

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.

Electronically Filed
Jun 15 2022 07:42 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**SOUTHERN NEVADA WATER AUTHORITY’S REPLY TO LINCOLN
VIDLER’S RESPONSE TO ITS EMERGENCY MOTION FOR STAY**

Appellant, SOUTHERN NEVADA WATER AUTHORITY (“SNWA”) hereby files this Reply to Lincoln County Water District and Vidler Water Company, Inc.’s (“Lincoln Vidler”) 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 pleadings and papers on file in case.

MEMORANDUM OF POINTS AND AUTHORITIES¹

A stay of the district court's Order will maintain the 8,000 acre-feet annum ("afa") pumping cap established in Order 1309 which will protect senior water rights and the Moapa dace in the Lower White River Flow System ("LWRFS"). Without a stay of the district court's Order SNWA will face irreparable harm its senior water rights and the habitat of the endangered Moapa dace will be threatened. Lincoln Vidler will not face irreparable harm if this Court stays the District Court's Order because Lincoln Vidler cannot use its water right to the detriment of senior water right holders. This Court should maintain the status quo by staying the District Court's Order and allowing the State Engineer to use the 8,000 afa pumping cap to protect senior water rights and the Moapa dace.

I. The District Court's Order Creates Significant Uncertainty Regarding The State Engineer's Existing Authority To Protect Senior Water Rights.

The District Court's Order calls into question the State Engineer's authority to jointly administer groundwater basins and conjunctively manage groundwater and surface water. Without the authority of joint administration and conjunctive management the State Engineer cannot effectively protect senior water rights.

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.; Apex Holding Company, LLC and Dry Lake Water, LLC's; and the Church of Jesus Christ of Latter-Day Saints.

Lincoln Vidler argues that SNWA failed to show that senior water rights and the Moapa dace cannot be protected by other tools that exist in Nevada law.² Lincoln Vidler ignores how the State Engineer's existing powers are impacted by the District Court's Order. The district court held that the State Engineer is not authorized "to combine basins for joint administration" or "to conjunctively manage . . . both groundwater and surface flows he believes are occurring in the LWRFS."³ Put simply, the district court does not believe the State Engineer has the statutory authority to consider the impacts of groundwater pumping in one basin on another basin or impacts of groundwater development on surface water resources. This holding greatly limits the State Engineer's ability to protect senior water rights. For example, Lincoln Vidler argues that the State Engineer could use his power to curtail groundwater pumping to protect senior water rights instead of relying on Order 1309.⁴ This argument fails because under the District Court's Order it is unclear to what extent the State Engineer can consider the impact of groundwater pumping on other basins or surface water. Therefore, the State Engineer's existing tools are insufficient to protect senior water rights because of the legal uncertainty created by the District Court's Order.

² Lincoln Vidler's Resp. to SNWA's Mot. for Stay at 3.

³ Appendix for SNWA's Motion for Stay ("APP MFS") at 215-16 (Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review at 27-28).

⁴ Lincoln Vidler's Resp. to SNWA's Mot. for Stay at 4.

In a related issue, Lincoln Vidler argues that the State Engineer will be able to use his existing tools to protect senior water rights without conflicting with this Court’s jurisdiction over Order 1309.⁵ This argument fails. Under Nevada law an administrative agency cannot interfere with a Court’s jurisdiction over the subject matter of an appeal.⁶ Lincoln Vidler fails to explain how the State Engineer can take actions to protect senior water rights without conflicting with this Court’s jurisdiction. Any action the State Engineer would take using his existing tools to protect senior water rights would necessarily involve joint administration and conjunctive management because of the hydrological connectivity in the LWRFS.⁷ Therefore, the State Engineer cannot use his existing statutory tools to protect senior water rights without conflicting with this Court’s jurisdiction over SNWA’s appeal.

II. SNWA Will Suffer Irreparable Harm If A Stay Is Denied.

SNWA, as a senior water right holder, will suffer irreparable harm if this Court does not issue a stay of the District Court’s Order. Lincoln Vidler argues that SNWA provided no evidence that its surface rights will be reduced if Order 1309 is

⁵ Lincoln Vidler’s Resp. to SNWA’s Mot. for Stay at 5.

⁶ *Westside Charter Service, Inc. v. Grey Line Tours of Southern Nevada*, 99 Nev. 456, 459 664 P.2d 351, 353 (1983)(“The Court’s jurisdiction over the subject matter of an appeal must be complete and not subject to [interference] . . . by concurrent action by the administrative body.”).

