

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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**SOUTHERN NEVADA WATER AUTHORITY’S REPLY TO GEORGIA-
PACIFIC GYPSUM, LLC AND REPUBLIC ENVIRONMENTAL
TECHNOLOGIES, INC.’S OPPOSITION TO ITS MOTION FOR STAY**

Appellant, SOUTHERN NEVADA WATER AUTHORITY (“SNWA”) by and through its counsel of record, hereby files this Reply to Georgia-Pacific Gypsum LLC and Republic Environmental Technologies, Inc.’s (“GP-R”) Response to SNWA’s 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”). This Reply is based on the following points and authorities, and all pleadings and papers on file in this case.

MEMORANDUM OF POINTS AND AUTHORITIES¹

I. Introduction

GP-R claim that SNWA's motion for stay should be denied for three reasons: (1) the motion does not satisfy NRAP 8(c); (2) SNWA presented a discussion of the merits in its Motion for Stay; and (3) SNWA is not an aggrieved party. This Court should reject GP-R's arguments and rule in favor of the stay request because (1) SNWA fully satisfied all elements of NRAP 8(c), and GP-R made no showing that any element under NRAP 8(c) does not weigh in favor of granting the stay; (2) a discussion of merits is the fourth element under NRAP 8(c), to which SNWA strictly complied, and GP-R made no showing that SNWA will not likely prevail on the merits; and (3) SNWA is an interested party, both as a petitioner and intervenor in the district court case below, and as an owner of water rights harmed by the Order Vacating Order 1309.

II. The Factors Under NRAP 8(C) Support Issuance Of A Stay.

A. The Object of the appeal will be defeated.

GP-R argues that the object of the appeal will not be defeated because the State Engineer has other tools to protect senior rights and the public interest.

¹ SNWA incorporates the arguments made in its Replies to the Responses to its Motion for Stay filed by Coyote Springs Investments, LLC; Apex Holding Company, LLC and Dry Lake Water, LLC's; 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.

However, GP-R does not explain what these tools are or how the State Engineer could explore those options while Order 1309 is vacated. The Order Vacting Order 1309 causes great uncertainty to the State Engineer’s authority to protect senior surface water rights from groundwater pumping (known as conjunctive management), and prevents the State Engineer from establishing a perennial yield for the aquifer.

The first step in protecting senior water rights from junior groundwater pumpers is to determine the perennial yield of the groundwater aquifer. The State Engineer is tasked with determining the perennial yield of a groundwater aquifer “in part to protect [river] water quality and native fish habitats.”² The State Engineer deterimined the perennial yield of the LWRFS to be 8,000 afa in Order 1309. Without this determination, the State Engineer is missing the key element necessary to protect senior water rights and the Moapa dace. GP-R argues that the State Engineer could instead designate the LWRFS as a critical management area, but such a determination cannot occur without a finding that groundwater withdrawals exceed the perennial yield – the very issue that is the subject of Order 1309. Nor does GP-R explain how existing rights or the environment will be protected without Order 1309 in place. The fact remains uncontested, without the findings in Order

² *Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. 521, 527, 245 P.3d 1145, 1149 (2010).

1309, there is nothing else currently or in the immediate future that will limit pumping. Without a stay, existing rights and the environment are in danger from unsustainable ground water pumping.

B. SNWA will be irreparably harmed without a Stay and GP-R will not be harmed.

GP-R argues on one hand that without a stay SNWA will not be harmed because there is no evidence that any party will pump its unused water, then immediately argues that if a stay is issued they will be harmed because they cannot increase their pumping. GP-R cannot have it both ways – either they intend to add to existing pumping, and thus harm SNWA’s senior water rights, or they will not pump and suffer no harm by a stay being issued. Also, GP-R is not the only pumper limited by Order 1309, and other parties such as CSI have admitted on the record that they are seeking to add to their pumping demands.³ Thus, a real and immediate threat of new pumping exists, as admitted to by opposing parties. Any new pumping stresses will result in capture of Muddy River water and further harm SNWA’s real property interests.

GP-R also misstates the record when it states “the 8,000 afa number could be higher.”⁴ Order 1309 is clear that the sustainable yield in the LWRFS is 8,000

³ Appendix for SNWA’s Motion for Stay (“APP MFS”)SNW at 144 (Transcript from District Court Hearing on SNWA’s Motion for Stay at 41:4-12).

⁴ GP-R Resp. to SNWA’s Mot. for Stay at 4.

afa or less. The fact is that pumping more than 8,000 afa already occurred through a pump test, which caused an immediate decline in the aquifer and capture of Muddy River flows.⁵ The Muddy River is fully appropriated, and SNWA was deprived of its full beneficial use of water. Since the groundwater pumping was reduced to about 8,000 afa, groundwater levels appear to be stabilizing, and in some areas are allegedly recovering. Unquestionably, pumping at or above the 8,000 afa limit has already harmed existing rights, and any additional pumping will cause even more irreparable injury. GP-R also mischaracterizes SNWA's position in this case. Order 1309 is a vital first step in protection of senior water rights. SNWA's due process arguments are completely unrelated to the due process arguments of GP-R. GP-R was given notice and a full and fair opportunity to be heard on all issues; SNWA only argued that two pages in Order 1309 exceeded the scope of the hearing and deprived it of notice and an opportunity to be heard on that issue.

C. SNWA will likely prevail on the merits

GP-R does not argue that SNWA will not prevail on the merits, only that SNWA should not have argued the merits in its Motion for Stay.⁶ This argument is nonsensical as GP-R admits that one of the elements of a motion for stay is to show a likelihood of success on the merits. GP-R had made no argument that SNWA

⁵ APP MFS at 5, 55 (Order 1309 at 5, 55).

⁶ GP-R Resp. to SNWA's Mot. for Stay at 9.

failed in this factor, and instead argues that SNWA spent too many pages on this element and should not have argued it at all. SNWA's has presented that it has "substantial case on the merits" as required under this element.⁷

III. SNWA Is An Aggrieved Party

GP-R then argues that SNWA lacks standing. However, SNWA is both a petitioner under its own case – which was only granted in part with the remainder rejected⁸ – and an intervening party in all other petitions. In both its intervention and in its petition for judicial review, SNWA supported the main conclusions of Order 1309. SNWA did not settle with the State Engineer on its limited opposition to Order 1309, but even if it had, SNWA retained standing as an intervening party in the other petitions. Thus, in having its petition denied and in having the petitions of others granted to which SNWA was an opposing party, SNWA has standing.

IV. Conclusion

SNWA respectfully requests this Court should grant its Motion for Stay of the Order Vacating Order 1309.

⁷ *Hansen v. Eighth Jud. District Ct.*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2002).

⁸ On May 13, 2022, the district court issued an *Addendum and Clarification to the Court's Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review Filed on April 19, 2022*. In the Addendum the district court specifically addressed SNWA's petition and granted the petition with respect to SNWA's due process claims and denied the rest of the petition.

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