

**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; SOUTHERN NEVADA  
WATER AUTHORITY; CENTER FOR  
BIOLOGICAL DIVERSITY; AND MUDDY  
VALLEY IRRIGATION CO.,

Appellants,

vs.

LINCOLN COUNTY WATER DISTRICT;  
VIDLER WATER 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.;  
SIERRA PACIFIC POWER COMPANY,  
D/B/A NV ENERGY; NEVADA POWER  
COMPANY, D/B/A/ NV ENERGY; THE  
CHURCH OF JESUS CHRIST OF LATTER-  
DAY SAINTS; MOAPA VALLEY WATER  
DISTRICT; WESTERN ELITE  
ENVIRONMENTAL, INC.; BEDROC LIMITED,  
LLC; CITY OF NORTH LAS VEGAS; AND  
LAS VEGAS WATER DISTRICT,

Respondents.

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District Court  
Case No.  
A816761

**REPLY OF LINCOLN COUNTY WATER DISTRICT AND VIDLER  
WATER COMPANY, INC. IN SUPPORT OF MOTION TO DISMISS  
THE APPEAL OF SNWA**

Respondents, LINCOLN COUNTY WATER DISTRICT (“Lincoln”) and VIDLER WATER COMPANY, INC. (“Vidler”), respectfully submit their reply in support of their motion seeking dismissal of the appeal filed by the Southern Nevada Water Authority (“SNWA”), designated Case No. 84741.

**MEMORANDUM OF POINTS AND AUTHORITIES**

SNWA’s appeal should be dismissed because it has not shown it is aggrieved by the district court’s Order Vacating Order 1309 (“Order”). SNWA’s arguments twisting the Court’s “aggrieved party” standards should be rejected by the Court.

**A. SNWA prevailed below on its petition for judicial review and is not aggrieved as a Respondent-Intervenor by the district court’s Order.**

The district court’s May 13, 2022 Addendum and Clarification Order specifically granted SNWA’s Petition for Judicial Review to the extent it sought relief for violating SNWA’s due process rights. SNWA APP MFS Vol. 2 at 230. Thus, SNWA is not aggrieved as a Petitioner because the district court granted SNWA relief. *Ford v. Showboat Operating Co.*, 110 Nev. 752, 756, 877 P.2d 546, 549 (1995).

SNWA argues it is aggrieved as a Respondent-Intervenor. SNWA does not identify how it is aggrieved by the district court’s Order leaving SNWA in the same position as it was before Order 1309 was issued and which did not order SNWA to do or refrain from doing anything. Instead, SNWA argues it is aggrieved because its ownership of Muddy River water rights requires the State Engineer to manage

the LWRFS as one administrative unit with a pumping cap to purportedly protect SNWA's water rights and the district court's Order impairs the State Engineer's statutory authority to protect SNWA's senior decreed surface water rights and the Moapa dace. *See* SNWA Response at 1, 3, 8, 9. These arguments do not satisfy the aggrieved party standard the Court has articulated. Even if these arguments satisfied the aggrieved party standard to file an appeal, these arguments are without merit for two reasons.

First, the State Engineer is not the decree court with authority to enforce the Muddy River Decree, and neither is this Court. If SNWA's Muddy River decree rights are being impacted by groundwater pumping, it has remedies in the decree court to stop the particular groundwater pumping that is purportedly affecting its water rights. *See S. Fork Band of Te-Moak Tribe of W. Shoshone Indians of Nevada v. Sixth Jud. Dist. Ct. ex rel. Cnty. of Humboldt*, 116 Nev. 805, 810, 7 P.3d 455, 458 (2000) (Decree court has continuing jurisdiction over Decree matters); *U.S. v. Orr Water Ditch Co.*, 600 F.3d 1152, 1160 (9<sup>th</sup> Cir. 2010) (Decree protects decreed surface rights from diminution resulting from groundwater pumping). Second, NRS 533.0245 prohibits the State Engineer from carrying out his duties in a manner which conflicts with a decree, but that statute does not grant the State Engineer judicial authority to enforce a decree. This renders meritless any argument that the vacation of Order 1309 is a "burden" on SNWA's property (water) rights or that SNWA is

aggrieved because the district court's Order impairs the State Engineer's "existing" authority to protect SNWA's surface water rights and the Moapa dace.