⁷ APP MFS at 54 (Order 1309 at 54) (In Order 1309 the State Engineer found that the LWRFS shares “both a unique and close hydrologic connection and virtually all the same source and supply of water, and therefore will benefit from joint and conjunctive management.”).

not stayed.⁸ Lincoln Vidler ignores the State Engineer's finding in Order 1309 that groundwater pumping that exceeds 8,000 afa in the LWRFS will threaten senior water right holders.⁹ The district court found no error with this conclusion. Furthermore, the threat of groundwater pumping above 8,000 afa is not speculative. Coyote Springs Investments, LLC has admitted that it plans to pump an additional 536 afa of groundwater pumping during the pendency of SNWA's appeal.¹⁰ Therefore, SNWA faces the imminent threat that its surface water rights will be reduced if this Court does not issue a stay of the District Court's Order.

Lincoln Vidler also argues that recent evidence suggests there is no immediate threat of irreparable harm to senior water rights and the Moapa dace.¹¹ While this Court is not directly reviewing factual and scientific decisions made by the State Engineer, when considering any factual or scientific issue as it relates to the Motion for Stay this Court should defer to the expertise of the State Engineer.¹² The State Engineer received numerous expert reports and relied on almost a decade's of water

⁸ Lincoln Vidler's Resp. to SNWA's Mot. for Stay at 6.

⁹ APP MFS at 63 (Order 1309 at 63).

¹⁰ APP MFS at 144 (Transcript from District Court Hearing on SNWA's Motion for Stay at 41:4-12).

¹¹ Lincoln Vidler's Resp. to SNWA's Mot. for Stay at 6-7.

¹² *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979) (When reviewing a decision or order of the State Engineer, the court may not "pass upon the credibility of the witness nor reweigh the evidence."). The Legislature has specified that "[t]he decision of the State Engineer shall be prima facie correct, and the burden of proof shall be upon the party attacking the same." NRS 533.450(10); *see also Revert*, 95 Nev. at 786, 603 P.2d at 264.

level data to support his finding that groundwater pumping in the LWRFS that exceeds 8,000 afa will impact senior water right holders and the Moapa dace. Regardless of any new evidence this Court should defer to the State Engineer's expertise in evaluating scientific evidence regarding the threat of irreparable harm to senior water rights and the Moapa dace.

III. Respondents Have No Right To Use Their Water Right To The Detriment Of Senior Water Right Holders.

Respondents do not face irreparable harm by not being able to increase their groundwater pumping that will conflict with senior water right holders. Lincoln Vidler falsely claim they have suffered and will continue to suffer irreparable harm because the 8,000 afa cap prevents them from using their junior water rights.¹³ Lincoln Vidler has no right to use its water right if it conflicts with a senior water right.¹⁴ Therefore, Lincoln Vidler will not suffer irreparable harm if it is not permitted to use its water right if the District Court's Order is stayed.

IV. Conclusion

For the aforementioned reasons this Court should grant SNWA's Motion to Stay the District Court's Order.

¹³ Lincoln Vidler Resp. to SNWA's Mot. for Stay at 9.

¹⁴ 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).

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.

TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 – Telephone
(775) 883-9900 – Facsimile

By: /s/ Paul Taggart
PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
THOMAS P. DUENSING, ESQ.
Nevada State Bar No. 15213

STEVEN C. ANDERSON
Nevada State Bar No. 11901
SOUTHERN NEVADA WATER
AUTHORITY
1001 S. Valley View Blvd.
Las Vegas, NV 89153
Sc.anderson@lvvwd.com

Attorneys for SNWA

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:

OFFICE OF THE ATTORNEY GENERAL
JAMES N. BOLOTIN #13829
LAENA ST-JULES #15156C
100 North Carson Street
Carson City, Nevada 89701-4717
Email: jbolotin@ag.nv.gov
Email: lstjules@ag.nv.gov
Attorneys for Nevada State Engineer

ROBISON, SHARP, SULLIVAN & BRUST
KENT R. ROBISON #1167
71 Washington Street
Reno, Nevada 89593
Email: krobison@rssblaw.com
Email: tshanks@rssblaw.com

IN ASSOCIATION WITH:
BRADLEY J. HERREMA #10368
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106
Email: bherrema@bhfs.com

