

Exhibit 1

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Sep 27 2022 07:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Exhibit 1

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.

APPELLANT SOUTHERN NEVADA WATER AUTHORITY’S SURREPLY

Appellant, SOUTHERN NEVADA WATER AUTHORITY (“SNWA”) by and through its counsel of record, files this Surreply (“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 Surreply is 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 entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

I. CSI Subdivision Maps

A. Recent Actions

After the entry of the district court's order vacating Order 1309, Coyote Springs Investment, LLC ("CSI") requested approval from the Las Vegas Valley Water District ("LVVWD"), as manager of the Coyote Springs Groundwater Improvement District ("GID"), of two of its subdivision maps so CSI could resume development of its Coyote Springs Project.¹ The first map is a Large Lot Final Map, consisting of 8 lots over 643.24 acres.² The second map is a 575-Unit Subdivision Map.³ In their Response, the Respondents represented that the new 575-Unit Subdivision requires 425 acre-feet annum ("afa") of groundwater.⁴ CSI admitted in its opposition to the motion for stay that the two maps are only the initial phase of a much larger planned development.⁵

¹ Ex. 1 (CSI Demand Letter) at 3-4. Note, CSI provided this Court with only one of the two maps it has submitted since the district court order, being the Large Lot Map. CSI did not provide the 575-Unit Subdivision map.

² Resp'ts Resp. at Ex. 4. The Large Lot Map was previously discussed in SNWA's motion for stay, which CSI claimed would require 536 afa of new water commitment. SNWA Emergency Motion for Stay at 2, 4, 9, 11. *See also* Appendix in Support of Motion for Stay ("APP MFS") Vol. 2 at 146:4 ("The first phase would only be 560 – 536 acre-feet").

³ Ex. 1 (CSI Demand Letter) at 4. Note Exhibit 4 is not the 575-Unit Subdivision Map as CSI stated.

⁴ Resp'ts Resp. at 5.

⁵ *Id.*, *see also* CSI Opp'n to SNWA Mot. for Stay at Ex. 3.

On August 15, 2022, after receiving a request from CSI to approve the Large Lot Final Map, LVVWD provided a letter to the Clark County Public Works' Mapping Team ("County").⁶ LVVWD informed the County that it could not confirm the availability of water resources to support approval of the subdivision map. LVVWD based this finding on two main factors: (1) existing groundwater permits exceed the available supply determined in Order 1309; and (2) pumping additional water in Coyote Spring Valley will conflict with senior water rights and harm the Moapa dace.⁷ On August 22, 2022, LVVWD sent a similar letter to the County in response to CSI's request to approve the tentative map for the 575-Unit Subdivision in Coyote Spring Valley.⁸

On August 26, 2022, CSI sent LVVWD a demand letter ("Demand Letter").⁹ In the Demand Letter, CSI claimed that LVVWD's reliance on Order 1309 is improper because the district court voided Order 1309.¹⁰ CSI gave LVVWD ten (10) days to endorse CSI's subdivision maps or else CSI would "consider all legal avenues to protect its rights and attempt to mitigate the damages occasioned by LVVWD's continuing wrongful actions."¹¹

⁶ Ex. 2 (LVVWD August 15, 2022, Letter).

⁷ Ex. 2 (LVVWD August 15, 2022, Letter).

⁸ Ex. 3 (LVVWD August 22, 2022, Letter).

⁹ Ex. 1 (CSI Demand Letter) at 3-4.

¹⁰ Ex. 1 (CSI Demand Letter) at 4-5. CSI ignored the fact that a temporary stay of the district court's order is currently in place.

¹¹ Ex. 1 (CSI Demand Letter) at 6.

On September 6, 2022, LVVWD responded to CSI's Demand Letter ("Response Letter").¹² In the Response Letter, LVVWD pointed out that this Court issued a stay of the district court's vacation of Order 1309, and its continued reliance on the factual determinations of Order 1309 is appropriate.¹³ LVVWD also pointed out that it would be imprudent to allow a development project to proceed supported by an uncertain supply of water.¹⁴

CSI has not formally communicated with LVVWD regarding the Demand Letter since the Response Letter. However, CSI threatened litigation to force approval of its subdivision maps.¹⁵ CSI has already named the GID as a defendant in a lawsuit between CSI and the State Engineer regarding takings claims related to the State's refusal to approve CSI's subdivision maps.¹⁶ LVVWD employees have also been subpoenaed for depositions and to produce documents in that case. Without the protection of Order 1309, LVVWD may be forced to authorize unsustainable development of 583 homes.

B. Significance of CSI's Demand Letter to this litigation

The recent demands by CSI demonstrate the significant uncertainty the district court created by vacating Order 1309 and why a stay of the district court's order is

¹² Ex. 4 (LVVWD Response Letter) at 1-3.

¹³ Ex. 4 (LVVWD Response Letter) at 2.

¹⁴ Ex. 4 (LVVWD Response Letter) at 2.

¹⁵ Ex. 1 (CSI Demand Letter) at 1.

¹⁶ Ex. 5 (CSI's Second Amended Complaint) at 1.

necessary to maintain the status quo. Without a stay, LVVWD and the State Engineer may be forced, through litigation, to approve subdivision maps for a development that they know is unsustainable. Forcing entities like LVVWD and the State Engineer to make water management decisions in opposition of the science is imprudent and could have long term consequences for groundwater availability in southern Nevada.

Furthermore, judicial economy is not served by litigating, while this appeal is pending, the question of whether LVVWD properly responded to CSI's request to approve subdivision maps. Instead, this Court should maintain the status quo while it reviews the appeals of the district court's order. Then, after this Court issues a ruling, parties can pursue litigation, if appropriate, regarding the approval of subdivision maps. Maintaining the stay during this appeal will avoid wasteful litigation in which lower courts rely on the district court's order to rule on issues even though this Court could end up vacating the order.

Lastly, CSI's requested new development is not modest, will increase reliance on an unsustainable water supply, and will allow lots to be sold to buyers who will be left with no water to serve their homes. Pumping an additional 425 to 961 afa is not insignificant and will cause a further overdraft of the aquifer.¹⁷ And CSI has

¹⁷ CSI has referenced two different water commitment amounts in this proceeding. Based on the arguments provided, SNWA is without sufficient information to

indicated, these 586 lots are just the first phase of its project.¹⁸ The number of lots is also significant as 586, or more, lot owners could find themselves without water in a future curtailment action if Order 1309 is reinstated. A stay is warranted to avoid this foreseeable disaster and maintain the status quo.

II. Garnet Valley Change Applications

In the Response, the Respondents argued for the first time that Georgia Pacific and Republic will face irreparable harm if Order 1309 is reinstated because the State Engineer may approve pending change applications in Garnet Valley.¹⁹ This new argument is speculative, premature, and lacks evidentiary support.

First, the alleged harm is purely speculative.²⁰ No evidence exists to suggest that the State Engineer intends to approve the referenced change applications.²¹ Further, with or without Order 1309, the Garnet Valley applications are subject to

determine whether the originally stated 536 afa includes the newly referenced 425 afa, the demand was recalculated to be 425 afa instead of 536 afa, or whether these two numbers are additive for a total of 961 afa. Regardless, CSI owns approximately 4,000 afa of junior rights that it intends to use for the complete buildout of all phases of development. *See* Resp'ts Resp. at 5, APP MFS Vol. 2 at 146:4.

¹⁸ APP MFS Vol. 2 at 146:4.

¹⁹ Ex. 4 (Response Letter) at 9.

²⁰ *Berryman v. Int'l Bhd. Elec. Workers*, 82 Nev. 277, 280, 416 P.2d 387, 389 (1966) (injury must have a reasonable probability of occurrence)

²¹ Resp'ts Resp. at 9 (Georgia Pacific and Republic concede that the "State Engineer has not acted on the Applications" and the risk of harm is only a "possibility.").

the same standard for approval as set forth in NRS 533.370.²² Georgia Pacific and Republic filed protests. Their claim that the State Engineer would use a different standard than NRS 533.370 is directly contrary to evidence in the record, and is purely hypothetical.²³

Second, even if these change applications were approved based on Order 1309, Georgia Pacific and Republic have an adequate legal remedy.²⁴ If the State Engineer approved the change applications, Georgia Pacific and Republic can file a stay of the State Engineer's approval pursuant to NRS 533.450(5), and have the decision reviewed under NRS 533.450(1).²⁵

²² See NRS 533.370; APP MFS Vol. 1 at 65 (“All applications for the movement of existing groundwater rights among sub-basins of the Lower White River Flow System Hydrographic Basin will be processed in accordance with NRS 533.370.”).

²³ Resp'ts Resp. at 9. *Herbst Gaming, Inc. v. Sec'y of State*, 122 Nev. 877, 141 P.3d 1224 (2006) (a case is ripe for review when there is a justiciable controversy with a concrete harm that is neither remote nor hypothetical).

²⁴ *Dep't of Conservation & Nat. Res., Div. of Water Res. v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005) (an irreparable injury is one for which there is no adequate remedy at law).

²⁵ Resp'ts Resp. at 9. As protestants, Georgia Pacific and Republic have an adequate remedy at law and have not yet exhausted their administrative remedies. See NRS 533.365; NRS 533.450; *Benson v. State Eng'r*, 131 Nev. 772, 773, 358 P.3d 221, 222 (2015) (a party must “exhaust all available administrative remedies before seeking judicial review, even when the remedy that the State Engineer is authorized to provide is not the remedy that the party seeks”).

Lastly, there is no evidence of irreparable harm.²⁶ Georgia Pacific and Republic claim a harm to priority only.²⁷ Whatever decision this Court makes related to priority in this case would apply to all water rights in the LWRFS, including the pending change applications. As there is no curtailment action yet initiated, the priority of rights is currently merely academic and easily remedied if this Court upholds the district court's order.²⁸

CONCLUSION

The issues raised for the first time in the Response further demonstrate the need for a stay of the district court's order to maintain the status quo in the LWRFS during the pendency of this appeal. For the foregoing reasons, and the reasons demonstrated in SNWA's Motion for Stay and Reply, SNWA respectfully requests that this Court maintain its stay the district court's order.

²⁶ Georgia Pacific and Republic provide no citations to support their argument. When evidence is not cited to support an argument, the argument may be stricken or ignored. *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 860 P.2d 720 (1993); NRAP 28.

²⁷ Resp'ts Resp. at 9 (Georgia Pacific and Republic claim that their senior rights in Garnet Valley would be "permanently displaced" if the more senior rights of NV Energy in the Muddy River Hydrographic Basin were moved as requested under the applications).

²⁸ *Amoco Prod. Co. v. Vill. of Gambell, AK*, 107 S. Ct. 1396, 1402 (1987).

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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EXHIBIT INDEX

Exhibit	Document	Pages
1.	CSI Demand Letter	6
2.	LVVWD August 15, 2022, Letter	1
3.	LVVWD August 22, 2022, Letter	1
4.	LVVWD Response Letter	3
5.	CSI's Second Amended Complaint	34

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COULTHARD LAW, PLLC
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840 SOUTH RANCHO DRIVE #4-627
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August 26, 2022

Nick Santoro, Esq.
Oliver Pancheri, Esq.
10100 W Charleston Blvd, Ste. 250
Las Vegas, Nevada 89135

Via E-mail and Regular Mail

RE: *Coyote Springs Investment, LLC, et al. vs. State of Nevada, Case No. A-20-820384-B*

- 1. LVVWD/Coyote Springs Water Resources General Improvement District's Failure / Refusal to Approve Large Lot Final Map (NFM-18-500155) - Coyote Springs Village A (Project 135445) and Village A, Parcels A-D Tentative Map (TM-22-500152);**
- 2. Notice of Breach by LVVWD of Amended and Restated Coyote Springs Water Multi-Party Agreement dated July 7, 2015; and**
- 3. Demand for LVVWD to endorse Final Map (NFM-18-500155) and Tentative Map (TM-22-500152).**

Dear Messrs. Santoro and Pancheri:

I am writing on behalf of Plaintiffs Coyote Springs Investment, LLC, et al. (collectively, "CSI") to your attention on behalf of the Las Vegas Valley Water District ("LVVWD"), as manager of Clark County's Coyote Springs Water Resources General Improvement District (the "CSGID"). As you are aware, CSGID is a named defendant in the above-referenced litigation against the State of Nevada. While LVVWD/CSGID has not responded to Plaintiff's Second Amended Complaint for Damages and Demand for Jury Trial ("SAC")¹, filed and served on CSGID in November of 2021, by mutual agreement, this correspondence addresses LVVWD/CSGID's ongoing breach of the Amended and Restated

¹ The Second Amended Complaint for Damages and Demand for Jury Trial, as well as its Exhibits, is incorporated herein for reference.

Coyote Springs Water and Wastewater Multi-Party Agreement dated July 7, 2015 (the “Multi-Party Agreement”).²

As the Multi-Party Agreement provides, the initial term of the Multi-Party Agreement commenced on December 5, 2006 and runs for 50 years with renewal periods thereafter. The Multi-Party Agreement acknowledges CSI as the owner of Ground Water Permits 46777, 70429, 70430, 74094 and 74095 and authorizes the appropriation of 4,140 acre feet per year (AFY) of ground water from the carbonate aquifer at locations within the Coyote Springs Clark County Development (“Water Rights”) to serve the needs within the long-planned and fully-entitled Clark County Development as defined in the Multi-Party Agreement. Pursuant to the Multi-Party Agreement, CSI has conveyed 2000 AFY of Water Rights to the CSGID to service the initial needs of this Master Planned Development.

Importantly, the Multi-Party Agreement obligates LVVWD, among other thing, to “review and approve the design and engineering drawings of the water facilities,” “review and approve a water system master plan” and to “inspect and approve construction of any water facilities” at the Coyote Springs Development. With the extensive involvement and approval of LVVWD, these water facilities have been designed, constructed, inspected, approved and certain water facilities are operational and ready to serve the needs of the Clark County Development.

