

Case No. 84739

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Nov 08 2022 04:38 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

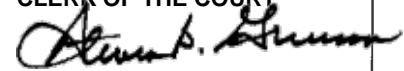
Appellants,

vs.

LINCOLN COUNTY WATER
DISTRICT, et al.

JOINT APPENDIX

VOLUME 1 OF 49



CASE NO: A-20-816761-C
Department 19

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20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

22 LAS VEGAS VALLEY WATER DISTRICT, and
23 SOUTHERN NEVADA WATER AUTHORITY

24 Petitioners,

25 vs.

26 TIM WILSON, P.E., Nevada State Engineer,
27 DIVISION OF WATER RESOURCES,
28 DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,

Respondent.

Case No.

Dept. No.

**PETITION FOR JUDICIAL REVIEW OF
ORDER 1309**

23 Petitioners SOUTHERN NEVADA WATER AUTHORITY (“SNWA”) and LAS VEGAS
24 VALLEY WATER DISTRICT (“LVVWD”), by and through its counsel, PAUL G. TAGGART, ESQ.
25 and TIMOTHY D. O’CONNOR, ESQ., of the law firm of TAGGART & TAGGART, LTD., hereby
26 files this Petition for Judicial Review of Order 1309 issued by Respondent TIM WILSON, P.E., Nevada
27 State Engineer, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND
28

1 NATURAL RESOURCES on June 15, 2020, attached hereto as Exhibit 1. This Petition for Judicial
2 Review is filed pursuant to NRS 533.450(1).

3 **JURISDICTIONAL STATEMENT**

4 Under NRS 533.450(1), any order or decision of the State Engineer is subject to judicial review
5 “in the proper court of the county in which the matters affected or a portion thereof are situated.” The
6 real property to which the water at issue in this appeal is appurtenant lies within Clark County, Nevada;
7 therefore, the Eighth Judicial District Court of the State of Nevada in and for Clark County is the proper
8 venue for judicial review.

9 Further, the subject matter of the appeal involves decreed waters of the Muddy River Decree.
10 Under NRS 533.450(1), “on stream systems where a decree of court has been entered, the action must
11 be initiated in the court that entered the decree.” This court has proper jurisdiction of the Muddy River
12 Decree, *Muddy Valley Irrigation Company, et al, vs. Moapa Salt Lake Produce Company, et al*, Case
13 No. 377, which was entered in the Tenth Judicial District of the State of Nevada, in and for the County
14 of Clark in 1920.¹

15 **FACTUAL BACKGROUND**

16 **I. SNWA and LVVWD have substantial interests in the Lower White River Flow System.**

17 SNWA is a not-for-profit political subdivision of the State of Nevada consisting of seven
18 member agencies (local municipalities and political subdivisions in Clark County) and is a wholesale
19 water provider serving approximately 74 percent of Nevada’s population. SNWA’s water resource
20 portfolio includes approximately 20,000 afa of senior Muddy River decreed water rights, 9,000 afa of
21 groundwater in Coyote Spring Valley, and 2,200 afa of groundwater in Garnet and Hidden valleys.
22 SNWA conducted the Order 1169 pumping test and is one of the primary participants in the 2006
23 Memorandum of Agreement concerning the Moapa dace. Clark County designated SNWA’s largest
24 member purveyor, LVVWD, to be the operating entity for the Coyote Springs Water Resources General
25 Improvement District.

26 //
27 //

28 ¹ In 1920, the Tenth Judicial District consisted of Clark County and Lincoln County. In 1945, Clark County was designated as the Eighth Judicial District.

1 **II. Order 1169 Pumping Tests**

2 On March 8, 2002, the State Engineer issued Order 1169 to hold in abeyance all pending
3 groundwater applications filed in Coyote Spring Valley, Black Mountains Area, Garnet Valley, Hidden
4 Valley, Muddy River Springs Area, and Lower Moapa Valley. The California Wash was later added to
5 the study area, making Order 1169 apply to the entire Lower White River Flow System (“LWRFS”).
6 The purpose of Order 1169 was to require a large pumping study to determine whether pumping in the
7 LWRFS would have detrimental impacts on existing water rights or the environment.