WILLIAM L. COULTHARD #3927
COULTHARD LAW
840 South Ranch Drive, #4-627
Las Vegas, Nevada 89106
Email: wlc@coulthardlaw.com

EMILIA K. CARGILL #6493
3100 State Route 168
P.O. Box 37010
Coyote Springs, Nevada 89037
Email: emilia.cargill@coyotesprings.com
Attorneys for Coyote Springs Investment, LLC

MARQUIS AURBACH COFFING
CHRISTIAN T. BALDUCCI #12688
10001 Park Run Drive
Las Vegas, Nevada 89145
Email: cbalducci@maclaw.com
Email: kwilde@maclaw.com
Attorneys for Apex Holding Company, LLC and Dry Lake Water, LLC

SCOTT LAKE
Center for Biological Diversity
P.O. Box 6205
Reno, Nevada 89513
(802) 299-7495
Email: slake@biologicaldiversity.org

IN ASSOCIATION WITH:

LISA T. BELENKY (Pro Hac Vice to be submitted)
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, California 94612
Email: lbelenky@biologicaldiversity.org
Attorneys for Center for Biological Diversity

DYER LAWRENCE, LLP
FRANCIS C. FLAHERTY
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896
Email: fflaherty@dyerlawrence.com
Attorneys for Nevada Cogeneration Associates Nos. 1 and 2

KAEMPFER CROWELL
SEVERIN A. CARLSON #9373
SIHOMARA L. GRAVES #13239
50 West Liberty Street, Suite 700
Reno, Nevada 89501
Email: scarlson@kcnvlaw.com
Email: sgraves@kcnvlaw.com
Attorneys for The Church of Jesus Christ of Latter-day Saints

DOTSON LAW
ROBERT A. DOTSON #5285
JUSTIN C. VANCE #11306
5355 Reno Corporate Drive, Suite 100
Reno, Nevada 89511
Email: rdotson@dotsonlaw.legal
Email: jvance@dotsonlaw.legal

IN ASSOCIATION WITH:
STEVEN D. KING #4304
227 River Road
Dayton, Nevada 9403
Email: kingmont@charter.net
Attorneys for Muddy Valley Irrigation Company

McDONALD CARANO LLP
SYLVIA HARRISON #4106
LUCAS FOLETTA #12154
SARAH FERGUSON #14515
100 W. Liberty Street, Suite 1000
Reno, Nevada 89501
Email: sharrison@mcdonaldcarano.com
Email: lfoletta@mcdonaldcarano.com
Email: sferguson@mcdonaldcarano.com
Attorneys for Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc.

PARSONS BEHLE & LATIMER
GREGORY H. MORRISON #12454
50 West Liberty Street, Suite 750
Reno, Nevada 89501
Email: gmorrison@parsonsbehle.com
Attorneys for Moapa Valley Water District

NEVADA ENERGY
JUSTINA A. CAVIGLIA #9999
MICHAEL D. KNOX #8143
6100 Neil Road
Reno, Nevada 89511
Email: justina.caviglia@nvenergy.com
Email: mknnox@nvenergy.com
Attorneys for Nevada Power Company dba NV Energy

SCHROEDER LAW OFFICES, P.C.
THERESE A. URE STIX #10255
LAURA A. SCHROEDER #3595
10615 Double R Blvd., Suite 100
Reno, Nevada 89521
Email: t.ure@water-law.com
Email: schroeder@water-law.com
Attorneys for City of North Las Vegas, Western Elite Environmental, Inc. and Bedroc Limited, LLC

LINCOLN COUNTY DISTRICT ATTORNEY
DYLAN V. FREHNER #9020
181 North Main Street, Suite 205
P.O. Box 60
Pioche, Nevada 89043
Email: dfrehner@lincolncountynv.gov

IN ASSOCIATION WITH:
WAYNE O. KLOMP #10109
SNELL & WILMER L.L.P.
50 West Liberty Street, Suite 510
Reno, Nevada 89501
Email: wklomp@swlaw.com
Attorneys for Lincoln County Water District

ALLISON MacKENZIE, LTD.
KAREN A. PETERSON #366
402 North Division Street
Carson City, Nevada 89703
Email: kpeterson@allisonmackenzie.com
Attorneys for Vidler Water Company, Inc.

DATED this 15th day of June, 2022.

/s/ Thomas P. Duensing
Employee of TAGGART & TAGGART, LTD.

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