

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
Clerk of Supreme Court

APPELLANT SOUTHERN NEVADA WATER AUTHORITY'S
MOTION FOR LEAVE TO FILE SURREPLY

Appellant, SOUTHERN NEVADA WATER AUTHORITY (“SNWA”) by and through its counsel of record, hereby files this Motion for Leave to File a Surreply to Respondents’ Response to the State Engineer’s Supplement to its Partial Joinder to SNWA’s Motion for Stay of the District Court’s Order Granting Petitions for Judicial Review and Vacating State Engineer Order 1309 (“Response”).

This motion is made and based on the following Memorandum of Points and Authorities, all papers and pleadings on file in this action, and any oral argument this Court may choose to entertain. SNWA has attached its proposed surreply as Exhibit 1 to this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

In their Response, the Respondents brought up two issues that SNWA should be permitted to address in a surreply which help the court better evaluate SNWA's underlying motion to stay. Courts recognize that a party may file a surreply "in appropriate circumstances, especially when new submissions and/or arguments are included in a reply brief."¹ This Court "may grant leave to file a surreply if it responds to new evidence, facts, or arguments."² This Court recognized that a party should seek permission to file a surreply through a properly filed motion.³ Motions to file surreplies are likely to be granted when the surreply will assist this Court in evaluating the underlying motion.⁴

First, the Respondents introduced the latest subdivision map submitted by Coyote Springs Investment, LLC ("CSI") to argue that CSI's request to use an additional groundwater in the Lower White River Flow System ("LWRFS") is modest in nature.⁵ Recent factual developments related to CSI's subdivision maps

¹ *Key v. Shelby County*, 551 Fed.Appx. 262, 265 (6th Cir. 2014) (Court denied Motion for Leave to file Surreply because non-moving party did not present new evidence or arguments in its reply brief) (internal quotations omitted).

² *Novartis AG v. Actavis, Inc.*, 243 F. Supp. 3d 534, 540 (D.Del. 2017) (Court allowed plaintiff to file surreply to argument first raised in defendant's reply brief).

³ *In re Estate of Klein*, 127 Nev. 1146, n. 1 (2011) (Court granted motion to strike surreply because moving party did not seek leave from the Court to strike surreply).

⁴ *Visa Int'l Serv. Ass'n v. JSL Corp.*, 533 F. Supp. 2d 1089, 1099 (D. Nev. 2007).

⁵ Resp'ts Resp. at 5, Ex. 4.

refute this claim, and possible related litigation further demonstrate the necessity of a stay of the district court's order vacating State Engineer Order 1309.

Second, in their Response, the Respondents argued that Nevada Energy's pending change applications in Garnet Valley demonstrate that Georgia Pacific and Republic will face irreparable harm if the Court grants SNWA's motion for stay.⁶ The issue of irreparable harm was not addressed in the State Engineer's Response to its joinder and the Garnet Valley applications were not mentioned in previous briefing on SNWA's motion for stay.⁷

As the moving party in the underlying motion for stay, SNWA requests the opportunity to respond to these new factual claims and arguments, as a response will assist this Court and ensure that the matter has been fully briefed.⁸

CONCLUSION

A surreply is warranted to assist and fully brief this Court on the new factual allegations and arguments first raised in the Response. SNWA respectfully requests that this Court grant its motion for leave and file the attached surreply.

⁶ Resp'ts Resp. to State Engineer's Suppl. to Joinder at 9.

⁷ See State Engineer's Suppl. to Partial Joinder.

⁸ Key, 551 Fed.Appx. at 265, *Visa Int'l Serv. Ass'n*, 533 F. Supp. 2d at 1099.

AFFIRMATION

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

Respectfully submitted this 27th day of September 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 document by electronic service to:

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DATED this 27th day of September 2022.

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EXHIBIT INDEX

Exhibit	Document	Pages
1.	Proposed Surreply to Respondents' Reply to State Engineer's Supplement to Partial Joinder	60