8 In 2006, a Memorandum of Agreement (“MOA”) was signed among the Southern Nevada Water
9 Authority (“SNWA”), Coyote Springs Investments (“CSI”), the United States Fish and Wildlife Service
10 (“USFWS”), the Moapa Valley Water District (“MVWD”), and the Moapa Valley Band of Paiute
11 Indians (“MBOP”). The MOA was created to ensure water usage in the LWRFS did not interfere with
12 measurable progress toward protection and recovery of the endangered Moapa Dace and its habitat. The
13 MOA contained triggers and actions for the various parties to take if flow levels in the Muddy River
14 declined. Through the MOA, all parties recognized that pumping in Coyote Spring Valley could have
15 a detrimental impact on existing water rights and the environment.

16 The State Engineer issued Order 1169A on December 21, 2012, in which he declared that the
17 Order 1169 pump test was complete. Ultimately, the State Engineer concluded that the pumping had a
18 direct connection to the fully appropriated Muddy River which is part of the source of water for the
19 endangered Moapa Dace, and the decreed senior rights of the Muddy River. The State Engineer issued
20 Rulings 6254-6258 on January 29, 2014, in which he denied all pending water right applications in the
21 LWRFS basins. The State Engineer ruled in Rulings 6254-6258 that pumping of existing rights in the
22 1169 pump tests measurably reduced flows in headwater springs of the Muddy River. While the State
23 Engineer denied the pending applications, he took no action to limit or reduce the existing water rights.

24 **III. Public Workshops**

25 Starting in 2018, the State Engineer held several public workshops review the status of
26 groundwater use and recovery following the conclusion of the State Engineer Order 1169 pumping tests.
27 The purpose of the workshops was to update the public on development in the LWRFS, address concerns
28 relating to the effect of groundwater pumping, and to provide an opportunity to comment on how to

1 proceed in developing the water resources in the LWRFS.² In the 2018 Notice of Public Workshop, the
2 State Engineer noted that pumping only 10,200 afa of the over 50,000 afa of permitted rights during the
3 Order 1169 pumping test “yielded an unacceptable loss in spring flow and aquifer storage within the
4 LWRFS.” The State Engineer found that “only a small portion of the permitted water rights in the
5 LWRFS may be fully developed without negatively affecting the endangered Moapa Dace and its habitat
6 or the senior decreed rights on the Muddy River.”³

7 As a result of the workshops, on August 30, 2018, the State Engineer drafted a proposed order.
8 On December 14, 2018, the State Engineer held a hearing on the proposed order. The State Engineer
9 received comments on the proposed order. On January 11, 2019, the State Engineer issued Interim
10 Order 1303 as a result of the workshop and proposed order process. The State Engineer continued to
11 hold several more workshops and meetings relating to the potential development of a conjunctive
12 management plan on the LWRFS.⁴

13 **IV. Order 1303**

14 On January 11, 2019, the State Engineer issued Interim Order 1303 to obtain stakeholder input
15 on four specific factual matters: 1) the geographic boundary of the LWRFS, 2) aquifer recovery since
16 the 1169 pump test, 3) long-term annual quantity that may be pumped from the LWRFS, and 4) effects
17 of moving water rights between the carbonate and alluvial system to senior water rights on the Muddy
18 River.⁵ After factual findings were made on those questions, the State Engineer was to evaluate
19 groundwater management options for the Lower White River Flow System (“LWRFS”).⁶

20 In Order 1303, the State Engineer made sound factual findings based on the Order 1169 pumping
21 test. He found that groundwater rights within the LWRFS should be jointly managed because of a
22 “unique” and “direct hydraulic connection” among basins that encompass over 1,100 square miles. He
23

24 ² June 14, 2018, Notice of Public Workshop at 2. Available at Available at <http://water.nv.gov/news.aspx?news=LWRFS>
(Public Meetings, July 24, 2018). Last visited 6/17/2020.