In November of 2017, LVVWD, purportedly acting as the manager of the CSGID, unilaterally sent an unsolicited letter to the State of Nevada and its State Engineer seeking an opinion whether CSI’s permitted “ground water can sustainably supply water for the Coyote Springs Master Planned Project.”³ LVVWD’s letter was sent despite the fact that there were no pending claims of impairment as against CSI’s use of its Water Rights, and CSGID held 2000 AFY of CSI’s fully permitted and available Water Rights for use at the Master Planned Development. LVVWD’s letter resulted in the State’s issuance of its May 16, 2018, correspondence announcing a moratorium on the processing of any subdivision development maps at Coyote Springs based upon CSI’s “junior priority groundwater rights” in a newly-created, five-basin area. *See* Exhibit 1 to SAC. Though the State’s May 2018 letter was subsequently rescinded, it was soon followed by the State’s September 2018 Draft Order, January 2019 Interim Order 1303, and the June 15, 2020, Final Order 1309. *See* Exhibits 2-4 to SAC. Each of these orders (except Order 1309) included a moratorium on processing and approval of subdivision maps needed for the continued development, construction, and sale of residences at the Coyote Springs Master Planned Community, which has frozen the Clark County Development project.

² A true and correct copy of the Multi-Party Agreement is attached as Exhibit 1 for your convenience.

³ A true and correct copy of LVVWD’s November 16, 2017 letter is attached as Exhibit 2 for your convenience.

Litigation was commenced against the State Engineer for wrongful entry of these Orders recently culminating in a Judicial Review proceeding in Clark County District Court concerning the State Engineer's Order 1309. LVVWD, in concert with the Southern Nevada Water Authority (SNWA), were active litigants in the Judicial Review Case No. A-20-816761-C proceeding challenging Order 1309. After lengthy briefing and oral argument, the Honorable District Court Judge Bitu Yeager entered comprehensive Findings of Fact, Conclusions of Law and an Order Granting Petitions for Judicial Review on April 19, 2022 (the "Yeager Order")⁴.

Importantly, the Yeager Order held, inter alia, that the State did not have statutory authority to form the Lower White River Flow System "mega basin" nor to combine multiple basins into this "mega basin" for conjunctive management. Judge Yeager further held that the State violated the impacted water right holders' due process rights in the proceeding that resulted in Order 1309. Therefore, Judge Yeager vacated Order 1309 in its entirety. Although LVVWD immediately sought to stay the Yeager Order in hopes Order 1309 might remain in place, LVVWD's stay request was denied by the District Court. LVVWD's subsequent effort to stay entry of the order before the Nevada Supreme Court has not yet been ruled upon. Accordingly, Order 1309 has been vacated in its entirety and is of no force or effect since April 19, 2022.

Following entry of the Yeager Order vacating State Engineer Order 1309, CSI requested final approval of Large Lot Final Map (NFM-18-500155) and its Village A Tentative Map (TM-22-500152) so that CSI might resume development at Coyote Springs and avoid the substantial and ongoing damages caused by the State and its subdivisions' improper moratoriums and delay. Unfortunately, on August 15, 2022, LVVWD, on behalf of the CSGID, issued a letter to Clark County Public Works' Mapping Team regarding the Coyote Springs Large Lot Final Map (NFM-18-500155), which provided, in relevant part:

Based upon the reasons stated below, the District cannot confirm the availability of water resources sufficient to support recordation of this map.

State Engineer Order 1309, which addresses the Lower White River Flow System (LWRFS), has been appealed to the Nevada Supreme Court.

...

The District is also concerned that pumping additional water in Coyote Spring Valley is likely to cause conflicts with existing senior water rights and jeopardize the Moapa dace[.]⁵

⁴ A true and correct copy of the Yeager Order is attached hereto as Exhibit 3 for your convenience.

⁵ A copy of LVVWD's August 15, 2022 letter to Clark County Public Works is attached hereto as Exhibit 4 for your convenience.

More recently, on August 22, 2022, LVVWD sent a nearly identical letter to Clark County Public Work's Mapping Team regarding Coyote Springs' Village A, Parcel A-D for a 575 Residential Unit Subdivision Tentative Map (TM-22-500152) adding only that "there is not a public water system to serve the proposed development."⁶

LVVWD's purported reasons for refusing to approve and endorse CSI's Final Map and Tentative Map are untenable.

1. LVVWD's Reliance Upon Order 1309 Is Misplaced

First, as expressly confirmed by the Yeager Order, Order 1309 is "arbitrary, capricious, and void." Judge Yeager's Order is the law, which you are required to follow. Judge Yeager concluded that the State Engineer lacked statutory authority to create the LWRFS "mega basin". Judge Yeager further concluded that the State Engineer does not have authority to jointly administer and conjunctively manage this unlawful "mega basin". The Court further recognized that "it is universally understood that that priority of a water right is its most valuable component." *See* Yeager Order pg. 21, lines 21-22. The Court determined that combining multiple basins into one "mega basin" necessarily reorders priority dates, which violates the prior appropriation doctrine and Nevada law. This is a taking of water rights. Importantly, the Court also found that the State violated CSI and others' due process rights by failing to provide adequate notice and opportunity to be heard as to Order 1309.

Again, the Yeager Order has not been stayed and is fully enforceable. Notably, even if the Yeager Order had been stayed, your reliance on Order 1309 to avoid your contractual obligations is arbitrary and capricious. While we adamantly disagree with the findings and conclusions set forth in Order 1309, even the State Engineer concluded that 8,000 AFY could be pumped in the purported "mega basin". CSI seeks to pump 408.25 AFY, which is a fraction of the amount the State Engineer has authorized for the "mega basin". The State Engineer has repeatedly asserted that Order 1309 did not define how that 8,000 AFY would be appropriated. Your position assumes that Order 1309 would not allow CSI to pump even 408.25 AFY, but the State Engineer has consistently argued that Order 1309 did not strip CSI of its priority rights. Indeed, Order 1309 expressly terminated the temporary moratorium on the submission of subdivision development and construction documents. Accordingly, your reliance on Order 1309 is entirely unfounded.

Regardless, Order 1309 is void. LVVWD's refusal to sign off on Coyote Springs Large Lot Final Map and Tentative Map based upon a vacated, null, and void order is arbitrary, capricious, and contrary to Nevada law. Moreover, it is a violation of the LVVWD's obligations to act in good faith to endorse CSI's maps as contemplated by the Multi-Party

⁶ A true and correct copy of LVVWD's August 22, 2022 letter to Clark County Public Works is attached hereto as Exhibit 5 for your convenience.

Agreement. LVVWD's reliance upon vacated Order 1309 to justify its refusal to sign CSI's final and tentative maps is arbitrary and capricious and is only contributing to CSI's harm. Moreover, such reliance clearly constitutes a breach of LVVWD's obligations to act in good faith.

2. **Conflicts with senior water rights and impacts to Moapa dace.**

Likewise, LVVWD's assertion that "pumping additional water in Coyote Spring Valley is likely to cause conflicts with existing senior water rights and jeopardize the Moapa dace" is misplaced and not a basis for LVVWD to refuse to endorse final maps for the Coyote Springs Master Planned Community. There is no statutory conflict. There is no curtailment action challenging the 2000 AFY ground water rights held by the CSGID for use at Coyote Springs. Moapa dace monitoring and curtailment thresholds set forth in the April 20, 2006 Memorandum of Agreement between CSI, LVVWD, Moapa Valley Water District, Moapa Band of Paiutes, and US Fish and Wildlife (as amended), and related Biological Advisory Committee and Technical Advisory Committee meetings, studies, and reviews and reports, have been in place and have NOT been triggered by ground water pumping.⁷

Notably, Coyote Springs relinquished 460 AFY of its ground water rights back to the Coyote Spring basin for the purposes of furthering the survival and recovery of the Moapa dace. Coyote Springs additionally paid \$200,000 in mitigation funds to US Fish & Wildlife for the restoration of Moapa dace habitat in reliance on the 2006 MOA and to obtain an underlying programmatic biological opinion issued by US Fish and Wildlife Service, all of which is in support of CSI's planned ground water pumping at Coyote Springs for the Coyote Springs Master Planned Community. CSI has performed its necessary mitigation for the Moapa dace. LVVWD's Moapa dace concerns do not relieve LVVWD as the manager of the CSGID of its obligations to sign maps and issue will-serve commitments for Coyote Springs' Master Planned Community.

The LVVWD, as Manager of CSGID, is obligated to endorse CSI's Final Map and Tentative Map.

This letter is to provide written NOTICE to the LVVWD and CSGID as to its violations of the terms and conditions of the Multi-Party Agreement as well as its obligations under statutory and common law. Specifically, the Multi-Party Agreement obligates LVVWD to **"sign tentative and final subdivision and parcel maps on behalf of CSWRGID when such maps meet the requirements of Clark County and Nevada law,"** Multi-Party Agreement Section 4(8). The pending Maps have previously been conditionally approved by the State of Nevada's Division of Water Resources in September of 2018.

⁷ A true and correct copy of the Memorandum of Agreement dated April 20, 2006 is attached as Exhibit 6 for your convenience.

The Multi-Party Agreement further provides that LVVWD, on behalf of CS-GID, "shall certify to the State of Nevada Division of Water Resources, though endorsement of final maps (a "Commitment") that there is sufficient quantity of water available to serve any area covered by a final map so long as CSWRGID has enough water available to serve the mapped area (calculated pursuant to Paragraph 10), and still have at least 700 AFY of uncommitted water rights dedicated by Developers available. Multi-Party Agreement Sec. 11. Using the Paragraph 10 calculation of 0.71 AFY per single family residence, equates to 408.25 AFY for the planned 575 residential units. Given that the CSGID presently holds 2000 AFY of ground water rights for use at Coyote Springs, LVVWD is obligated to endorse CSI's pending maps.

The LVVWD's continuing refusal, as the Manager of the CSGID, to execute Coyote Springs Large Lot Final Map and approve the 575 Unit Subdivision Tentative Map is wrongful and a breach of the Multi-Party Agreement. LVVWD's actions have caused, and continue to cause, significant irreparable damage to CSI and its affiliates.

Accordingly, and based upon the foregoing, DEMAND is hereby made upon LVVWD to endorse the Coyote Springs Village A Large Lot Final Map (NFM-18-500155) and Coyote Springs Village A, Parcel A-D, 575 Unit Subdivision (TM-22-500152). Time is of the essence in this matter. Should LVVWD fail to comply with this demand within ten (10) days of its receipt of this letter, Coyote Springs will consider all legal avenues to protect its rights and attempt to mitigate its damages occasioned by LVVWD's continuing wrongful actions. Thank you.

COULTHARD LAW PLLC



William L. Coulthard

CC: Coyote Springs Investment, LLC

Pursuant to Notice Provisions under Multi-Party Agreement; Section 16(a). Notice is also provided directly to the following:

Coyote Springs Water Resource General Improvement District
c/o Las Vegas Valley Water District
1001 S. Valley View Blvd., Mail Stop 480
Las Vegas, NV. 89153
Attn: General Manager

Las Vegas Valley Water District
1001 S. Valley View Blvd.
Las Vegas, NV. 89153
Attn: General Manager

General Counsel, LVVWD
1001 S. Valley View Blvd.
Las Vegas, NV. 89153

Exhibit 2

Exhibit 2



**LAS VEGAS VALLEY
WATER DISTRICT**

1001 South Valley View Boulevard
Las Vegas, NV 89153
(702) 870-2011 • lvwd.com

August 15, 2022

Tina Garrison
Clark County Public Works
Survey Department, Mapping Team
P.O. Box 554000
Las Vegas, Nevada 89155-4000

**SUBJECT: WATER AVAILABILITY FOR LARGE LOT FINAL MAP
NFM-18-500155, COYOTE SPRINGS VILLAGE A (PROJECT 135445)**

The Las Vegas Valley Water District (District), in its capacity as manager of the Coyote Springs Water Resources General Improvement District (GID), has reviewed the subject subdivision map. Based on the reasons stated below, the District cannot confirm the availability of water resources sufficient to support recordation of this map.

- State Engineer Order 1309, which addresses the Lower White River Flow System (LWRFS), has been appealed to the Nevada Supreme Court. Among other issues, Order 1309 addressed the amount of groundwater that may be sustainably pumped in the LWRFS, which includes Coyote Spring Valley. Order 1309 recognized that the permitted groundwater rights in the region exceed the groundwater that can be sustainably pumped. Until such issues have been resolved, the District cannot confirm whether additional groundwater development in the LWRFS will be allowed or what conditions might be placed on such uses.
- The District is also concerned that pumping additional water in Coyote Spring Valley is likely to cause conflicts with existing senior water rights and jeopardize the the Moapa dace, a fish endemic to the LWRFS and designated as “endangered” by the U.S. Fish and Wildlife Service.

Should you have any questions, please contact me at (702) 258-3179 and reference NFM-18-500155.

Sincerely,

Matthew Favalora

Matthew Favalora, Engineering Services Supervisor
Engineering Services Division

MJF/lm

cc: VTN Nevada

Exhibit 3

Exhibit 3



**LAS VEGAS VALLEY
WATER DISTRICT**

1001 South Valley View Boulevard
Las Vegas, NV 89153
(702) 870-2011 • lvwd.com

August 22, 2022

Tina Garrison
Clark County Public Works
Survey Department, Mapping Team
P.O. Box 554000
Las Vegas, Nevada 89155-4000

SUBJECT: RESPONSE TENTATIVE MAP
TM-22-500152, COYOTE SPRINGS VILLAGE A, PARCEL A-D, 575 UNIT
SUBDIVISION (PROJECT# 135444)
A.P.N. 009-16-601-001, 009-16-710-001, 009-16-801-002, 009-16-811-001, 009-16-811-
003, 009-21-501-004 & 009-22-101-010

Ms. Garrison,

The Las Vegas Valley Water District (District), in its capacity as manager of the Coyote Springs Water Resources General Improvement District (GID), has reviewed the subject tentative map. For the reasons stated below, the District cannot endorse the map.

