

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  
Jun 15 2022 07:39 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**SOUTHERN NEVADA WATER AUTHORITY’S REPLY TO THE  
CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS’ RESPONSE TO  
ITS EMERGENCY MOTION FOR STAY**

Appellant, SOUTHERN NEVADA WATER AUTHORITY (“SNWA”) hereby files this Reply to the Church of Jesus Christ of Latter-Day Saints’ (“the Church”) Response to its Emergency Motion for Stay Under NRAP 27(e) of the district court's Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review (“District Court’s Order” or “Order Vacating Order 1309”) based on the following memorandum of points and authorities, and all pleadings and papers on file in case.

## **MEMORANDUM OF POINTS AND AUTHORITIES**<sup>1</sup>

The purpose of SNWA's Motion for Stay is to ensure the protection of senior water rights and the endangered Moapa dace during the pendency of its appeal. Without a stay the State Engineer will be unable to use the 8,000 acre-foot annum ("afa") pumping cap he established in Order 1309 to prevent additional groundwater pumping in the Lower White River Flow System ("LWRFS"). The 8,000 afa pumping cap complies with prior appropriation by not preventing senior groundwater right holders from asserting their seniority over junior groundwater right holders who are currently pumping in the LWRFS. Without at stay of the District Court's Order respondents will pump at least an additional 546 afa of water which will harm senior water holders and the Moapa dace during the pendency of SNWA's appeal. This Court must maintain the status quo and allow Order 1309 to stay in place while it addresses the State Engineer's authority of joint administration of groundwater basins and conjunctive management of surface water and groundwater.

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<sup>1</sup> SNWA incorporates the arguments made in its Replies to the Responses to its Motion for Stay filed by Coyote Springs Investments, LLC; Georgia-Pacific Gypsum, LLC, and Republic Environmental Technologies, Inc.; Apex Holding Company, LLC and Dry Lake Water, LLC's; and Lincoln County Water District and Vidler Water Company, Inc.; and the Church of Jesus Christ of Latter-Day Saints.

**I. The Church Can Still Assert The Priority Of Its Senior Groundwater Rights If This Court Grants SNWA's Motion For Stay.**

A stay of the Order Vacating Order 1309 will not impact the Church's ability to assert their senior groundwater rights in the LWRFS. The Church argues that a stay of the District Court's Order will prevent senior groundwater right holders, like the Church, from pumping groundwater regardless of the seniority of their water rights.<sup>2</sup> The Church misunderstands the effect of a stay on senior groundwater right holders. While a stay will maintain the State Engineer's 8,000 afa pumping cap in the LWRFS, there is nothing in Order 1309 that would prevent the Church from asserting their senior groundwater right against junior groundwater pumpers. In other words, nothing in Order 1309 allows junior groundwater right holders to pump groundwater to the detriment of senior groundwater right holders. All Order 1309 does is establish the 8,000 afa pumping cap in the LWRFS. In the event the Church wishes to pump its senior groundwater rights there is nothing in Order 1309 that prevents them asserting their priority over junior groundwater right holders.

However, if the District Court's Order is not stayed, the State Engineer will be unable to protect senior surface water rights and the Moapa dace. For instance, without the 8,000 afa pumping cap, the State Engineer may be forced to approve Coyote Springs Investment, LLC's ("CSI") subdivision maps and allow CSI to pump

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<sup>2</sup> The Church's Resp. to SNWA's Mot. for Stay at 8.

its junior groundwater rights to support its residential development. This would be disastrous. A residential development could be built supported by water rights that could be cut off in the future because pumping exceeds the available water supply. To maintain the status quo and avoid residential development being built on unsustainable water rights this Court should grant SNWA's Motion for Stay.

**II. The District Court's Order Creates Significant Uncertainty Regarding The State Engineer's Existing Authority To Protect Senior Water Rights.**

The District Court's Order calls into question the State Engineer's authority to jointly administer groundwater basins and conjunctively manage groundwater and surface water. Without the authority of joint administration and conjunctive management the State Engineer cannot effectively protect senior water rights. The Church argues that SNWA overstates the threat of harm if this Court does not issue a stay because the State Engineer has other powers to protect senior water rights.<sup>3</sup> The Church fails to recognize how the State Engineer's existing powers are impacted by the District Court's Order. The district court held that the State Engineer is not authorized "to combine basins for joint administration" and "to conjunctively manage . . . both groundwater and surface flows he believes are occurring in the LWRFS."<sup>4</sup> Put simply, the district court does not believe the State Engineer has the

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<sup>3</sup> The Church's Resp. to SNWA's Mot for Stay at 10.