25 ³ *Id.*

26 ⁴ See LWRFS Working Group Meeting Agenda for February 6, 2019, and Notice of Public Workshop on July 17, 2019, dated
June 10, 2019. Available at <http://water.nv.gov/news.aspx?news=LWRFS> (Public Meetings). Last visited 6/17/2020.

27 ⁵ Exhibit 2.

28 ⁶ Exhibit 3 at 2 (“The State Engineer directed the participants to limit the offer of evidence and testimony to the salient
conclusions, including directing the State Engineer and his staff to the relevant data, evidence and other information
supporting those conclusions. The State Engineer further noted that the hearing on the Order 1303 reports was the first step
in determining to what extent, if any, and in what manner the State Engineer would address future management decisions,
including policy decisions relating to the [LWRFS] basins.”)

1 also determined water was not available for additional applications and denied all the pending
2 applications in the LWRFS through Rulings 6254-6260. The State Engineer also found that:

- 3 1. pumping has a direct interrelationship with the flow of the decreed and
4 fully appropriated Muddy River, which are the most senior rights;
- 5 2. the Muddy River had a pre-development flow of approximately 34,000
6 acre-feet annually;
- 7 3. pumping from the test caused “sharp declines in groundwater levels and
8 flows in the Pederson and Pederson East springs,” and throughout the
LWRFS; and
- 9 4. pumping in the LWRFS must be less than occurred during the test,
otherwise pumping will conflict with senior Muddy River rights or
adversely impact the Moapa dace.⁷

10 Order 1303 was issued to solicit input from experts on discrete issues to build on these foundational
11 findings from Rulings 6254-6260 – not to “start over.”

12 On May 13, 2019, the State Engineer amended Order 1303 and modified certain deadlines for
13 filing reports. On July 25, 2019, the State Engineer issued a Notice of Pre-Hearing Conference. On
14 August 23, 2019, the State Engineer held a prehearing conference. At the prehearing conference,
15 Hearing Officer Fairbank unequivocally stated that “the purpose of the hearing is not to resolve or
16 address allegations of conflict between groundwater pumping within the LWRFS and Muddy River
17 decreed rights.”⁸ On August 23, 2019, the State Engineer issued a Notice of Hearing, and again clarified
the limited scope of the hearing.

18 In July and August 2019, reports and rebuttal reports were submitted discussing the four matters
19 set forth in Order 1303. Several parties filed objections to witnesses and evidence. Most of the
20 objections were related to the scope of the topics in the submitted evidence. On August 23, 2019, the
21 State Engineer issued an Order on Objections to Witnesses and Evidence. The State Engineer agreed
22 that “the evidence presented in the hearing is to be limited to the four issues identified in the Notice of
23 Hearing.” The State Engineer allowed all evidence to be presented, but again warned that the “scope
24 of the testimony shall be limited to the four issues identified in Order 1303” and cautioned that while
25 some evidence could be submitted outside the specific scope but that the State Engineer “may order a
26 line of questioning to cease or to remain limited to the relevant issues that are the subject of the hearing.”⁹

27 _____
28 ⁷ Exhibit 2 at 7-11.

⁸ Exhibit 4 at 12:6-15.

⁹ August 23, 2019, Order on Objections.