- While certain water-system infrastructure has been constructed, there is not a public water system to serve the proposed development.
- State Engineer Order 1309, which addressed multiple hydrographic basins including Coyote Spring Valley, raised concerns over the availability of a sustainable water supply for the development. The amount of groundwater that may be pumped in Coyote Spring Valley and surrounding areas has still not been determined and Order 1309 is on appeal before the Nevada Supreme Court. Regardless, permitted groundwater rights in Coyote Spring Valley and the surrounding area appear to greatly exceed the available groundwater supply. Consequently, the District cannot confirm whether there is sufficient groundwater to reliably supply the development and no alternative water source has been identified.
- The District is also concerned that pumping additional groundwater in Coyote Spring Valley is likely to cause conflicts with existing senior water rights and jeopardize the the Moapa dace, a fish designated as "endangered" by the U.S. Fish and Wildlife Service.

If you have any questions, please contact me at (702) 258-3179 and reference TM-22-500152.

Sincerely,

Matthew Favalora

Matthew Favalora, Engineering Services Supervisor
Engineering Services Division

MJF/lm

cc: VTN
Coyote Springs Nevada LLC
Coyote Springs Investments

Exhibit 4

Exhibit 4

Nicholas J. Santoro
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Andrew J. Glendon
Oliver J. Pancheri
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SANTORO WHITMIRE

E-mail: opancheri@santoronevada.com

September 6, 2022

VIA EMAIL

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840 South Rancho Drive, #4-627
Las Vegas, NV 89106
Email: wlc@coulthardlaw.com

Re: *Coyote Springs Investment, LLC et al. vs. State of Nevada*,
Case No. A-20-820384-B
August 26, 2022 Demand Letter

Dear Mr. Coulthard:

This response is provided on behalf of the Las Vegas Valley Water District (“*LVVWD*”), and addresses your August 26, 2022, letter (“*Demand Letter*”) from Coyote Springs Investment, LLC, et al. (“*CSF*”). In the Demand Letter you claimed that *LVVWD*, as manager of the Coyote Springs Water Resources General Improve District (“*CSGID*”), breached the Multi-Party Agreement dated July 7, 2015, (“*Multi-Party Agreement*”) by not approving Final Map (NFM-18-500155) – Coyote Springs Village A (“*Final Map*”) and Village A, Parcels A-D Tentative Map (TM-22-500152) (“*Tentative Map*”). No such breach has occurred.

After your Demand Letter, on August 29, 2022, the Nevada Supreme Court issued an order granting a temporary stay of the Eighth Judicial District’s order vacating State Engineer Order 1309. One result of the Nevada Supreme Court’s stay is that Order 1309 is now in full force and effect. Therefore, contrary to your claims in the Demand Letter, *LVVWD*’s reliance on Order 1309 was completely appropriate. The legality of Order 1309 is currently being litigated at the Nevada Supreme Court. The legal questions involved are issues of first impression so there is a likelihood that the Supreme Court will vacate the district court’s order and reinstate Order 1309. The Nevada Supreme Court’s ultimate decision on 1309 will obviously impact your clients’ request for approval of the subdivision maps. Thus, it would be both premature and improper for *LVVWD* to recommend approval of the subdivision maps when the issue remains very much undecided.

The Multi-Party Agreement expressly conditions *CSGID*’s execution of a final map on a determination that “*CSWRGID* has enough water available to serve the mapped area.” Based on the factual findings of the State Engineer in Order 1309, and *LVVWD*’s knowledge and expertise, enough water is not water available to serve the mapped area on the Final Map and the Tentative Map. In Order 1309 the State Engineer designated the Lower White River Flow

System (“*LWRFS*”) Hydrological Basin based on the strong hydrological connection of the previously independent basins which include Kane Springs Valley, Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, and the northwest portion of the Black Mountain Are Hydrographic Basins. With regards to Coyote Spring Valley, the location of CSI’s project, the State Engineer found that while “discrete aquifers may exist in parts of the northern Coyote Springs Valley, [the] criteria for defining the LWRFS calls for inclusion of the entirety of the basin in the LWRFS.” The criteria the State Engineer used to show a close hydrologic connection included “[w]ater level hydrographs that, in well-to-well comparisons, demonstrate a similar temporal pattern.” At the administrative hearing preceding Order 1309, the Southern Nevada Water Authority submitted hydrographs that showed wells in Coyote Spring Valley have a direct hydrologic connection to the Muddy River and high elevation springs that provide habitat for the endangered Moapa Dace. Increased pumping in Coyote Springs will only increase the negative impact on Muddy River flows and Dace habitat.

In Order 1309 State Engineer also found that in the entire LWRFS there is 8,000 acre-feet annum (“*afa*”) or less of groundwater that can be pumped without adversely impacting senior water rights and the Moapa dace. “The best available data at this time indicate that continued groundwater pumping that consistently exceeds [8,000 afa] will cause conditions that harm the Moapa dace and threaten to conflict with Muddy River decreed water rights.” Furthermore, given that current groundwater pumping in the LWRFS is already around 8,000 afa CSI’s additional groundwater pumping will cause the total amount of pumping in the LWRFS to exceed 8,000 afa which will threaten senior water rights and the Moapa dace.

Even without the Nevada Supreme Court’s stay with regard to Order 1309, LVVWD’s continued reliance on the hydrologic science and data in the order is appropriate. Instead of allowing a development project to proceed supported by an uncertain supply of groundwater, LVVWD prudently refused to recommend approval of CSI’s subdivision maps. The Order 1309 legal challenges do not concern the extensive data that shows the direct impact that groundwater pumping in Coyote Spring Valley has on the Muddy River. Concern over the impacts of additional groundwater pumping in the vicinity is not new. Neither is a significant portion of the facts underlying Order 1309, many of which are supported by the best available science and detailed in previous State Engineer rulings and orders. Furthermore, none of the State Engineer’s factual determinations in Order 1309 were disturbed by the district court’s order vacating Order 1309. Therefore, even if Order 1309 had been vacated, it is not arbitrary or capricious for LVVWD to rely on the State Engineer’s undisturbed factual findings regarding hydrological connectivity and available groundwater for CSI’s subdivision.

In your Demand Letter you also claim that LVVWD’s assertion that additional pumping in Coyote Spring Valley is likely to cause conflicts with senior water rights and the Moapa dace is misplaced because there is no “statutory conflict.” You ignore the fact that, pursuant to NRS 533.430 and other provisions of statute, CSI cannot use its groundwater permits and certificates in a manner which conflicts with senior water rights. While there is presently no curtailment action, current flow rates are dangerously close to the critical flow rates that set the triggers in the Memorandum of Agreement. Also, in Order 1309, the State Engineer found that any additional groundwater pumping in the LWRFS above the current 8,000 afa will adversely

William Coulthard, Esq.
September 6, 2022
Page 3

impact senior water rights. LVVWD cannot confirm there is available groundwater to support CSI's subdivision maps when additional groundwater pumping would violate the terms of CSI's permits and certificates. Therefore, LVVWD's refusal to recommend approval of CSI's subdivision maps was not a violation of its obligation of good faith under the Multi-Party Agreement. Furthermore, contrary to your claim in the Demand Letter, CSI's previous dedication of 460 afa of its groundwater rights for the conservation of the Moapa dace does not relieve CSI of its duty not to conflict with senior water rights.

Finally, LVVWD is not a party to your clients' action against the State of Nevada and the CSGID (Case No. A-20-820384-B). Thus, your references to LVVWD not responding to the Second Amended Complaint are not accurate as LVVWD has never been a party to that action. Your clients named CSGID as a party but, by mutual agreement, CSGID has not appeared or responded to the Second Amended Complaint. We had several discussions regarding your clients dismissing CSGID as a party. CSGID sent a stipulation to dismiss CSGID as a party on May 3, 2022. You indicated you would review the stipulation and get back to us. We never heard further from you until we received the demand letter. Are your clients no longer willing to consider dismissing CSGID as a party? Please let us know your clients' position.

Should you have any questions, or concerns, please feel free to contact this office.

Sincerely,

SANTORO WHITMIRE

s/ Oliver J. Pancheri
Oliver J. Pancheri, Esq.

OJP/rj

Exhibit 5

Exhibit 5



1 SACOM
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5 *Attorneys for Plaintiffs CS-Entities*

6
7 **DISTRICT COURT**

8 **CLARK COUNTY NEVADA**

9
10 COYOTE SPRINGS INVESTMENT, LLC, a
Nevada Limited Liability Company; COYOTE
11 SPRINGS NEVADA, LLC, a Nevada limited
liability company; and COYOTE SPRINGS
12 NURSERY, LLC, a Nevada limited liability
company,

13 Plaintiffs,

14 vs.

15 STATE OF NEVADA, on relation to its Division
of Water Resources; DEPARTMENT OF
16 CONSERVATION and NATURAL
RESOURCES; ADAM SULLIVAN, Nevada
17 State Engineer; CLARK COUNTY-COYOTE
SPRINGS WATER RESOURCES GENERAL
18 IMPROVEMENT DISTRICT, a political
subdivision of the State of Nevada; and Does I
19 through X.

20 Defendants.

Case No.: A-20-820384-B
Dept.: 13

21
22 **PLAINTIFFS' SECOND AMENDED
COMPLAINT FOR DAMAGES AND
23 DEMAND FOR JURY TRIAL**

24
25 COME NOW Plaintiffs COYOTE SPRINGS INVESTMENT LLC, a Nevada limited liability
26 company; COYOTE SPRINGS NEVADA LLC, a Nevada limited liability company; and COYOTE
27 SPRINGS NURSERY LLC, a Nevada limited liability company (collectively the "CS-Entities" and or
28 "Plaintiffs"), by and through their counsel, William L. Coulthard Esq., of Coulthard Law PLLC, and
hereby complain and allege against Defendants STATE OF NEVADA, on relation to its Division of
Water Resources; DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES; ADAM
SULLIVAN, Nevada State Engineer; CLARK COUNTY-COYOTE SPRINGS WATER RESOURCES

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1 GENERAL IMPROVEMENT DISTRICT, a political subdivision of the State of Nevada, and DOES I
2 through X, as follows:

3 I.

4 PARTIES AND JURISDICTION

5 1. Plaintiffs COYOTE SPRINGS INVESTMENT LLC, a Nevada limited liability
6 company ("CSI"), COYOTE SPRINGS NEVADA LLC, a Nevada limited liability company ("CS-
7 Nevada"), and COYOTE SPRINGS NURSERY LLC, a Nevada limited liability company ("CS-
8 Nursery") and when referred to together, CSI, CS-Nevada and CS-Nursery shall be referred to as the
9 "CS-Entities"; each of which such entities were formed under the laws of the State of Nevada and
10 collectively are the owners of all of Coyote Springs, a Master Planned development measuring roughly
11 42,100 acres located in both Clark and Lincoln County, Nevada. A portion of Coyote Springs land
12 measuring approximately 6,881 acres has been planned, designed, mapped, approved and partially
13 constructed as a Major Project in Clark County, Nevada, along with an additional 6,219 acres managed
14 by CSI, of designated conservation land subject to a lease from Bureau of Land Management. Certain of
15 the Coyote Springs property located in Lincoln County has likewise been planned, designed and
16 approved for development by Lincoln County, Nevada. Coyote Springs is located approximately 50
17 miles north of Las Vegas, Nevada. As a critical and necessary part of its Master Planned development,
18 the CS-Entities also own certain acre feet annually ("afa") of certificated and permitted Nevada ground
19 water rights in the Coyote Spring Valley.

20 2. Plaintiffs are informed and believe and thereupon allege that Defendant STATE OF
21 NEVADA, on relation to its Division of Water Resources, Department of Conservation and Natural
22 Resources, and its State Engineers (hereinafter the "State" and/or the "State Engineer") have taken
23 actions, as will be more particularly described herein, in contravention of CS-Entities' Master Planned
24 Major Project development rights and its existing permitted and certificated Nevada water rights at
25 Coyote Springs, Nevada.

26 3. Plaintiffs are informed and believe and thereupon allege that the State's actions, as will
27 be more particularly described herein, rise to the level of an unconstitutional taking of CS-Entities'
28 permitted and certificated water rights as detailed herein, and that the taking of such water rights by the
State has left the CS-Entities with no economical beneficial use of its real estate and its master planned

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1 development property in Coyote Springs, Nevada. Plaintiffs further assert that the State has breached its
2 expressed contractual duties of good faith and fair dealings memorialized in a Settlement Agreement
3 entered into on or around August 29, 2018, as well as the State's duty of good faith and fair dealing
4 required by Nevada law.

5 4. Plaintiffs are informed and believe and thereupon allege that Defendant CLARK
6 COUNTY-COYOTE SPRINGS WATER RESOURCES GENERAL IMPROVEMENT DISTRICT
7 ("CSGID"), is a political subdivision of the State of Nevada, created pursuant to NRS Chapter 318, and
8 is a necessary party to this action. CSGID was established to provide water and waste water services
9 within the Clark County Approved Major Project Development. CSGID engaged the Las Vegas Valley
10 Water District ("LVVWD") as the general manager of CSGID pursuant to the Amended and Restated
11 Coyote Springs Water and Wastewater Multi-Party Agreement, dated July 7, 2015 (the "Multi-Party
12 Agreement").

