

Apex makes the confusing argument that SNWA has not demonstrated it will likely prevail on the merits of its underlying appeal by claiming that SNWA settled its petition for judicial review with the State Engineer in the district court. Apex's claim is false. SNWA did not settle its petition with the State Engineer. SNWA, and several other parties, entered into a preliminary agreement to settle its petition with the State Engineer near the conclusion of oral arguments in the district court. Unfortunately, they were unable to finalize the agreement. Furthermore, if SNWA had reached a settlement with the State Engineer, the district court would not have issued a ruling in which it partially granted and partially denied SNWA's petition.¹⁰ Apex's mischaracterization of the procedural history of this case should be ignored by this Court.

⁹ See NRS 533.085, NRS 534.110(5), NRS 533.430(1) (“[e]very permit to appropriate water, and every certificate of appropriation granted under any permit by the State Engineer upon any stream or stream system under the provisions of NRS 533.087 to 533.235, inclusive, shall be, and the same is hereby declared to be, *subject to existing rights* . . .”) (emphasis added).

¹⁰ APP MFS at 229-234 (Addendum and Clarification to Court's Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review).

V. A Stay Of The District Court's Order Is Appropriate.

Apex makes the curious argument that this Court should not grant SNWA's Motion for Stay because it requires this Court "to endorse the State Engineer's 8,000 [afa] pumping maximum on an emergency basis, with limited information and limited briefing."¹¹ Apex misunderstands the nature of a stay of the District Court's Order. This Court would not necessarily be endorsing the 8,000 afa pumping cap by issuing a stay but rather maintain the status quo to ensure that SNWA and other senior water right holders are not irreparably harmed during this appeal. Given the complex nature of the legal questions involved, it makes sense for this Court to allow the 8,000 afa cap to remain in place when there is a good chance this Court could reinstate the cap. Therefore, a stay would be a prudent and appropriate measure by this Court to protect senior water right holders and the Moapa dace during this appeal.

VI. Conclusion

For the aforementioned reasons, this Court should grant SNWA's Motion for Stay of the Order Vacating Order 1309.

¹¹ Apex's Resp. to SNWA's Mot. for Stay at 6.

AFFIRMATION

The undersigned hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully submitted this 15th day of June 2022.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b), I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this day, I served, or caused to be served, a true and correct copy of this Motion by electronic service to:

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DATED this 15th day of June 2022.

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APPENDIX INDEX

<u>Exhibit</u>	<u>Description</u>	<u>Bate Stamp</u>
1.	Order 1309	APP MFS 1-68
2.	Interim Order 1303	APP MFS 69-87
3.	CSI's Opposition to LVVWD & SNWA's Motion for Stay Pending Appeal	APP MFS 68-103
4.	Transcript of Hearing regarding LVVWD & SNWA's Motion for Stay Pending Appeal	APP MFS 104-188
5.	Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review	APP MFS 189-228
6.	Addendum and Clarification to Court's Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review	APP MFS 229-234
7.	Court Minutes from May 16 th , 2022	APP MFS 235-236
8.	SNWA & LVVWD Assessment of the Moapa Dace and other Groundwater-Dependent Special Status Species in the Lower White River Flow System	APP MFS 237-239
9.	APP MFS 240-314 Intentionally Omitted	APP MFS 240-314
10.	Amended Notice of Hearing August 26 th , 2019	APP MFS 315-332
11.	Prehearing Conference on August 8 th , 2019	APP MFS 333-366
12.	CSI's Stipulation to SNWA's Intervention	APP MFS 367-383
13.	SNWA's Motion to Intervene	APP MFS 384-401