1 Between September 23, 2019, and October 4, 2019, the State Engineer held a hearing on the
2 reports submitted under Order 1303. As part of that hearing, SNWA offered very limited evidence of
3 conflicts with its senior water rights.¹⁰ SNWA repeatedly indicated that this evidence was limited
4 because of the prior directions of the State Engineer, and because the question of conflicts was to be
5 addressed at a latter administrative stage of the proceedings.¹¹

6 **V. Order 1309**

7 On June 15, 2020, the State Engineer issued Order 1309. In Order 1309, the State Engineer
8 determined that “reductions in flow that have occurred because of groundwater pumping in the
9 headwaters basins is not conflicting with Decreed rights.”¹²

10 **GROUNDS FOR THE PETITION**

11 The third factual inquiry the State Engineer sought input on was: “The long-term annual quantity
12 of groundwater that may be pumped from the Lower White River Flow System, including the relationships
13 between the location of pumping on discharge to the Muddy River Springs, and the capture of Muddy River
14 flow.”¹³ The State Engineer specifically limited the evidence he would consider on this matter, stating
15 that this hearing was not to address allegations of conflict.¹⁴ During a prehearing conference, the State
16 Engineer’s staff stated that

17 the purpose of the hearing is not to resolve or address allegations of
18 conflict between groundwater pumping within the LWRFS and Muddy
19 River decreed rights. That is not the purpose of this hearing and that's not
20 what we are going to be deciding at this point in time. The purpose of the
21 hearing is to determine what the sustainability is, what the impact is on
22 decreed rights, and then addressing and resolving allegations of conflict
23 should that be a determination that will be addressed in, at a future point
24 in time.¹⁵

22 Thus, the majority of the evidence submitted related to the capture of Muddy River water by junior
23 groundwater pumpers. The State Engineer agreed in Order 1309 that current pumping is capturing
24 Muddy River flows.¹⁶

25 ¹⁰ See e.g., Hr’g on Order 1303 Tr. vol. 5, 942 (Burns), SNWA Ex.7 at 7-5 to 7-6. (SNWA has suffered a loss of approximately
26 12,040 afa over the last 10 years, equating to over \$2 million in costs for replacement supplies.)

27 ¹¹ Hr’g on Order 1303 Tr. 2019-09-07 at 1049:20-1050:3(Taggart); Tr. 2019-09-27 at 1072:9-23(Pellegrino).

28 ¹² Exhibit 1 at 61.

¹³ Exhibit 2 at 13.

¹⁴ Exhibit 4 at 12:6-15.

¹⁵ Exhibit 4 at 12:6-15.

¹⁶ Exhibit 1 at 61.

1 However, the State Engineer incorrectly went beyond the scope of the hearing to determine that
2 “capture or potential capture of flows of the waters of a decreed system does not constitute a conflict.”¹⁷
3 The State Engineer stated that “there is no conflict as long as the senior water rights are served.”¹⁸ The
4 State Engineer then performed a coarse calculation to determine the consumptive use needs of the senior
5 decreed rights holders and concluded that the capture of 8,000 acre-feet of Muddy River flows by junior
6 groundwater users would not deprive the seniors of any portion of their water rights.¹⁹ The calculation
7 did not include consideration of water losses through the river system, such as losses in conveying the
8 water or losses on water reservoirs.

9 By making these findings in Order 1309, the State Engineer violated the due process rights of
10 SNWA and other senior water right owners because he indicated before the hearing that he would not
11 be making a finding on this point, and evidence on this point would not be accepted. He also acted
12 arbitrarily and capriciously because he ignored the only evidence that existed related to conflicts
13 (SNWA’s), and then applied an erroneous analysis that no party had an opportunity to review or
14 comment on. Further, the State Engineer’s method is contrary to law – particularly the Muddy River
15 Decree.

16 SNWA owns and leases substantial water rights on the Muddy River and the capture of flow by
17 junior groundwater pumping has deprived SNWA of use of its senior decreed water rights. Prior to
18 groundwater development in the LWRFS, Muddy River flows were approximately 34,000 afa, and every
19 acre-foot is apportioned in the Decree.²⁰ Since groundwater development began, Muddy River flows
20 have declined by over 3,000 afa. This is an impermissible conflict with existing rights that can only
21 continue if effective mitigation occurs for the impacts to senior water rights holders.