13 5. The true names and capacities, whether individual, corporate, associates or otherwise, of
14 Defendants herein designated as DOES I through X inclusive are unknown to the Plaintiffs CS-Entities
15 at this time, who therefor sue said Defendants by such fictitious names. Plaintiffs are informed and
16 believe and thereon allege that each of said DOES Defendants may have conspired with the State and/or
17 participated in the wrongful events and happenings and proximately caused the injuries and damages
18 herein alleged. Plaintiffs may, as allowed under NRCP 15, seek leave to amend this Complaint to allege
19 their true names and capacities as they are ascertained.

20 6. This lawsuit was initially filed in the Eighth Judicial District Court, Clark County,
21 Nevada, where venue was proper, as the Coyote Springs Development, and its approved Clark County
22 Major Project under Clark County Code Title 30, is located in Clark County, Nevada. Certain of
23 Plaintiffs' real property related hereto, which was likewise wrongfully taken by the state, is located in
24 Lincoln County, Nevada. Many of the claims and the underlying facts arose, and the causes of action
25 plead herein, relate to certain of the CS-Entities' real property rights, including but not limited to its
26 approved Clark County Major Project Development rights, and the prohibited and wrongful delay and
27 blocking of CS-Entities' use and enjoyment of its Clark County real property, including but not limited
28 to, its certificated and permitted water rights in Clark and Lincoln Counties, Nevada. Many of the
witnesses in this case reside in Clark County, Nevada. On October 1, 2020, Defendants removed this

1 case to United States District Court for the District of Nevada. On September 28, 2021, the United
2 States District Court entered an Order remanding this action back to State Court.

3 **II.**

4 **STATEMENT OF FACTS**

5 **A. CS-Entities' Coyote Springs Master Plan Development.**

6 7. Coyote Springs, Nevada is a master-planned community being developed by Plaintiff
7 CS-Entities in Clark County and Lincoln County, Nevada. The Coyote Springs property, in its entirety,
8 consists of roughly 42,100 acres, or 65 square miles, located approximately 50 miles north of Las Vegas.
9 It is bordered by the Delamar Mountains to the north, the Meadow Valley Mountains to the east, State
10 Route 168 to the south and U.S. 93 to the west. Approximately one-third of the CS-Entities lands
11 (13,100 acres) lie within Clark County, Nevada and the remaining two-thirds of the lands (29,000 acres)
12 are located in Lincoln County, Nevada.

13 8. For the past 15+/- years, CS-Entities have completed, submitted, and processed land use
14 entitlements and zoning applications, permits and approvals for its Coyote Springs' master planned
15 community in both Lincoln and Clark Counties. CS-Entities have submitted and obtained multiple
16 government and regulatory approvals for infrastructure, maps and plans, including tentative maps,
17 submitted and recorded large parcel maps, parent final maps for the purpose of subsequent residential
18 subdivision maps and related property development and sales, all in furtherance of its planned
19 development of the Coyote Springs master planned community (the "Coyote Springs Master Planned
20 Community"). These zoning, land use and construction applications and permits have been submitted to
21 numerous Federal, State and County agencies including the State, the State Engineer, the CSGID, the
22 LVVWD, the Clark County Water Reclamation District ("CCWRD") and Clark and Lincoln Counties,
23 Nevada. These CS-Entities' submittals, approvals, subsequent design, construction and construction
24 approvals consistent with such land use entitlements and approvals were all done in reliance on, in
25 furtherance of, and in support of the CS-Entities' Coyote Springs Master Planned Community
26 development and investment backed expectations and their efforts to design, develop, construct, sell and
27 operate the Coyote Springs Master Planned Community.

28 ///

1 **B. Clark County Approves Coyote Springs as a Clark County Title 30 Major**
2 **Project and Enters Into A Comprehensive Development Agreement with the**
3 **CS-Entities.**

4 9. As part of its ongoing efforts to develop the Coyote Springs Master Planned
5 Community, the CS-Entities submitted and obtained Clark County's approval of Coyote Springs
6 as a Major Project, pursuant to Clark County ("CC") Code 30.20.30, and further submitted and
7 obtained Clark County's approval of the following Major Project development submittals:

8 a. Coyote Springs Concept Plan (MP-1424-01) approved on February 6, 2002.

9 b. Coyote Springs' Public Facilities Needs Assessment (PFNA) (MP-0540-02)
10 approved on May 22, 2002.

11 c. Coyote Springs Specific Plan (MP-0853-02), first approved on August 7, 2002,
12 and then later amended on August 2, 2006, and then again amended and approved on September
13 17, 2008 (MP-0760-08).

14 d. CSGID created by Ordinance by the Clark County Board of County
15 Commissioners in October 2006, subject of Clark County Board of Commissioners Ordinance #
16 3456, Bill # 10-17-06-2, along with the initiating Service Plan and Operations Management
17 Agreement among CSI, CSGID, LVVWD and CCWRD all for purposes of operating and
18 providing water and wastewater facilities and services in the Clark County Coyote Springs
19 Master Planned Community.

20 e. Coyote Springs' zone change request (ZC-1401-02) which included master
21 development agreement (DA-1400-02) for the Coyote Springs Master Planned Community was
22 approved on December 18, 2002 pursuant to Development Agreement Ordinance #2844 that was
23 effective January 1, 2003, and later amended by that certain First Amendment and Restatement
24 to Development Agreement dated August 4, 2004 and recorded September 16, 2004 in Clark
25 County Official Records as Book 20040916-0004436.

26 f. In 2003, a use permit, UC-1493-03, was approved for a water pumping station,
27 power substation, and other related ancillary utility structures, and another use permit, UC-0335-
28 04 was approved for power transmission lines on April 8, 2004.

 g. Approved 125-acre Tourist Commercial zoning that includes a 40-acre Gaming
Enterprise District approved on December 17, 2008 (ZC-0947-08), and the conditions therein

1 extended until December 2024, pursuant to ET 0184-16 which was approved on February 8,
2 2017.

3 **C. Lincoln County Also Approves Coyote Springs Proposed Plan of**
4 **Development of Its Lincoln County Property and Approves and Records a**
5 **Comprehensive Development Agreement with CS-Entities.**

6 10. As part of and in furtherance of its efforts to develop the Coyote Springs Master Planned
7 Community, the CS-Entities submitted and obtained Lincoln County's, State of Nevada ("Lincoln
8 County") approval of its planned Coyote Springs Master Planned Community for certain of their lands
9 located within Lincoln County. Moreover, and as authorized by Nevada Statutes, Lincoln County and
10 CS-Entities entered into a comprehensive Development Agreement that authorized the CS-Entities'
11 property located within Lincoln County, to be developed as a planned unit development and to establish
12 the long-range plans for the development of the CS-Entities' property located within Lincoln County.

13 11. An Initial Development Agreement was entered into by and between Lincoln County
14 and Coyote Springs Investment dated December 20, 2004, and adopted pursuant to Lincoln County
15 Ordinance 2004-03; was amended by a First Amendment to Coyote Springs Development Agreement
16 dated January 4, 2010, which was likewise adopted by Lincoln County Ordinance 2009-11. Thereafter,
17 a First Amended and Restated Development Agreement dated August 17, 2015 was made and entered
18 into by and between Lincoln County and Coyote Springs Investments LLC, and approved and adopted as
19 Lincoln County Ordinance 2015-01 (the "Lincoln County Development Agreement").

20 12. In adopting the Lincoln County Development Agreement Ordinance 2015-01, Lincoln
21 County found, in part, "it necessary to further the public health, safety, morals and general welfare in an
22 era of increasing urbanization and of growing demand for housing of all types and design within the
23 Coyote Springs Planning Area" and that "the purpose of the development agreement for the County is to
24 ensure that necessary public facilities, services, staffing and equipment are conveniently located in the
25 Coyote Springs Planning Area.

26 13. The Lincoln County Development Agreement authorized a Planned Community within
27 and upon CS-Entities' approximately 29,000 acres of property located within Lincoln County with a
28 maximum quantity of residential units of 5.0 dwelling units per gross acre, with additional non-
residential and commercial uses authorized to be designed, developed, and constructed pursuant to the
Lincoln County Development Agreement.

1 14. Many other zoning and land use plan approvals have been similarly pursued by the CS-
2 Entities and approved for the Coyote Springs Master Planned Community by Clark and Lincoln
3 Counties, Nevada. All of the above land use zoning and development entitlements in both Lincoln and
4 Clark Counties, when taken together with all other CS-Entities' approvals and entitlements, will be
5 referred to herein as the "CS-Entities' Approved Major Project".

6 15. CS-Entities' Approved Major Project status, confirmed by County Ordinances in both
7 Lincoln and Clark Counties, Nevada, authorizes the CS-Entities' development of its Approved Major
8 Project. CS-Entities' Approved Major Project has been designed and pursued in furtherance of the CS-
9 Entities' investment backed development expectations when it acquired the Coyote Springs property and
10 its Coyote Springs' ground water rights.

11 16. CS Entities' Approved Major Projects in both Lincoln and Clark Counties were
12 memorialized through County Ordinances, recorded with the respective County Recorders, which
13 worked to place the public, as well as the State, on notice of the Plaintiffs' Coyote Springs Master
14 Planned Development project plans.

15 **D. CS-Entities Spends Years and Hundreds of Millions of Dollars Developing Coyote**
16 **Spring Master Planned Community In Furtherance of Their Reasonable**
17 **Investment Backed Expectations and In Reliance Upon Government Approvals.**

18 17. In furtherance of their investment backed expectations and their Approved Major
19 Project, CS-Entities have further been preparing and processing permits and construction plans and have
20 obtained numerous approvals for community infrastructure, construction maps and plans, including
21 recorded large parcel, parent final maps for purpose of subsequent residential subdivision maps, for
22 development of the Coyote Springs Development with numerous agencies, including the State, and its
23 State Engineer, LVVWD, Clark County Water Reclamation District ("CCWRD"), CSGID, Clark
24 County, and Lincoln County. Multiple permits, applications, improvements, maps and plans have been
25 approved and the CS-Entities have designed, developed, and constructed significant infrastructure
26 improvements to support the Coyote Springs Master Planned Community and its investment backed
27 expectations. Specifically, CS-Entities constructed and are operating a \$40,000,000 Jack Nicklaus
28

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1 Signature designed golf course open to the public since May 2008,¹ designed and constructed as an
2 amenity for the Master Planned Community, a 325 acre flood control detention basin, designed and built
3 to protect the Master Planned Community, which is the subject of a dam permit issued by the Defendant
4 State and its State Engineer, a groundwater treatment plant, including two 1,000,000 gallon water
5 storage tanks designed and constructed to culinary water standards, a wastewater treatment plant and
6 initial package treatment plant, all of which have been considered and approved by the Defendant State
7 and its Nevada Department of Water Resources, and associated electrical power facilities, including a
8 three megawatt electrical substation and appurtenant equipment. CS-Entities have also constructed four
9 groundwater production wells (Well 1, Well 2, Well 3, and Well 4), two of which, Well 1 and Well 4,
10 are in full operational use at the present time and were constructed to culinary municipal well standards
11 as required by the LVVWD on behalf of the CSGID, all approved by the State and its State Engineer in
12 2013, with significant enhancements to make them compliant with municipal well standards at a cost in
13 excess of \$20,000,000. Moreover, and with the approvals of the various government agencies, including
14 the State and subdivisions of the State, CS-Entities developed, permitted, and constructed miles of roads
15 and streets and installed miles of associated underground utilities, including water, treated water /
16 wastewater, fiber-optic, electric lines and a 3-megawatt substation, in the Coyote Springs Development.
17 The total cost of construction and acquisitions for these improvements and associated processing is well
18 over \$200,000,000. This development, and its associated development costs, have all been incurred
19 based upon the CS-Entities' reasonable investment backed expectations, in compliance with all
20 submitted and approved plans, done in furtherance of its Approved Major Project and Development
21 Agreement related thereto, done in furtherance of its real property rights, and with assurance and reliance
22 upon the State and the State Engineer's approval of the use and enjoyment of its certificated and
23 permitted water rights the CS-Entities acquired in the Coyote Spring Valley in support of the Coyote
24 Springs planned development and Approved Major Project.

25
26

27 ¹ The Coyote Springs Golf Course operation was built as an amenity to serve the planned Coyote Springs Master Planned Community. The Golf Course has
28 operated at a significant annual loss since its inception and is expected to continue to operate at a loss until the planned residential community is substantially built
out with homes within the Master Planned Development.

1 18. When CS-Entities acquired the Coyote Springs real property, and its certificated and
2 permitted water rights were approved by the State to be used in its Master Planned Development, it had
3 reasonable investment backed expectations that it would be able to develop, construct, market and sell its
4 Master Planned Community and their Approved Major Project. Moreover, CS-Entities have relied upon
5 and taken extensive action at the Coyote Springs Development based in large part upon the approvals of
6 the agencies listed above, but most particularly those of the State and its State Engineer, to proceed with
7 its Master Planned Development and construction projects. CSI, in particular has relied on the approvals
8 of the State, and its State Engineer, recognizing that CSI could use its certificated and permitted water
9 rights in the Coyote Springs Development in order to support operation of the golf course, all of its
10 construction efforts, and ultimately to support the approved residential and commercial development
11 planned for the Coyote Springs Master Planned Community.

