

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM SULLIVAN, P.E., NEVADA
STATE ENGINEER, DIVISION OF
WATER RESOURCES, DEPARTMENT
OF CONSERVATION AND NATURAL
RESOURCES,

Appellant,

vs.

LINCOLN COUNTY WATER DISTRICT;
VIDLER WATER COMPANY, INC.;
COYOTE SPRINGS INVESTMENT,
LLC; NEVADA COGENERATION
ASSOCIATES NOS. 1 AND 2; APEX
HOLDING COMPANY, LLC; DRY LAKE
WATER, LLC; GEORGIA-PACIFIC
GYPSUM, LLC; REPUBLIC
ENVIRONMENTAL TECHNOLOGIES,
INC.; SIERRA PACIFIC POWER
COMPANY, D/B/A NV ENERGY;
NEVADA POWER COMPANY, D/B/A
NV ENERGY; THE CHURCH OF
JESUS CHRIST OF LATTER-DAY
SAINTS; MOAPA VALLEY WATER
DISTRICT; WESTERN ELITE
ENVIRONMENTAL, INC.; AND
BEDROC LIMITED, LLC; CITY OF
NORTH LAS VEGAS,

Respondents.

SOUTHERN NEVADA WATER
AUTHORITY,

Appellant,

vs.

LINCOLN COUNTY WATER DISTRICT;
VIDLER WATER COMPANY, INC.;
COYOTE SPRINGS INVESTMENT,
LLC; NEVADA COGENERATION
ASSOCIATES NOS. 1 AND 2; APEX
HOLDING COMPANY, LLC; DRY LAKE
WATER, LLC; GEORGIA-PACIFIC

No. 84739

FILED

MAY 02 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

No. 84741

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

CENTER FOR BIOLOGICAL DIVERSITY,
Appellants,

vs.

LINCOLN COUNTY WATER DISTRICT; VIDLER WATER COMPANY, INC.; COYOTE SPRINGS INVESTMENT, LLC; NEVADA COGENERATION ASSOCIATES NOS. 1 AND 2; APEX HOLDING COMPANY, LLC; DRY LAKE WATER, LLC; GEORGIA-PACIFIC GYPSUM, LLC; REPUBLIC ENVIRONMENTAL TECHNOLOGIES, INC.; SIERRA PACIFIC POWER COMPANY, D/B/A NV ENERGY; NEVADA POWER COMPANY, D/B/A NV ENERGY; THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS; MOAPA VALLEY WATER DISTRICT; WESTERN ELITE ENVIRONMENTAL, INC.; AND BEDROC LIMITED, LLC; CITY OF NORTH LAS VEGAS,
Respondents.

MUDDY VALLEY IRRIGATION COMPANY,
Appellant,
vs.

No. 84742

No. 84809

LINCOLN COUNTY WATER DISTRICT;
VIDLER WATER COMPANY, INC.;
COYOTE SPRINGS INVESTMENT,
LLC; NEVADA COGENERATION
ASSOCIATES NOS. 1 AND 2; APEX
HOLDING COMPANY, LLC; DRY LAKE
WATER, LLC; GEORGIA-PACIFIC
GYPSUM, LLC; REPUBLIC
ENVIRONMENTAL TECHNOLOGIES,
INC.; SIERRA PACIFIC POWER
COMPANY, D/B/A NV ENERGY;
NEVADA POWER COMPANY, D/B/A
NV ENERGY; THE CHURCH OF
JESUS CHRIST OF LATTER-DAY
SAINTS; MOAPA VALLEY WATER
DISTRICT; WESTERN ELITE
ENVIRONMENTAL, INC.; AND
BEDROC LIMITED, LLC; CITY OF
NORTH LAS VEGAS,
Respondents.

*ORDER DENYING MOTIONS FOR JUDICIAL NOTICE AND TO
STRIKE AND GRANTING MOTION TO FILE SUR-REPLY*

These are consolidated appeals challenging district court orders resolving petitions for judicial review of State Engineer Order 1309, which designated the Lower White River Flow System (LWRFS) and determined the amount of water that could be sustainably withdrawn therefrom. Certain respondents have filed two motions in this court, both of which appellants oppose.

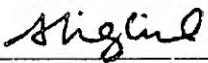
Respondents' first motion asks this court to take judicial notice of five documents: (1) May 23, 2022, legislative subcommittee minutes reflecting the State Engineer representative's statement that "no explicit authority" to conjunctively manage water resources exists; (2) the State Engineer's answering brief in another case that assertedly acknowledges

the management of Nevada water based on established unit boundaries; (3) February 27, 2019, legislative committee minutes reflecting the State Engineer's comment that, despite statutory recognition of hydrological connection between surface and groundwaters, no statutory framework to implement any related policy goals exists, (4) State Engineer Order 1329, in which the State Engineer acknowledges the failed attempt in 2019 to amend water law statutes to provide the State Engineer with authority to conjunctively manage resources; and (5) August 22, 2022, legislative committee minutes and a summary requesting a bill to clarify the process and authority for conjunctive management.

Respondents assert that these documents demonstrate "the many different positions that the State Engineer has taken in legislative, judicial, and administrative proceedings that are diametrically opposed to the position he argues in this appeal," which inconsistency should be considered by this court. "We may take judicial notice of facts that are [c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute." *Mack v. Est. of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (quoting NRS 47.130(2)(b)). However, judicial notice is available only for "facts in issue or facts from which they may be inferred," NRS 47.130(1), and we generally "will not take judicial notice of records in another and different case, even though the cases are connected." *Id.* Applying these standards, respondents' request for judicial notice of the five documents, some of which are dated after the district court's decision in this matter, is denied. Further, to the extent respondents' reply seeks judicial notice of a bill draft request, that invitation is denied.

Respondents' second motion seeks an order striking the NRAP 28(f) pamphlet attached to appellants' reply brief, which contains copies of 24 State Engineer orders and rulings, and the parts of appellants' reply brief referring to it (pages 13-16), as improperly raising new arguments and documents not part of the record; they alternatively seek leave to file a sur-reply. Respondents additionally seek attorney fees for having to file the motion to strike. Appellants respond that the pamphlet documents counter respondents' answering brief argument that, before entering Order 1309, the State Engineer had never combined or applied a pump cap across different basins. Although the pamphlet does not appear to comply with NRAP 28(f) (reproduction of statutes, rules, regulations, etc.), the historical accounts contained therein might assist this court's review of this matter, and therefore, the motion to strike is denied, as is respondents' request for attorney fees as sanctions. NRAP 2. Respondents' alternative request to file a sur-reply is granted; respondents shall have 14 days from the date of this order to file and serve a joint sur-reply consisting of no more than 5 pages.

It is so ORDERED.

 _____, C.J.

cc: Hon. Bitia Yeager, District Judge
Attorney General/Carson City
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