22 The difference between predevelopment flows and annual post-development flows represents
23 the impacts from pumping, and the conflict with SNWA’s rights, because SNWA is being deprived of
24 the full beneficial use of its senior water rights at a significant cost to the organization.²¹ The State
25 Engineer failed to consider the impacts to non-irrigation uses and failed to consider direct evidence of

26 ¹⁷ Exhibit 1 at 61

27 ¹⁸ Exhibit 1 at 60.

28 ¹⁹ Exhibit 1 at 60-61.

²⁰ Exhibit 2 at 7.

²¹ Hr’g on Order 1303 Tr. vol. 5, 942 (Burns), SNWA Ex.7 at 7-5 to 7-6. (SNWA has suffered a loss of approximately 12,040 afa over the last 10 years, equating to over \$2 million in costs for replacement supplies.)

1 conflict outside his hypothetical analysis. Current pumping has already conflicted with existing rights.
2 Continued pumping at the current levels will only continue to conflict with existing rights and harm
3 SNWA.

4 **CONCLUSION**

5 For the foregoing reasons, and for others that may be discovered and raised during the pendency
6 of this Petition for Judicial Review, LVVWD and SNWA request that the Court order the State Engineer
7 to amend Order 1309 to remove or strike findings made therein regarding conflicts with senior water
8 rights. LVVWD and SNWA do not seek relief from any other portion of Order 1309.

9 DATED this 17 day of June, 2020.

10 TAGGART & TAGGART, LTD.

11
12 By: 

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on the 18th day of June, 2020, I served, or caused to be served, a true and correct copy of the foregoing as follows:

By **HAND-DELIVERY**:

Tim Wilson P.E., State Engineer
Nevada Division of Water Resources
Department of Conservation and Natural Resources
901 South Stewart Street, Suite 2002
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By **U.S. POSTAL SERVICE, CERTIFIED, RETURN RECEIPT REQUESTED**, by placing a true and correct copy of the foregoing document in an envelope, with postage prepaid, in Carson City, Nevada, addressed as follows:

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DATED this 18th day of June, 2020.



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EXHIBIT INDEX

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1.	Order 1309	68
2.	Order 1303	17
3.	Notice of Hearing dated August 23, 2019	26
4.	Transcript of Proceedings, Public Hearing, Pre-Hearing Conference, Thursday, August 8, 2019, pp. 11-13.	8

Exhibit 1

Exhibit 1

**Document (Order 1309) Located at JA Vol. 2 at JA_326
through JA_393**

Exhibit 2

Exhibit 2

**Document (Order 1303) Located at JA Vol. 2 at JA_394
through JA_412**

Exhibit 3

Exhibit 3

**Document (Notice of Hearing dated August 23, 2019) Located at JA
Vol. 2 at JA_464 through JA_484**

Exhibit 4

Exhibit 4

Document (Transcript of Proceedings, Public Hearing, Pre-Hearing Conference, Thursday, August 8, 2019, pp. 11-13) Located at JA Vol. 2 at JA 703 through JA 736



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CASE NO: A-20-817765-P
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DISTRICT COURT
CLARK COUNTY, NEVADA

PETITION FOR JUDICIAL REVIEW)
OF NEVADA STATE ENGINEER)
ORDER 1309)

CASE NO.
DEPT. NO.

COYOTE SPRINGS INVESTMENT,)
LLC)

PETITION FOR JUDICIAL REVIEW OF
NEVADA STATE ENGINEER ORDER
1309

v.)
Petitioner,)

RECEIVED
2020 JUL -9 PM 1:34
STATE ENGINEER'S OFFICE

1 TIM WILSON, State Engineer, State }
2 of Nevada, Department of }
3 Conservation and Natural }
4 Resources, Division of Water }
Resources, }
Respondent. }