12 **E. CSI's Permitted and Certificated Water Rights.**

13 19. In furtherance of its investment backed expectations, and as a necessary component of
14 the Coyote Springs Master Planned Development, CSI acquired rights to 4600-acre feet annually ("afa")
15 of permitted Nevada water rights in the Coyote Spring Valley. Specifically, CSI holds and perfected
16 1500 afa under Permit 70429 (Certificate 17035) of which 1250 afa were conveyed to the CSGID to be
17 used for the Coyote Springs Development, with the remaining 250 afa still owned by CSI. CSI also
18 holds 1000 afa under Permit 74094 of which 750 afa were conveyed to the CSGID to be used for the
19 Coyote Springs Development, with the remaining 250 afa still owned by CSI. CSI also holds 1140 afa
20 under Permit 70430. CSI, in reliance upon moving forward with the Coyote Springs Development,
21 relinquished 460 afa of Permit 70430, under Permit 70430 RO1, back to the State in care of the State
22 Engineer in accord with the U.S. Fish and Wildlife Service as CS-Entities' mitigation for any potential
23 Muddy River instream water level flow decreases potentially associated with the CS-Entities' Approved
24 Major Project for the purpose of furthering the survival and recovery of the endangered Moapa dace fish.
25 CSI also holds 500 afa under Permit 74095. In the event that CSGID is unable or unwilling to supply
26 any of these Water Rights to CS-Entities' Approved Major Project and approve and sign-off on large lot
27 and subdivision maps, and proceed with permits, approvals, inspections, and certificates of occupancy,
28 which is the case following the State actions described herein, CSI has the right to receive back all 2000
afa of the Water Rights previously transferred by CSI, to CSGID, pursuant to the Multi-Party

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1 Agreement. Pursuant to the Multi-Party Agreement, CSGID is holding the water rights in trust for CS-
2 Entities use at its Coyote Springs Master Planned Development. The Multi-Party Agreement details the
3 allocation of water for development within the Coyote Springs Master Planned Community. A true and
4 correct copy of the Multi-Party Agreement is attached hereto as Exhibit 6.

5 20. CS-Entities are informed and believe and thereupon assert that as of the date hereof the
6 total amount of certificated and permitted Nevada groundwater rights owned by CSI is 2140 afa; the
7 total amount held for the benefit of CS-Entities by CSGID is 2000 afa; and, 460 afa has been
8 relinquished for the purpose of furthering the survival and recovery of the Moapa dace (collectively all
9 4600 afa are referred to herein as, "CS-Entities' Water Rights"). Importantly, the 460 afa of CS-
10 Entities' permitted and certificated water rights previously relinquished by CSI to the State in care of the
11 State Engineer, and in accord with the U.S. Fish and Wildlife Service, was done in furtherance of the
12 survival and recovery of the Moapa dace, an endangered fish that lives within the headwater springs of
13 the Muddy River, pursuant to agreement among the State, the State Engineer, LVVWD and SNWA and
14 others, in order to mitigate potential harms to the Moapa dace that may arise in connection with the CS-
15 Entities' use of ground water at its planned Coyote Springs Master Planned Development. CS-Entities
16 assert that the State, though its State Engineer's actions of unlawful regulation and restriction of CS-
17 Entities use of its Water Rights allegedly to help protect Muddy River water flow levels for the benefit
18 of the Moapa dace fish is an unlawful and unconstitutional exaction by the State. The CS-Entities have
19 previously relinquished 460 afa of its Water Rights, as mitigation for its development of Coyote Springs.
20 The State's recent actions as described herein place an unreasonable and unfair burden on the CS-
21 Entities for protection of the Moapa dace that should more appropriately be borne by the public as a
22 whole and not the CS-Entities individually.

23 21. CS-Entities are informed and believe and thereupon allege that the State, through its
24 State Engineer's most recent decisions, orders, and actions described herein, and most recently
25 memorialized in the State Engineer's Order 1309 dated June 15, 2020, has wrongfully taken CS-Entities'
26 Water Rights planned to be used for residential and commercial uses within its Master Planned
27 Community. Without the use and enjoyment of their water rights, the CS-Entities are not able to develop
28 the Coyote Springs Master Planned Community. Further, while prohibiting CS-Entities from developing
its residential community using its water rights, the State continues to allow other water users in the

1 Lower White River Flow System, whose rights are junior to CSI's water rights, to pump water without
2 restriction or impairment. This State action is unconstitutional and violates CS-Entities' rights.
3 Moreover, but only in the event the State continues to preclude CS-Entities' use of its water rights at its
4 Master Planned Community, the 460 afa relinquished for the survival and protection of the Moapa dace
5 was a further wrongful and unconstitutional take from the CS-Entities. This wrongful "take" of CSI's
6 Water Rights has, as the State Engineer is well aware, further effectuated a wrongful and illicit "take" of
7 all of the CS-Entities' economical beneficial use of its property and of the ability to develop its
8 Approved Major Projects and the Coyote Springs Master Planned Development.

9 **F. History of Wrongful State Actions Related to CS-Entities' Water Rights.**

10 22. After CSI acquired the Water Rights described above, CSI and others applied for
11 additional water rights in the Coyote Springs Valley. In response to CSI's new applications and the
12 applications of others, in 2002, the State, through then State Engineer, Hugh Ricci, issued Order 1169
13 which held in abeyance these pending new ground water applications. Order 1169 determined that there
14 was insufficient information and data concerning the deep carbonate aquifer from which the water would
15 be extracted for the State Engineer to make a decision on new water rights applications, including CS-
16 Entities' then pending applications. The State Engineer further ordered a hydrological study of the
17 basins. In doing so, the State Engineer recognized that certain parties, including CS-Entities, already had
18 interests in water rights permitted from the carbonate aquifer system, thereby acknowledging the
19 existence and validity of CS-Entities' Water Rights. The State Engineer ordered a study of the carbonate
20 aquifer over a five-year period during which 50% of the water rights currently permitted in the Coyote
21 Spring Valley Basin were to be pumped for at least two consecutive years. The applicants, which
22 included CS-Entities, were to pay for the studies and were to file a report with the State Engineer within
23 180 days of the end of the fifth consecutive year.

24 23. Following the issuance of Order 1169, and in furtherance of its ongoing Coyote Springs
25 development plans, CS-Entities along with other applicants engaged in pump tests of the wells in the
26 Coyote Spring Valley basin from 2010 to 2012 and filed their reports in 2013. In January 2014, the State
27 Engineer issued Ruling 6255 which found that the new applications to appropriate groundwater in the
28 Coyote Spring Valley basin could cause a decrease inflows at existing springs and could impact prior
appropriated existing water rights. The State Engineer further determined that this potential conflict with

1 existing rights was not in the public interest and that allowing appropriation of additional groundwater
2 resources could impair protection of springs and the habitat of the Moapa dace, an endangered species
3 that lives in the headwaters of the Muddy River. In Ruling 6255, the State Engineer then denied the
4 pending applications for new water rights based on the lack of unappropriated groundwater at the source
5 of supply, that the proposed use would conflict with existing water rights in the Order 1169 basins, and
6 the proposed use would threaten and prove detrimental to the public interest. Importantly, Ruling 6255
7 worked to protect existing water rights, including CS-Entities' Water Rights, from any new
8 appropriations by denying the pending new ground water applications on the basis that existing water
9 rights, such as CS-Entities' rights, must be protected.

10 24. Consistent with its reasonable investment backed expectations to develop its Master
11 Planned Community, and in further reliance on the State and its State Engineer's aforementioned Ruling
12 6255 protecting its certificated and permitted water rights, CS-Entities have pumped for beneficial use,
13 and continued to pump between 1400- and 2000 afa annually from its wells in the Coyote Spring Valley
14 Basin. Currently, approximately 1100 afa are pumped to support the existing and operational golf
15 course, and the rest of the water is pumped to support its planned Master Plan construction activities.
16 CS-Entities' expectations were to use the balance of its water rights for development of its Master
17 Planned Community.

18 25. CS-Entities have adopted, and Clark County has approved via its Major Plan Approval
19 and Development Agreement, an aggressive water conservation plan for Coyote Springs. This plan
20 includes significant reuse of water that is pumped from the groundwater, including use of recycled water
21 on its golf courses, common areas, and public parks. CS-Entities' water conservation goals are aimed at
22 a limitation on the use of water for each developed lot in its development to 0.36 acre feet per year. It is
23 the intent that the effluent from the Coyote Springs Development's wastewater treatment plant will be
24 recycled within the development and any portion not reused for irrigation will be allowed to be re-
25 injected and recharge the aquifer. To effectuate these plans, an affiliate to CS-Entities was formed to
26 hold the rights to the re-use water from the wastewater treatment facility and that entity, Coyote Springs
27 Reuse Water Company LLC holds permits 77340, 77340-S01 and 77340-S02, which are specifically
28 reuse water permits, for treated wastewater to be used within the Coyote Springs community.

1 26. With the CS-Entities' Water Rights and all of their Approved Major Project entitlements
2 contemplated and as were approved, CS-Entities intended to support thousands of residential units
3 within its Master Planned Community subdivisions, plus related resort, commercial and industrial
4 development. Return flows from the proposed subdivision and effluent from its treatment plants owned
5 by Coyote Springs Reuse Water Company LLC were to be returned to the aquifer or recycled for use at
6 Coyote Springs. Unfortunately, and as alleged herein, in violation of CS-Entities' historic reasonable
7 investment backed development expectations, the State, has taken oppressive and wrongful actions to
8 wrongfully delay and preclude CS-Entities from moving forward with their design, development and
9 construction of the Coyote Springs Master Planned Development.

10 **G. The State, Commences Efforts to Wrongfully Interfere With CS-Entities' Water**
11 **Rights and Development Efforts at Coyote Springs.**

12 27. The CS-Entities are informed and believe, and thereupon allege that LVVWD
13 purportedly acting as the manager of the CSGID, sent an unsolicited letter dated November 16, 2017 to
14 the State, and its State Engineer, which sought "to solicit [the State Engineer's] opinion whether Coyote
15 Spring Valley groundwater can sustainably supply water for the Coyote Springs Master Plan project."
16 Through its response to this letter, the State commenced its efforts to wrongfully interfere with CS-
17 Entities' use and enjoyment of its certificated and permitted water rights and CS-Entities' continuing
18 efforts to develop and construct its Coyote Springs Master Planned and Approved Major Project.

19 28. Despite the fact that LVVWD's November 16, 2017, letter acknowledged that State
20 Engineer's Ruling 6255 "did not invalidate any existing water rights, including those held by [Coyote
21 Springs Water Resource General Improvement District] GID and [CSI] Developers" at Coyote Springs,
22 LVVWD asserted that "we [LVVWD] are not convinced that Coyote Spring Valley groundwater can
23 sustainably support the CSI Approved Major Project given endangered species issues in the Muddy
24 River and impacts to senior water rights." *Id.* The LVVWD November 16, 2017 letter sought an opinion
25 from the State Engineer as to whether the State Engineer's "office would be willing to execute
26 subdivision maps for the [Coyote Springs] Project if such maps were predicated on the use of
27 groundwater owned by the GID or [CSI] Developers in Coyote Spring Valley". *Id.*

28

1 29. The State received and took action to respond to LVVWD's November 16, 2017 letter
2 despite the fact that no person or entity had asserted an alleged conflict or impairment regarding
3 pumping and use of the CSGID or CS-Entities' water rights in Coyote Springs.

4 30. CS-Entities are informed and believe, and thereupon allege that the State accepting and
5 acting upon LVVWD's November 16, 2017 letter:

6 (1) wrongfully interfered with CS-Entities' use and enjoyment of their Water Rights and
7 continuing Master Planned and Approved Major Project development rights at Coyote Springs;

8 (2) was wrongfully aimed at delaying and/or stopping CS-Entities' ongoing
9 development of its Coyote Springs Project and use of their certificated, permitted and previously
10 unchallenged Water Rights; and,

11 (3) was wrongfully aimed at precluding CS-Entities' use of its Water Rights in the
12 Coyote Spring Valley thus preventing development of the Coyote Springs Project, and according to the
13 State's newly formulated theory of homogeneity of the hydrographic basins (which is contested by the
14 CS-Entities) comprising the Lower White River Flow System identifying these basins incorrectly as
15 "homogeneous" or as a "single bathtub" arguably resulting in increased water flows in the Muddy River
16 and flowing to Lake Mead thereby increasing SNWA's claim for return flow credits and/or intentionally
17 created surplus, which is then available for use by LVVWD and SNWA in the Las Vegas Valley.

18 31. CS-Entities are informed and believe and thereupon allege that the aforementioned
19 actions done by the State, were aimed at delaying and/or halting CS-Entities planned use of its
20 certificated and permitted Water Rights to develop the Coyote Springs Project with an end game of
21 asserting that unused CS-Entities' Water Rights flow underground into the Muddy River watershed and
22 eventually into Lake Mead. While contested by CS-Entities, the State and others will likely assert that
23 these unused CS-Entities' Water Rights will flow through the LWRFS into the Muddy River Springs
24 Area and the Muddy River, and will eventually flow downstream into Lake Mead, thereby providing
25 LVVWD and its affiliate SNWA, with additional water that can be used and/or banked for use by these
26 political entities in Southern Nevada as described in SNWA's reports and certifications to the U.S.
27 Bureau of Reclamation, in the LVVWD / SNWA Integrated Resource Plan(s) and annual Water
28 Resource Plan(s), among others. The CS-Entities assert that these recent State's actions are driven in

1 part by SNWA's recent 2020 abandonment of its long-planned pipeline for the pumping of groundwater
2 from central Nevada into southern Nevada.

3 **H. The State's Response to LVVWD November 16, 2017 Letter.**

4 32. On May 16, 2018, and in response to LVVWD's November 16, 2017 letter, the State,
5 through its State Engineer, sent a letter to LVVWD regarding Coyote Spring Valley Basin Water Supply,
6 with a copy to CS-Entities' Representatives. A true and correct copy of the State Engineer's May 16,
7 2018 Letter is attached hereto as Exhibit "1". In this correspondence, the State asserted that the Order
8 1169 pump tests indicate that pumping at the level during the two year pump test caused declines in
9 groundwater levels and noted that monitoring of pumpage and water levels has continued since
10 completion of the pumping tests on December 31, 2012 and that the additional data shows that
11 groundwater levels and spring flows have remained relatively flat while precipitation has been nearly
12 average and the five basin carbonate pumping has ranged between 9090 and 14766 acre feet annually
13 during the years 2007 to 2017. See Interim Order 1303, Section IV final "whereas" clause, page 9.