This Court has not deviated from requiring an intervenor be aggrieved by a district court's order to file an appeal and invoke the Court's jurisdiction. *Las Vegas Police Protective Ass'n Metro, Inc. v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 122 Nev. 230, 239-240, 130 P.3d 182, 189-190 (2006). In the *Las Vegas Police Protective Ass'n* case, the Court determined the intervenor was aggrieved because the district court's order affected the intervenor's ability and legal right to defend its members against citizen review board subpoenas. Here, SNWA does not identify what legal rights it is not able to defend or are affected by the district court's Order or how the district court's Order affects its ability and legal right to protect its water rights by filing an action in the decree court. SNWA has not shown it has a legal right requiring the State Engineer to enter Order 1309 and manage the LWRFS as one administrative unit with a pumping cap.

The intervention stipulation in the lower court does not confer aggrieved party status to SNWA for purposes of an appeal. *See* SNWA Response at 6, n. 25, 26. As the Court had held, "the mere fact that a party could properly arouse the jurisdiction of the court below does not establish his right to appeal from an adverse decision." *Kenney v. Hickey*, 60 Nev. 187, 105 P.2d 192, 193 (1940).

SNWA contends its ownership of the Warm Springs Natural Area, its stewardship of the Moapa dace, its senior decreed surface water rights, and its interest in avoiding a water crisis in southern Nevada represent property rights and other interests adversely and substantially affected by the vacation of Order 1309. SNWA Response at 2. SNWA argues it has a cognizable legal interest in assuring its member, the Las Vegas Valley Water District (“LVVWD”), is not required to serve a residential development if no sustainable water rights exist for the project or if pumping groundwater for the development would violate the Endangered Species Act by harming the Moapa dace. SNWA Response at 2. The district court’s Order does not order SNWA to do or not do anything with regard to the Warm Springs Natural Area, SNWA’s stewardship of the Moapa dace, SNWA’s senior decreed surface water rights, or SNWA’s interest in avoiding a water crisis in southern Nevada—if general stewardship of the Moapa dace or a general interest in avoiding a water crisis are legally protectable personal or property rights. The district court’s Order does not order LVVWD to serve a land development in the LWRFS. Any claim that LVVWD will be required to serve a project in the future is speculative and insufficient to confer jurisdiction on this Court over SNWA’s appeal. In sum, the district court’s Order does not deny or affect SNWA’s personal or property rights, does not impose any injustice, or illegal obligation or burden on SNWA nor deny it some equitable or legal right – which are required for a party to be

aggrieved by a district court order. Thus, the Court has no jurisdiction over SNWA's appeal, and SNWA's appeal must be dismissed.

**B. SNWA's authority cited in its Response is inapposite.**

SNWA cites to three cases on page 6 of its Response in which it argues parties are routinely recognized to have standing to defend an order or decision of the State Engineer before the Court. The three cases cited by SNWA are not factually or legally similar to this case. In the *Great Basin Water Network* and *In re 63805* cases, the parties such as SNWA defending the State Engineer's decision were not appellants and thus, were not required to show they were aggrieved in order to participate in the appeal as a respondent. In the *Diamond Valley Natural Resources Protection* case, the appellants owning water rights were aggrieved by the district court's order because it vacated an order of the State Engineer approving a groundwater management plan which applied to the appellants' junior groundwater rights and the plan's adoption avoided curtailment of their rights. Unlike the *Great Basin Water Network* and *In re 63805* cases, SNWA is an appellant and must show it is aggrieved by the district court's Order. Unlike the *Diamond Valley Natural Resources Protection* case, SNWA cannot show how any personal or property right is adversely and substantially affected by the district court's ruling. *See Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994).

Lincoln and Vidler respectfully request this Court dismiss SNWA's appeal.

Respectfully submitted this 20<sup>th</sup> day of July, 2022.

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**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(1)(c), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

✓ Court's electronic notification system

~ and ~

✓ Via E-Mail as follows:

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DATED this 20<sup>th</sup> day of July, 2022.

*/s/ Nancy Fontenot*  
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NANCY FONTENOT