

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM SULLIVAN, P.E., NEVADA  
STATE ENGINEER, et al.

Appellants,

vs.

LINCOLN COUNTY WATER  
DISTRICT, et al.

Respondents.

Electronically Filed  
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Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT SOUTHERN NEVADA WATER AUTHORITY'S LIMITED  
OBJECTION TO THE COURT'S OCTOBER 14, 2022, ORDER SETTING  
BRIEFING SCHEDULE**

Appellant, Southern Nevada Water Authority (“SNWA”) hereby files this limited objection and request for clarification of the Court’s October 14, 2022, Order Amending Caption and Setting Briefing Schedule (“Scheduling Order”). SNWA agrees with nearly all the Court’s directions in the Scheduling Order. However, for the limited reasons stated herein, SNWA respectfully requests that the Court amend and/or clarify the Scheduling Order.<sup>1</sup>

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<sup>1</sup> In lieu of filing a motion for leave to file this objection, SNWA respectfully submits that this Limited Objection and Request for Clarification is timely. The Court issued the Scheduling Order on October 14, 2022, and directed that any objections must be filed within 5 days. Unfortunately, SNWA did not receive notice of the Order, nor was it aware of the Scheduling Order, until October 19, 2022. Apparently, service

These appeals arise from challenges to State Engineer Order 1309 that involved groundwater pumping in the Lower White River Flow System (“LWRFS”). SNWA largely supports Order 1309, and participated with the State Engineer in defending the vast majority of Order 1309 before the district court.

However, SNWA also filed its own petition for judicial review of Order 1309 on a discrete, but critical issue. SNWA owns water rights in the Muddy River that are used to provide water service to the residents of the Las Vegas area. In Order 1309, the State Engineer made a finding that groundwater pumping in the LWRFS does not conflict with water rights in the Muddy River (the “conflicts determination”). SNWA challenged the State Engineer’s conflicts determination. As such, SNWA’s position before the district court was not completely aligned with the State Engineer.

The district court issued two orders resolving the various petitions for judicial review of Order 1309. The first was issued on April 19, 2022, in which the district court vacated Order 1309, and granted the petitions for judicial review filed by Coyote Springs Investment LLC, Lincoln County Water District and Vidler Water

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did not occur because of technical issues in state governmental offices. On October 19, 2022, the Court issued an order directing the clerk to provide copies of the October 14 order to counsel. SNWA received notice of that order and first become aware of the Scheduling Order. Nevada’s Electronic Filing Rule 9(f)(1) provides that “the time to respond to a document served through EFS is computed under JCRCP 6, NRCPP 6, or NRAP 25, as applicable, from the date of service stated in the proof of service, which must be the date the document was submitted to the EFS.”

Company, Georgia-Pacific Gypsum LLC and Republic Environmental Technologies, Inc., Apex Holding Co. and Dry Lake Water, LLC, and Nevada Cogeneration Associates Nos. 1 and 2. The second was issued on May 13, 2022, in which the district court partially granted the petition for judicial review that was filed by SNWA. The district court's partial granting of SNWA's petition was based on SNWA's argument that the State Engineer had violated SNWA's due process rights by including the conflicts determination in Order 1309.

After the district court issued its first order vacating Order 1309, and before it entered its second order, the State Engineer appealed the district court's April 19, 2022 decision. Then, after the district court issued its second order, the State Engineer amended its notice appeal to add an appeal from the district court's second order, the May 13, 2022, order that granted SNWA's petition for judicial review.

On May 19, 2022, SNWA filed its notice of appeal, but only appealed the findings in the district court's April 19, 2022, order. Accordingly, SNWA is not completely aligned with the State Engineer in these appeals. SNWA is aligned with the State Engineer as an appellant on the primary issue in these appeals - the validity of the district court's reasoning in its April 19, 2022, order. But SNWA is not aligned with the State Engineer's Office regarding the district court's May 13, 2022, order on the conflicts determination. On that question, the State Engineer's Office is an appellant and SNWA is a respondent.

Given this procedural posture, prior to the October 14, 2022, Scheduling Order, SNWA anticipated that it would file an opening and reply brief as an appellant to defend all the portions of Order 1309 except the conflicts determination. Importantly, SNWA also anticipated that if the State Engineer's Office included in its opening brief a defense of the conflicts determination, SNWA would file an answering brief to defend the district court's determination regarding that issue. The Court properly anticipated this in its June 7, 2022, Order Granting Motions To Consolidate. The Court ordered, on page 5, that "any appellant who disagrees with another appellant's opening brief may, to the extent the disagreeing appellant's interests are impacted thereby, file an answering brief addressing the issues related to those interests by the answering brief deadline."

The Scheduling Order lacks this clarifying language and places SNWA in an untenable position from a briefing standpoint that prejudices its ability to protect its Muddy River water rights. SNWA, as an appellant, is required to file its opening brief jointly with the State Engineer. But the State Engineer may desire to include an argument in that brief that is directly contrary to SNWA's position on the conflicts determination. If SNWA is required to jointly file a brief that makes arguments contrary to its position on the conflicts determination, SNWA's joint filing should not be construed as a waiver of its successful position below. Also, if the State Engineer defends the conflicts determination in a joint appellant's opening brief,

SNWA may be precluded from responding to that argument because it is not listed as a respondent in the caption for the State Engineer’s appeal.

SNWA respectfully suggests that this issue can be resolved in one of the three following ways, thereby allowing SNWA to argue as it did below: all of Order 1309, except the conflicts determination, should be upheld.

**Option 1**

1. Clarify the Scheduling Order by specifying that the due process arguments related to the conflicts determination are included in the issue identified as Issue 2(B) in the Scheduling Order.

2. Amend the caption of only the State Engineer’s appeal to add SNWA as a respondent, thereby clarifying that SNWA may “file and serve a separate answering brief addressing part B of the due process issues that does not exceed 15 pages or 7,000 words.”

3. Clarify that parties who file joint briefs may identify portions of the briefs they do not agree with, and the joint filing will not be construed as a waiver of those contrary arguments.

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## **Option 2**

1. Incorporate in the Scheduling Order the following language from its June 7, 2022, order: “any appellant who disagrees with another appellant’s opening brief may, to the extent the disagreeing appellant’s interests are impacted thereby, file an answering brief addressing the issues related to those interests by the answering brief deadline.”

2. Clarify that parties who file joint briefs may identify portions of the briefs they do not agree with, and the joint filing will not be construed as a waiver of those contrary arguments.

## **Option 3**

1. Establish a separate briefing schedule for the conflicts determination issue.

2. Amend the Scheduling Order by amending the caption of only the State Engineer’s appeal to add SNWA as a respondent.

3. Allow the State Engineer Office, if it desires, to file an opening brief and reply brief on the conflicts determination issue.

4. If the State Engineer does file an opening brief on that issue, allow SNWA to file an answering brief.

For the reasons stated herein, SNWA respectfully request the Scheduling Order be amended or clarified accordingly.

**AFFIRMATION**

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

Respectfully submitted this 21st day of October 2022.

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**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(b), I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this day, I served, or caused to be served, a true and correct copy of this document by electronic service to:

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DATED this 21st day of October 2022.

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