14 33. The State Engineer's May 16, 2018 letter publicly announced that the amount of
15 groundwater pumping that will be allowed in the five basin area (also known as the "superbasin") will be
16 limited to the amount that will not conflict with the Muddy River Springs or the Muddy River as they are
17 the most senior rights in the five basin area. The State, through its State Engineer, then further publicly
18 announced that "carbonate pumping will have to be limited to a fraction of the 40,300-acre feet already
19 appropriated in the five basin area". *Id.* The State Engineer further stated:

20 Therefore, specific to the question raised in your November 16, 2017, letter, considering current
21 pumping quantities as the estimated sustainable carbonate pumping limit, pursuant to the
22 provisions found in Nevada Revised Statutes Chapter 278, 533 and 534, the State Engineer
23 cannot justify approval of any subdivision development maps based on the junior priority
groundwater rights currently owned by CWSRGID (sic)[Coyote Springs Water Resources
General Improvement District] or CSI unless other water sources are identified for
development. (emphasis in original.)

24 These State actions effectively denied the CS-Entities the use and access to their Water Rights and
25 commenced a taking by the State of these Water Rights and associated Master Planned development
26 rights.

27 34. CS-Entities are informed and believe and thereupon asserts that the State Engineer's
28 May 16, 2018 letter commenced a "take of CS-Entities' property rights, worked as a public
announcement of the States' intent to condemn and/or wrongfully take CS-Entities' Water Rights, and

1 further worked to unreasonably delay and freeze CS-Entities' continued development of its Approved
2 Major Project development. CS-Entities further contend that it was inappropriate, unreasonable, and
3 oppressive for the State, and its State Engineer, in response to an unsolicited inquiry by LVVWD, with
4 no claim of conflict or impairment of its water rights against the CS-Entities, to publicly announce its
5 decision and intent to manage groundwater resources "across the five-basin area" and that "pumping will
6 have to be limited to a fraction of the 40,300 acre-feet already appropriated in the five-basin area". *Id.*

7 35. Following the State and its State Engineer's May 16, 2018 public announcement of its
8 intent to condemn and/or take the CS-Entities' Water Rights and effectively freeze CS-Entities'
9 development rights, in communications by email between CS-Entities Representatives and the State
10 Engineer, on May 17, 2018, the State further announced that it "would not sign off on CSI's subdivision
11 maps to allow their approval if they were based on the water rights CS-Entities owned or those
12 previously dedicated to the Coyote Springs General Improvement District CSGID." CSI asserts that
13 such State action was unreasonable, oppressive and unlawful.

14 36. On May 18, 2018, in conversation with CS-Entities Representatives, the State Engineer
15 advised CS-Entities "not to spend one dollar more on the Coyote Springs Development Project and that
16 processing of CSI's maps had stopped". This further evidences the State's intent and decision to
17 wrongfully take CSI's existing and certificated water rights and to further unreasonably delay and
18 eventually wrongfully take CS-Entities' development rights at its Master Planned Community. The State
19 announced that it would prepare a new draft order that would supersede or dramatically modify Order
20 1169 and Ruling 6255. The State, again through its State Engineer, admitted that this is "unchartered
21 territory and his [State Engineer] office has never granted rights and then just taken them away". These
22 statements of the State Engineer further confirm the State's taking of CS-Entities' Water Rights.

23 37. On May 18, 2018, CS-Entities Representatives further inquired of the State Engineer if
24 anyone had filed an impairment claim or any type of grievance with regards to CSI's and CSGID's water
25 rights and/or the pumping CS-Entities had performed over the last 12 years at its Coyote Springs Master
26 Planned Development. On May 21, 2018, the State Engineer responded that no one has asserted a
27 conflict or impairment regarding CSI's pumping of the CSGID and CS-Entities' Water Rights.

28 ///

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1 38. In an effort to best protect its water and development rights and its investment backed
2 expectations, on June 8, 2018, CSI filed a Petition for Judicial Review of the State Engineer's May 16,
3 2018 letter in this Court, challenging the decision by the State Engineer to place a moratorium on the
4 processing of CSI's subdivision maps. During a court-ordered settlement conference, CSI and the State,
5 through Jason King, their State Engineer at the time, entered into a written Settlement Agreement dated
6 August 29, 2018 (the "Settlement Agreement"). A true and correct copy of the Settlement Agreement is
7 attached hereto as Exhibit 7. The Settlement Agreement established significant obligations upon both
8 CSI and the State designed to allow CSI to move forward with its Master Planned Development
9 Mapping, development and sales of lots within the planned community. Further, the State accepted
10 heightened "good faith" processing obligations for critical mapping and development application
11 approvals necessary for Plaintiffs to move forward with the build-out and sales of lots within the Coyote
12 Springs Master Planned Community. Specifically, the State Engineer rescinded his May 16, 2018 letter
13 and agreed to "process in good faith any and all maps or other issue submittals as requested by CSI,
14 and/or its agents or affiliates in accordance with the State Engineers' ordinary course of business."
15 Unfortunately, however, the State, breached its obligations owed CSI "to process in good faith any and
16 all maps or other issue submittals by CSI" pursuant to the Settlement Agreement. These wrongful State
17 actions commenced a breach of the Settlement Agreement.

18 39. Recognizing its May 16, 2018 letter decision was unlawful and now rescinded, the State
19 Engineer began a public workshop process to review the water available for pumping in the Lower
20 White River Flow System ("LWRFS") which includes the Coyote Spring Valley basin. On July 24,
21 2018, the State Engineer held a Public Workshop on the LWRFS and on August, 23, 2018, the State
22 Engineer facilitated a meeting of the Hydrologic Review Team ("HRT"), a team established under a
23 2006 Memorandum of Agreement ("MOA") among some of the same parties.

24 40. On September 7, 2018, the Office of the State Engineer issued two conditional approvals of
25 subdivision maps submitted for review by CSI. The first conditional approval was for the Large Lot
26 Coyote Springs—Village A, consisting of eight lots, common area, and rights of way totaling
27 approximately 643 acres in Clark County and requiring the statutory 2.0 afa per lot, for a total of 16 afa.
28 The second conditional approval was for the Coyote Springs—Village A subdivision map, consisting of
575 lots, common areas and rights of way for approximately 142.71 acres in Clark County and requiring

1 an estimate demand of 408.25 afa of water annually based on .71 afa per residential unit. The two
2 subdivision maps were conditionally approved by the State Engineer subject only to a will serve letter
3 from CSGID and a final mylar map; the State Engineer confirmed that sufficient water existed to supply
4 to these subdivisions without affecting senior water rights in the Muddy River and the Muddy River
5 Springs.² The State's "conditional approval" of these maps failed to allow CS-Entities to move forward
6 with its Master Planned Community Development.

7 41. On September 19, 2018, the State Engineer held an additional Public Workshop on the
8 LWRFS and issued a Draft Order at the workshop for comment (the "Draft Order"). A true and correct
9 copy of the September 19, 2018 Draft Order is attached as Exhibit "2". The Draft Order contained a
10 preliminary determination that there were 9,318 afa of water rights with a priority date of March 31,
11 1983, or earlier, that could be safely pumped from the LWRFS basins without affecting the flows in the
12 Muddy River and without affecting the endangered Moapa dace fish. The Draft Order also contained
13 provisions that would place a moratorium on processing of all subdivision maps unless there was a
14 demonstration that there was a showing to the State Engineer's satisfaction that an adequate supply of
15 water was available "in perpetuity" for the subdivision. CS-Entities are informed and believe and
16 thereupon allege that the "in perpetuity" restriction was arbitrary, capricious, and unreasonable and not
17 supported by law or State precedent. CS-Entities further allege this Draft Order moratorium on
18 processing of all subdivision maps was a further violation of the State's obligation to process "in good
19 faith" CSI's maps as required by the Settlement Agreement.

20 42. On October 5, 2018, CSI-Entities sent a series of comment letters regarding the Draft
21 Order. CS-Entities commented upon the total lack of technical information that was necessary to

22 _____
23 ² Conditional approval letter for Tentative Subdivision Review No. 13217-T Permit None for Coyote
24 Springs – Village A; dated September 7, 2018, and signed by Mark Sivazlian, PE, Section Chief, Water
25 Rights for the Division of Water Resources, and specifically stating on page 4 thereof: "*Because there
26 exist numerous mechanisms that may supply water to support Coyote Springs – Village A...there exists
27 justification to conditionally approved Coyote Springs Village – A, as submitted."* And also see
28 Conditional approval letter for Tentative Subdivision Review No. 13216-T Permit None for Large Lot
Coyote Springs – Village A; dated September 7, 2018, and signed by Mark Sivazlian, PE, Section Chief,
Water Rights for the Division of Water Resources, and specifically stating on page 4 thereof: "*Because
there exist numerous mechanisms that may supply water to support Large Lot Coyote Springs – Village
A...there exists justification to conditionally approve Large Lot Coyote Springs – Village A, as
submitted."*

1 perform a comprehensive review of the State Engineer's conclusions in the Draft Order. CS-Entities also
2 pointed out to the State Engineer that his use of the 9,318 afa limit for pumping in the basin was not
3 supported by substantial evidence and that the State Engineer's own data supported a figure of at least
4 11,400 afa that could be pumped without any effect on the flows in the Muddy River or any effects on
5 the Moapa dace. CS-Entities' technical expert, Mr. Steve Reich, a qualified hydrogeologist from Stetson
6 Engineering, after criticizing the State Engineer's use of only three years of data, provided the following
7 technical comments on the State Engineer's Draft Order:

8 a. The observed data does not substantiate a direct relationship between the recent three
9 years of pumping and "relatively flat" groundwater levels and spring discharge that support
groundwater pumping of 9,318 acre-feet per year for the 6-Basin area.

10 b. An extended 14-year dry period, including two wetter than normal years, occurred
11 from 2000 through 2012.

12 c. Climate and climatic cycles play a significant role in assessing available water
supply.

13 d. Discharge at the Pederson Spring Complex is affected by local and regional recharge
14 as shown by response to 1-year and multi-year climatic conditions.

15 e. The relationship between local carbonate pumping and groundwater levels in the
16 [Muddy River Springs Area] MSRA [sic] is affected by recharge and long-term climate. The
impact to water levels from pumping in other basins is not defined.

17 f. The effect of pumping in CSV [Coyote Spring Valley] on carbonate groundwater
levels in MSRA [sic] may be affected by groundwater barriers and geologic structure.

18 g. Groundwater levels were declining in the MSRA at the early part of this century
19 when there was no pumping in the CSV.

20 h. Rainfall intensity and temporal distribution affect recharge and subsequent
groundwater levels in the 6-Basin area.

21 43. On October 23, 2018, CS-Entities provided additional comments on the Draft Order
22 noting again that the State Engineer's own data supported a determination that the correct amount of
23 pumping that could be sustained in the LWRFS was at least 11,400 afa and not 9,318 afa. However,
24 even assuming that 9,318 afa was the correct number, this would mean, based on CS-Entities' Water
25 Right priority date of March 31, 1983, that CS-Entities should be permitted to pump at least 1,880 afa of
26 water for its Approved Major Project subdivisions. Importantly, and as further evidence of its
27 unreasonable and oppressive conduct, the State, and its State Engineer have refused to acknowledge that
28 the 1,880 afa was more than sufficient to support CSI's current proposed subdivision developments that
were conditionally approved by the Office of the State Engineer on September 7, 2018. Notwithstanding

1 its obligations under both Nevada law and the Settlement Agreement, the State Engineer continued to
2 unreasonably delay³ the final approval as to CS-Entities' two conditionally approval maps despite the
3 fact the State Engineer's own analysis in the September 19, 2018 Draft Order determined that CSI could
4 pump at least 1,880 afa of water from the Coyote Spring Valley Basin in priority and would be within
5 the 9,318 afa of water that the State Engineer believed could be safely pumped. After CS-Entities
6 incurred extensive time, energy, and expenses related to responding to and addressing the State's
7 proposed Draft Order, the State Engineer abandoned the Draft Order outright and failed to process same
8 as a final order. CS-Entities assert that such actions were unfair, unreasonable, and designed to further
9 delay and frustrate CS-Entities' efforts to continue its Master Planned Development.

10 44. On January 11, 2019, the State Engineer, Jason King, issued Interim Order 1303 (the
11 "Interim Order").⁴ A true and correct copy of the January 11, 2019 Interim Order 1303 is attached as
12 Exhibit "3". In the Interim Order, the State Engineer again declared, consistent with its prior, now
13 withdrawn May 18, 2018 letter, that Coyote Spring Valley, Muddy River Springs Area, Hidden Valley,
14 Garnet Valley, California Wash, and the northwestern part of the Black Mountains Area are designated
15 as a joint administrative unit for purposes of administration of water rights, known as the Lower White
16 River Flow System or the Six-Basin Area. Interim Order 1303 also declared a temporary moratorium on
17 approvals regarding any final subdivision or other submissions concerning development and construction
18 submitted to the State Engineer for review. According to Interim Order 1303, any such submissions
19 shall be held in abeyance pending the conclusion of the public process to determine the total quantity of
20 groundwater that may be developed within the Lower White River Flow System. Interim Order 1303
21 does provide, however, that the State Engineer may review and grant approval of a subdivision or other
22 submission if a showing can be made of an adequate and sustainable supply of water to meet the
23 anticipated "life of the subdivision." Unfortunately, the State Engineer continued its unreasonable and
24 oppressive delay practice as to CS-Entities pending subdivision map submittals, the State Engineer again

25 _____
26 ³ CS-Entities' representatives inquired as to the status of the maps submitted for processing several times, via
27 telephone and electronic-mail between August 15, 2019 and early January 2020, to no avail, and the State
28 Engineer would not meet or discuss any outstanding questions or concerns of their office regarding the submittal.