<sup>4</sup> Appendix for SNWA's Motion for Stay ("APP MFS") at 215-16 (Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review at 27-28).

statutory authority to consider the impacts of groundwater pumping in one basin on another basin or on surface water. This holding greatly limits the State Engineer's ability to protect senior water rights. For example, if the State Engineer does not have the authority to consider the impacts of groundwater on surface water (also known as conjunctive management) then how can the State Engineer protect senior surface water rights that are adversely impacted by groundwater pumping. Also, without the ability to jointly administer groundwater basins, it is unclear how exactly the State Engineer can consider the impacts of pumping in one groundwater basin on another basin. The District Court's Order has significantly affected the State Engineer's ability to protect senior surface water rights and should be stayed during this appeal.

**III. SNWA did not overstate the likelihood of additional groundwater pumping occurring in the LWRFS.**

The threat of additional groundwater pumping in the LWRFS is a real and imminent threat. The Church falsely implies that the only threat to the senior water right holders is in the unlikely event that all water right holders seek to pump their water rights. Based on the State Engineer's findings in Order 1309 any groundwater pumping in the LWRFS that exceeds 8,000 afa "will cause conditions that harm the Moapa dace and threaten to conflict with [senior] Muddy River decreed water

rights.”<sup>5</sup> Therefore, contrary to the Church’s claim, only a small portion of the 30,000 afa of unused permitted groundwater rights need to be pumped to cause harm to senior water rights and the Moapa dace. Furthermore, this threat is not speculative. Before the District Court’s Order was enforceable CSI attempted to have the State Engineer approve its subdivision map for its residential development in the LWRFS.<sup>6</sup> CSI also admitted before the district court that it was attempting to use an additional 536 afa during the pendency of SNWA’s appeal.<sup>7</sup> SNWA has not overstated the threat to senior water rights and the Moapa dace if this Court does not stay the District Court’s Order.

#### **IV. Conclusion**

For the aforementioned reasons this Court should grant SNWA’s Motion for Stay of the District Court’s Order.

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<sup>5</sup> APP MFS at 63 (Order 1309 at 63).

<sup>6</sup> APP MFS at 95-95 (CSI Opposition to Motion for Stay at 8:28-9:2).

<sup>7</sup> APP MFS at 144 (Transcript from District Court Hearing on SNWA’s Motion for Stay at 41:4-12).

**AFFIRMATION**

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

Respectfully submitted this 15th day of June 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 Motion by electronic service to:

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DATED this 15th day of June, 2022.

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**APPENDIX INDEX**

<u>Exhibit</u>	<u>Description</u>	<u>Bate Stamp</u>
1.	Order 1309	APP MFS 1-68
2.	Interim Order 1303	APP MFS 69-87
3.	CSI's Opposition to LVVWD & SNWA's Motion for Stay Pending Appeal	APP MFS 68-103
4.	Transcript of Hearing regarding LVVWD & SNWA's Motion for Stay Pending Appeal	APP MFS 104-188
5.	Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review	APP MFS 189-228
6.	Addendum and Clarification to Court's Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review	APP MFS 229-234
7.	Court Minutes from May 16 <sup>th</sup> , 2022	APP MFS 235-236
8.	SNWA & LVVWD Assessment of the Moapa Dace and other Groundwater-Dependent Special Status Species in the Lower White River Flow System	APP MFS 237-239
9.	APP MFS 240-314 Intentionally Omitted	APP MFS 240-314
10.	Amended Notice of Hearing August 26 <sup>th</sup> , 2019	APP MFS 315-332
11.	Prehearing Conference on August 8 <sup>th</sup> , 2019	APP MFS 333-366
12.	CSI's Stipulation to SNWA's Intervention	APP MFS 367-383
13.	SNWA's Motion to Intervene	APP MFS 384-401