⁴ Thereafter, also on January 11, 2019, the State Engineer resigned his State Engineer position effective immediately.

1 failed to address any of the technical and legal issues raised by CS-Entities in its comments and failed to
2 recognize that even under the State Engineer's own analysis, there was more than sufficient water in the
3 Six-Basin Area to support CS-Entities current pending subdivision plans. These continuing delays were
4 unreasonable and oppressive actions that have and continue to effectuate an unlawful taking of CS-
5 Entities use and enjoyment of its Water Rights and Master Planned Development rights. These actions
6 and issuance of the Interim Order are also a violation of the State's "good faith" obligations to process
7 CSI's subdivision maps necessary to move their Master Planned Community development forward.

8 **I. The State Failed to Finally Approve CSI's Conditionally Approved Subdivision**
9 **Maps Despite Available Water for Such Development Under the State Engineer's Own**
10 **Water Availability Analysis.**

11 45. CS-Entities have submitted, and attempted to fully process, certain Coyote Springs
12 Village A Development Maps required to move their Approved Major Project and Master Planned
13 Development forward. Specifically, CS-Entities have submitted and obtained Conditional Approval to
14 the following Village A development maps:

15 A. Village A – Large Lot Tentative Map (TM-18-500081) (8 Lots)

- 16 a. Submitted: May 14, 2018
- 17 b. CC Planning Commission Final Approval: July 3, 2018
- 18 c. Expires July 3, 2022
- 19 d. LVVWD Response Letter dated August 20, 2018
- 20 e. State of Nevada- Division of Water Resources on Sept. 7, 2018 –
21 Conditionally Approved subject to a will serve letter, and then as set forth in
22 Order 1303 a verifiable water source condition.
- 23 f. CSI satisfies verifiable water source condition on June 13, 2019, upon
24 submittal of Technical Report 053119.0 dated May 31, 2019 issued by
25 Stetson Engineering, Inc., to the State Engineer.

26 B. Village A – Large Lot Final Map (8 Lots)

- 27 a. Final Mylar Submitted to Division of Water Resources: June 13, 2019 --
28 No Response
- 29 b. Paper Map Reviews through Clark County with County Approval "OK to
30 Submit Final Mylar Map"

31 Paper Final Map submitted to LVVWD – Response Letter dated September 12, 2018.

32 C. Village A – Parcels A-D Tentative Map (575 Residential Lots)

- 33 a. Submitted: June 11, 2018
- 34 b. Board of County Commissioners Approval: Aug. 8, 2018
- 35 c. Expires: July 3, 2020
- 36 d. LVVWD Response Letter date August 20, 2018
- 37 e. State of Nevada- Division of Water Resources on Sept. 7, 2018 –
38 Conditionally Approved subject to a will serve letter, and then as set forth in
39 Order 1303 a verifiable water source condition.

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f. CSI satisfies verifiable water source condition on June 13, 2019, upon submittal of Technical Report 053119.0 dated May 31, 2019 issued by Stetson Engineering, Inc., to the State Engineer.

D. Village A – Parcel A-B Unit 1 Final Map (30 Lots) - Only Department of Water Resources submittal

Paper Final Map only to DWRS: Dec. 4, 2018 - No Response from Department of Water Resources. (Collectively the “Conditionally Approved Maps”).

46. On September 12, 2018, LVVWD sent the State Engineer correspondence advising that LLVWD “in its capacity as manager of the Coyote Springs Water Resources General Improvement District (GID), has reviewed the subject [Coyote Springs Village A] subdivision map” and that based upon “the facts described in the Sate Engineer’s letter dated May 16, 2018, concerning the viability of groundwater rights previously dedicated to the GID by the developer [CS-Entities], the uncertain resolution of the Lower White River Flow System (“LWRFS”) workshop process initiated by the Division of Water Resources . . . , and the [LVVWD] District’s assessment of aquifer dynamics, potential conflicts with senior rights, and potential adverse impacts to endangered species, the District is unable to confirm the availability of water resources sufficient to support recordation of this map at this time”.

47. The State failed to issue final approval of these Conditionally Approved Village A Maps, despite the fact that the State Engineer’s own Draft Order and Interim Order 1303 allow development to proceed if conditions were met by the CS-Entities. Those conditions were met on June 11, 2019, upon submittal of Technical Report 053119.0 issued by Stetson Engineering, Inc. to the State Engineer, providing the necessary analysis that sufficient available water is present to support this proposed Coyote Springs Village A development. CS-Entities asserts that the State’s failure to finally approved the Conditionally Approved Maps was wrongful, unreasonable and oppressive and have effectuated precondemnation damages, inverse condemnation damages, and a wrongful taking of CSI’s property rights, including CSI’s Water Rights and its development rights as to the Coyote Springs Master Planned Development and Approved Major Project, in the Coyote Springs Valley. CS-Entities further assert that the above-described acts of the State violated the State’s obligations “to process in good faith” CS-Entities development maps necessary for continued development of their Master Planned Community as required by the Settlement Agreement.

///

1 **J. The State Engineer Issues Order 1309 Which Effectuates A Take of CS-Entities’**
2 **Water Rights and Its Master Planned Development Rights, and Has Destroyed All**
3 **Viable Economic Use of CS-Entities’ Property.**

4 48. On June 15, 2020, the State, through its State Engineer, issued Order 1309. Pursuant to
5 its Order 1309, the State Engineer ordered, in relevant part:

- 6 1. The Lower White River Flow System consisting of the Kane Springs Valley, Coyote
7 Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet
8 Valley, and the Norwest potion of the Black Mountains Area as described in this
9 Order, is hereby delineated as a single hydrographic basin.
- 10 2. The maximum quantity of groundwater that may be pumped from the Lower White
11 River Flow System Hydrographic Basin on an average annual basis without causing
12 further declines in Warm Springs area spring flow and flow into the Muddy River
13 cannot exceed 8,000 afa and may be less.
- 14 3. The maximum quantity of water that may be pumped from the Lower White River
15 Flow System Hydrographic Basin may be reduced if it is determined that pumping
16 will adversely impact the endangered Moapa dace.
- 17 4. All applications for the movement of existing groundwater rights among sub-basins
18 of the Lower White River Flow System Hydrographic Basin will be processed in
19 accordance with NRS 533.370.
- 20 5. The temporary moratorium on the submission of final subdivision or other
21 submission concerning development and construction submitted to the State
22 Engineer for review established under Interim Order 1303 is hereby terminated.
- 23 6. All other matters set forth in Interim Order 1303 that are not specifically addressed
24 herein are hereby rescinded.

25 See State Engineer’s Order 1309 a true and correct copy of which is attached hereto as Exhibit “4”.

26 49. The State Engineer’s Order 1309, in creating a new single super basin now known as the
27 Lower White River System Hydrological Basin (“LWRFS”) for these seven previously stand-alone
28 hydrological basins, with its limitation of the maximum quantity of groundwater that may be pumped
29 from the LWRFS on an average annual basis that “cannot exceed 8,000 afa and may be less” effectuates
30 a “take” of the CS-Entities Water Rights and its Master Planned Approved Major Project development
31 rights. Multiple legal challenges have been filed by impacted parties, including CSI, to the State
32 Engineer’s Order 1309. Order 1309 has and continues to effectuate an unlawful and unconstitutional
33 take of CS-Entities’ property for which just compensation is due. Even with a judicial set aside of State
34 Engineer’s Order 1309, the State has occasioned a wrongful precondemnation delay and temporary
35 unconstitutional regulatory taking and other violations as claimed below, on CS-Entities for which

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1 compensation is now due and owing CSI. These State actions also breach the expressed and implied
2 terms of the Settlement Agreement.

3 50. Immediately following its issuance of Order 1309, the State, through its State Engineer,
4 sent correspondence dated June 17, 2020 to CS-Entities regarding its "Final Subdivision Review No.
5 13217-F" as to CS-Entities' conditionally approved Coyote Springs Village A subdivision maps, which
6 provided for "eight large parcels intended for further subdivision". The State Engineer, relying upon the
7 LWRFS as a single hydrological basin, stated in part:

8 General: Coyote Springs Investment, LLC groundwater permits have priority dates which
9 may exceed the threshold of allowable pumping within the definition of this
order.

10 The State Engineer then took the following action:

11 Action: The Division of Water Resources recommends disapproval concerning water
12 quantity as required by statute for Coyote Springs Village A subdivision based
13 on water service by Coyote Springs Water Resources General Improvement
District.

14 A true and correct copy of the State Engineer's June 17, 2020 letter is attached hereto as Exhibit
15 "5".

16 51. CS-Entities assert and thereupon allege that the State's actions, and its application of
17 Order 1309 as to CS-Entities' water rights and pending Coyote Springs Village A Maps, effectively
18 deprives the CS-Entities of all economically viable beneficial use of its property and precludes and
19 prevents the continued development of the Coyote Springs Master Planned Community and Approved
20 Major Project. The State's action of joining multiple groundwater basins into the single Lower White
21 River Flow System ("LWRFS") hydrographic basin and reducing the "maximum quantity of
22 groundwater that may be pumped from the LWRFS" is a wrongful and unconstitutional "take" of CS-
23 Entities' Water Rights and Master Planned Community and Major Project development rights for which
24 just compensation for such take is due the CS-Entities. The United States Supreme Court stated in *Lucas*
25 *v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 796, (1992) that "when
26 the owner of real property has been called upon to sacrifice all economically beneficial uses in the name
27 of the common good, that is, to leave his property economically idle, he has suffered a taking." CS-
28 Entities asserts that they have suffered such a taking and that just compensation for such taking of its
property rights is now due.

1 52. CS-Entities further assert and allege that the State’s denial of CSI’s development maps
2 was a further breach of the State’s obligations under the Settlement Agreement to “process in good faith”
3 development maps necessary for continued development of Plaintiffs’ Master Planned Community.

4 53. Pursuant to agreed upon mitigation procedures with various agencies and parties, CSI
5 has previously relinquished 460 afa of its certificated and permitted water rights for protection of the
6 Moapa dace endangered fish species and has committed to dedicate 5% of all additional water CSI
7 brings to Coyote Spring Valley above 4600 afa and used to support its development. Such water right
8 mitigation contribution was aimed at mitigating the potential decrease in in-stream water flows along the
9 Muddy River to best protect the Moapa dace potentially caused by the ground water pumping needed for
10 the continued development of the Coyote Springs Master Planned Development and Approved Major
11 Project. To take the balance of CSI’s Water Rights to further protect the Moapa dace, is an unfair and
12 unreasonable burden placed upon CS-Entities which should be more appropriately born by the public as
13 a whole rather than on the CS-Entities individually. “[W]hen the owner of real property has been called
14 upon to sacrifice all economically beneficial uses in the name of the common good, that is to leave his
15 property economically idle, he has suffered a taking”. *Lucas v. South Carolina Coastal Council*, 505
16 U.S. 1003 (1982). In this matter, CS-Entities have been called upon, though State Order 1309, to
17 sacrifice all economically beneficial uses of its Water Rights and real property development rights
18 allegedly in the name of the common good, the protection of the Moapa dace, which is a taking for
19 which just compensation is required.

20 54. CS-Entities asserts that the aforementioned acts of the State, and its issuance and
21 application of Order 1309 by the State Engineer, effectuated a total regulatory taking of all of CS-
22 Entities’ economically viable use of the entirety of its Coyote Springs property for which it is entitled to
23 an award of just compensation.

24 **III.**

25 **CLAIMS FOR RELIEF**

26 **FIRST CLAIM FOR RELIEF**

27 **(Inverse Condemnation Under Nevada Constitution – Lucas Regulatory Taking)**

28 55. CS-Entities incorporate the preceding paragraphs as if fully set for the herein.

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1 56. The Nevada Supreme Court has previously recognized that the first right established in
2 the Nevada Constitution’s declaration of rights is the protection of a landowner’s inalienable rights to
3 acquire, possess and protect private property. The Nevada Supreme Court further recognized “the
4 Nevada Constitution contemplates expansive property rights in the context of takings claims through
5 eminent domain” and that “our State enjoys a rich history of protecting private property owners against
6 government taking.” *McCarran Int’l. Airport v. Sisolak*, 122 Nev. 645, 669, (2006). Similar to the
7 protections in the Takings Clause of the United States Constitution, the Nevada Constitution provides
8 that “[p]rivate property shall not be taken for public use without just compensation having been first
9 made.” Nev. Const. art. 1, § 8. “When a governmental entity takes property without just compensation,
10 or initiating an eminent domain action, an aggrieved party may file a complaint for inverse
11 condemnation.” *Fritz v. Washoe County*, 132 Nev. 580, 583-84 (2016). The Nevada Supreme Court has
12 generally adopted the United States Supreme Court’s standards for inverse condemnation claims and has
13 “recognized that government regulation of private property may, in some instances, be so onerous that its
14 effect is tantamount to a direct appropriation or ouster – and that such “regulatory takings” may be
15 compensable.” *Sisolak*, 122 Nev. at 662. Further, “the Supreme Court has defined “two categories of
16 regulatory action that generally will be deemed *per se* takings.” *Id.* One such *per se* regulatory taking
17 occurs when a government regulation “completely deprives an owner of all economical beneficial use of
18 her property.” *Id.* CSI-Entities asserts and alleges that the State’s Orders, concluding in Order 1309,
19 effectuates a *per se* regulatory taking and deprives CS-Entities of all economical beneficial use of its
20 property in Coyote Springs. *See City of North Las Vegas v. 5th Centennial, LLC*, 2014 WL 1226443
21 (Nev.
22 March 21, 2014) (applying federal law standards to *per se* takings claims brought under the Nevada
23 Constitution).

24 57. The State Engineer’s May 18, 2018 Letter, its purported “draft order” issued only for
25 delay, its 1303 Interim Order, its Order 1309, and its most recent June 17, 2020 “disapproval concerning
26 water quantity . . . for Coyote Springs Village A subdivision”, all have effectuated a regulatory taking of
27 CS-Entities’ Water Rights, its property, and its development rights which requires compensation to CS-
28 Entities (the “State Engineer’s Orders”). The State Engineer’s Orders have had a massive, devastating and
continuing economic impact on the CS-Entities and their Coyote Springs Master Planned Development,

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1 blocked and interfered with CS-Entities' reasonable and approved investment-backed expectations to
2 design, develop, construct and sell Coyote Springs Master Planned Development, and unfairly signaled
3 out CSI to bear the burden of protecting the Moapa dace that should more appropriately be borne by the
4 public as a whole. The Defendants' actions have left CS-Entities' property economically idle and the
5 CS-Entities have suffered an unconstitutional taking for which just compensation is now due.

6 58. CS-Entities are informed and believe and thereupon alleges that the State, and its State
7 Engineer's actions as described herein, were wrongful, oppressive and unreasonable and have resulted in
8 a taking of CS-Entities' Water Rights, its property, and its Master Planned and Approved Major Project
9 development rights, and any viable economic use of its property. The State's actions rise to the level of
10 an unconstitutional *per se* regulatory taking for which just compensation is due to the CS-Entities.

11 59. The State's taking of CS-Entities' property by the public constitutes a taking by inverse
12 condemnation which require compensation under Article 1, Section 8 of the Nevada Constitution,
13 requiring the State to pay full and just compensation to Plaintiff CS-Entities.

14 60. As a result of the State's wrongful conduct and actions as described herein, the CS-
15 Entities have been damaged far in excess of \$15,000.

16 61. As a further result of Defendants' wrongful conduct, Plaintiffs have been required to
17 retain legal counsel to prosecute this action and therefor Plaintiff CS-Entities are entitled to recover their
18 reasonable attorneys' fees and costs of suit incurred in this action.

19 SECOND CLAIM FOR RELIEF

20 (Inverse Condemnation Under Nevada Constitution – Penn Central Regulatory Taking)

21 62. CS-Entities incorporate the preceding paragraphs as if fully set forth the herein.

22 63. Partial regulatory taking challenges are governed by the standard set forth in *Penn*
23 *Central Transportation Co. vs New York City*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631(1978). In
24 determining whether a Penn Central-type regulatory taking has occurred a Court should consider (1) the
25 regulation's economic impact on the property owner, (2) the regulations interference with investment-
26 backed expectations, and, (3) the character of the government action. *Sisolak*, 122 Nev. at 663. The
27 Nevada Supreme Court applies the federal *Penn Central* standards to partial regulatory takings claims
28 arising from the Nevada Constitution. *Id.*

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1 70. The pre-condemnation taking of Plaintiff's property by the public mandates
2 compensation under Article I, Section 8 of the Nevada Constitution, requiring the State to pay full and
3 just compensation to Plaintiffs CS-Entities in an amount to be determined.

4 71. As a result of the State's wrongful conduct and actions as described herein, the CS-
5 Entities have been damages far in excess of \$15,000.

6 72. As a further result of Defendants' wrongful conduct, the CS-Entities have been required
7 to retain legal counsel to prosecute this action. Plaintiffs are therefore entitled to recover their
8 reasonable attorney's fees and costs of suit incurred in this action.

9 **FOURTH CLAIM FOR RELIEF**

10 **(Equal Protection Violations Under Nevada Constitution)**

11 73. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

12 74. Article 4, Section 21 of the Nevada Constitution requires that all laws be general and of
13 uniform operation throughout the State. This means the State cannot deprive the CS-Entities of the equal
14 protection of the law. "The standard for testing the validity of legislation under the equal protection
15 clause of the state constitution is the same as the federal standard." *In re Candelaria*, 125 Nev. 408, 416-
16 17 (2010). Under the federal standards applied to the State Constitution's Equal Protection Clause, CS-
17 Entities must not be subjected to discrimination by the State and its State Engineer's decisions that result
18 in standardless and inconsistent administration. *See* U.S. Const. amend. XIV § 1. The State Engineer has
19 violated Plaintiff CSI's rights to equal protection under the Nevada Constitution as its May 16, 2018
20 letter, its Draft Order, and its Interim 1303 Order, all singled out the CS-Entities as to the map
21 moratorium contained therein. By failing to timely process and fairly adjudicate CS-Entities' pending
22 maps and applications, including its Conditionally Approved Maps, the State has treated CS-Entities in a
23 different, standardless and inconsistent position than others similarly situated.

24 75. The State, intentionally and without rational basis, treated CS-Entities differently than
25 others, including the Moapa Valley Water District ("MVWD"), which holds water rights junior to the
26 CS-Entities water rights. CS-Entities are informed and believe MVWD has been allowed to use its water
27 rights and conduct its business as a water utility using water rights junior to CS-Entities', including,
28 without limitation, for new hookups and processing tentative or subdivision maps during the Orders
1303 and 1309 subdivision map moratoriums. Moreover, the Defendants have not sought to curtail

1 MVWD's use of any of its water rights which are junior to CS-Entities water rights, while at the same
2 time precluding CS-Entities from use and enjoyment of its water rights and denying CS-Entities
3 subdivision maps. CS-Entities were treated differently from MVWD and potentially others subject to
4 Orders 1303 and 1309, when Defendants refused to approve CS-Entities' Master Planned Development
5 submitted subdivision maps and Conditionally Approved Maps as described herein. The State and its
6 State Engineer, have unfairly and in bad faith, targeted the CS-Entities.

7 76. The State and its State Engineer, without rational basis, treated the CS-Entities
8 differently from other similarly situated, and accordingly violated the equal protection clause of the
9 Nevada Constitution. *N. Pacifica LLC vs. City of Pacifica*, 526 F.3d 478,486 (9th Cir. 2008).

10 77. Plaintiff CS-Entities are entitled to damages for these Equal Protection violations.

11 78. Defendant's conduct has required Plaintiffs to incur attorneys' fees and costs of suit to
12 bring this action, and Plaintiffs are entitled to an award of attorneys' fees and costs incurred in this
13 action.

14 **FIFTH CLAIM FOR RELIEF**

15 **(Breach of Contract Claim)**

16 79. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

17 80. The Settlement Agreement entered into on or around August 29th, 2018, is a valid,
18 binding, and existing contract between Plaintiff CSI and the State.

19 81. Plaintiff CSI has fully performed its obligations under the Settlement Agreement
20 contract.

21 82. Defendant State has breached the Settlement Agreement by failing to timely and fairly
22 process Plaintiffs' development maps in "good faith" as required under the contract.

23
24 83. As a direct, proximate, and foreseeable cause of the conduct of the State as described
25 above, Plaintiffs have been damaged in an amount far in excess of \$15,000.00.

26 84. As a further result of the State's wrongful conduct, Plaintiffs have been required to
27 retain legal counsel to prosecute this action; Plaintiffs are therefore entitled to recover their reasonable
28 attorney's fees and costs of suit incurred herein.

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1 **SIXTH CLAIM FOR RELIEF**

2 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

3 85. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

4 86. Plaintiff CSI and Defendant State are parties to a valid and existing contract; namely the
5 Settlement Agreement entered into on or around August 29, 2018.

6 87. The covenant of good faith and fair dealing is inherent and implied in every contract and
7 in particular is implied in the Settlement Agreement contract.

8 88. Defendant State owed Plaintiff CSI a duty of good faith and fair dealing.

9 89. Defendant State breached its duty of good faith and fair dealing by committing the acts
10 and/or omissions described herein in a manner that was unfaithful to the purpose of the Settlement
11 Agreement.

12 90. Plaintiff CSI's justified expectations under the Settlement Agreement were thus denied.

13 91. As a direct, proximate and foreseeable cause of the conduct of the State, as described
14 above, Plaintiffs have been damaged in an amount far in excess of \$15,000.00.

15 92. As a further result of the CSGID and its manager, LVVWD, Plaintiffs have been
16 required to retain legal counsel to prosecute this action and are therefore entitled to recover their
17 reasonable attorneys fees and costs of suit herein.

18 **SEVENTH CLAIM FOR RELIEF**

19 **(Declaratory Relief-Claimed Against CSGID and the State of Nevada)**

20 93. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

21 94. A justiciable controversy exists between Plaintiffs, the State, and Defendant CSGID,
22 and its manager, LVVWD, that requires this Court's attention and intervention. Specifically, and
23 pursuant to the Multi-Party Agreement dated July 7, 2015, Plaintiffs seek a declaration from the Court
24 that the State's wrongful actions as described herein has precluded Plaintiffs from moving forward with
25 its Master Planned Development and caused Plaintiffs to "permanently cease development of the Clark
26 County Development" and that Plaintiffs "have the right to receive back from the CSGID any and all
27 water rights previously dedicated by the Developers to CSGID that are not Committed and are not
28 otherwise necessary to support existing development." Multi-Party Agreement pg. 9 of 25.

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1 95. Plaintiffs seek a declaration that Plaintiffs have the right to receive back from CSGID,
2 and to seek just compensation and damages associated with the State's wrongful take of the 2000 afa
3 previously conveyed by CSI to CSGID, for use at the Coyote Springs Master Planned Community.

4 96. As the action of the State, and its State Engineer, necessitated that Plaintiffs hire counsel
5 and incur legal fees and costs to bring this action, Plaintiffs are also entitled to an award of attorneys'
6 fees and costs of suit.

7 **EIGHT CLAIM FOR RELIEF**

8 **(Injunctive Relief)**

9 97. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

10 98. Plaintiffs are entitled to a preliminary and permanent injunction enjoining further
11 arbitrary and capricious actions and unfair and unconstitutional takings of Plaintiffs' water rights and
12 development rights at its Coyote Springs Master Planned Community. Further, that State should be
13 enjoined from any further violations of its obligations under the Settlement Agreement and from taking
14 any further wrongful and unlawful actions related to CS-Entities' water and development rights. The
15 status quo as to CS-Entities' water and development rights should be maintained during the pendency of
16 this action. Any Nevada Revised Statutory water forfeiture claims asserted by the State should be
17 tolled/stayed during the pendency of this action in order to protect Plaintiffs from further wrongful
18 actions by the State.

19 99. Plaintiffs have no plain, speedy or adequate remedy at law. Unless Defendants are
20 enjoined, Plaintiffs will continue to suffer irreparable harm, including violations of its constitutional
21 rights, lost business income, and injury to Plaintiffs' business goodwill and other business relationships.
22 Monetary damages are inadequate to fully compensate Plaintiffs because of the difficulty in quantifying
23 lost opportunity costs and harm to business goodwill and other relationships.

24 100. Plaintiffs have a reasonable probability of success on the merits of its claims and the
25 public interest and relative hardships all weigh in favor of granting injunctive relief to Plaintiffs.

26 101. A preliminary and permanent injunction should therefore issue enjoining the State, and
27 its State Engineer, from further arbitrary and capricious actions as alleged herein, and further enjoining
28 the State from continuing to unreasonably delay CS-Entities' development efforts for its Coyote Springs
Master Planned Community and requiring the State to properly, fairly, timely and in good faith process

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1 Plaintiffs' submittals in support of its Master Planned Community. Further, any statutory forfeiture time
2 frames applicable to the subject water rights should be tolled during this litigation.

3 102. As the action of the State, and its State Engineer, necessitated that Plaintiffs hire counsel
4 and incur legal fees and costs to bring this action, Plaintiffs are also entitled to an award of attorneys'
5 fees and costs of suit.

6 **NINTH CLAIM FOR RELIEF**

7 **(Claim of Attorneys' Fees Incurred Herein)**

8 103. Plaintiffs repeats and realleges all prior paragraphs as though fully set forth herein.

9 104. CS-Entities asserts that the State's conduct has required Plaintiffs to incur attorneys'
10 fees to bring this action and that Nevada Law provides for an award of attorneys' fees to prevailing
11 parties in inverse condemnation actions. CS-Entities hereby provide notice to these Defendants that it
12 intends to pursue its attorneys' fees incurred in this action as allowed by Nevada law. Accordingly, the
13 CS-Entities reserve all rights to pursue an award of their Attorney Fees incurred in this matter as allowed

14 **IV.**

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for the following relief:

- 17 1. For payment of full and just compensation as provided by law for the taking of property,
18 water rights, and development rights of the CS-Entities.
19 2. For Pre-Condemnation damages in an amount to be proven at trial;
20 3. For compensatory and special damages as set forth herein;
21 4. For pre-judgment and post-judgment interest, as allowed by law;
22 5. For declaratory relief as sought herein.
23 6. For injunctive relief as sought herein.
24 7. For all of the CS-Entities' incurred attorneys' fees and costs of suit as provided by law;
25 8. For all other remedies and relief that the Court deems just and appropriate.

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V.

DEMAND FOR JURY TRIAL

Plaintiffs CS-Entities, hereby demand a jury trial for all issues so triable.

DATED this 12th day of November, 2021.

COULTHARD LAW, PLLC
/s/ William L. Coulthard
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INDEX OF EXHIBITS

Exhibit No.	Description	Page Numbers (Including Exhibit Page)
1.	May 16, 2018 State Engineer letter to Las Vegas Valley Water District	1-4
2.	Draft Order dated September 19, 2018	5-18
3.	Interim Order 1303	19-36
4.	Order 1309, dated June 15, 2020	37-105
5.	June 17, 2020 Letter from State Department of Conservation and Natural Resources to Coyote Springs Investment LLC	106-109
6.	Amended and Restated Coyote Springs Water and Wastewater Multi-Party Agreement, dated July 7, 2015	110-138
7.	Settlement Agreement dated August 29, 2018	139-141