5
6 1. Petitioner Coyote Springs Investment, LLC ("CSI"), by and through the
7 undersigned counsel, hereby petitions this Court for judicial review of a June 15, 2020
8 decision entitled "Order # 1309 DELINEATING THE LOWER WHITE RIVER FLOW
9 SYSTEM HYDROGRAPHIC BASIN WITH THE KANE SPRINGS VALLEY BASIN (206),
10 COYOTE SPRING VALLEY BASIN (210). A PORTION OF BLACK MOUNTAINS AREA
11 BASIN (215), GARNET VALLEY BASIN (216), HIDDEN VALLEY BASIN (217),
12 CALIFORNIA WASH BASIN (218), AND MUDDY RIVER SPRINGS AREA (AKA
13 UPPER MOAPA VALLEY) BASIN (219) ESTABLISHED AS SUB-BASINS,
14 ESTABLISHING A MAXIMUM ALLOWABLE PUMPING IN THE LOWER WHITE RIVER
15 FLOW SYSTEM WITHIN CLARK AND LINCOLN COUNTIES, NEVADA, AND
16 RESCINDING INTERIM ORDER 1303" by Tim Wilson, Nevada State Engineer ("Order
17 1309"). A true and correct copy of Order 1309 is attached as Exhibit "A".

18 2. In Order 1309, Nevada State Engineer ("State Engineer"), Tim Wilson, ordered
19 the delineation of six, and part of a seventh, previously separately delineated
20 hydrographic basins, into a single hydrographic basin called the "Lower White River
21 Flow System", *and ordered* designated a maximum quantity of 8000 acre-feet-annually
22 of groundwater that may be pumped from the Lower White River Flow System
23 Hydrographic Basin, *and ordered* that the 8000 acre-foot maximum may be reduced if it
24 is determined that pumping adversely affects the Moapa dace, *and ordered* that the
25 previously issued moratorium regarding any final subdivision submitted to the State
26 Engineer for review set forth in State Engineer Interim Order 1303 dated January 11,

1 2019 ("Rescinded Order 1303") be terminated, *and ordered* that all other matters set
2 forth in Rescinded Order 1303 that are not specifically addressed in Order 1309 were
3 rescinded.

4 JURISDICTION AND PARTIES

5 3. This Court has jurisdiction to address this petition pursuant to N.R.S. 533.450(1),
6 which provides that "any person feeling aggrieved by any order or decision of the State
7 Engineer, . . . may have the same reviewed by a proceeding for that purpose, insofar as
8 may be in the nature of an appeal, which must be initiated in the proper court of the
9 county in which the matters affected or a portion thereof are situated. . . ." Coyote
10 Springs Investment LLC, master developer of the Coyote Springs Development, which
11 is subject to the State Engineer's June 15, 2020 decision, has over 21,000 acres of fee-
12 owned land for development in Lincoln County, Nevada, and holds a leasehold interest
13 to over 7,500 acres of conservation land in Lincoln County, Nevada; and over 6,800
14 acres of fee-owned land for development in Clark County, Nevada, and holds a
15 leasehold interest to over 6,200 acres of conservation land in Clark County, Nevada.

16 4. CSI is a limited liability company, formed under the laws of the State of Nevada,
17 and is the original developer of Coyote Springs Development in both Lincoln and Clark
18 Counties, Nevada.

19 5. Tim Wilson is, as of the date of this Petition, the State Engineer, Nevada Division
20 of Water Resources, is an agent of the State of Nevada, and is appointed by and
21 responsible to the Director of the State Department of Conservation and Natural
22 Resources ("Department"). NRS 532.020. The State Engineer issued the June 15,
23 2020 decision, Order 1309, which is the subject of this Petition.

FACTS

1
2 6. From water rights purchased in 1998, CSI owns 4600 acre feet annually ("afa") of
3 certificated and permitted Nevada water rights in the Coyote Spring Valley Hydrographic
4 Basin. CSI's groundwater rights in the Coyote Spring Valley are evidenced as follows:
5 CSI owned 1500 afa under Permit 70429 (Certificate 17035) of which 1250 afa was
6 conveyed to the Clark County Coyote Springs Water Resources General Improvement
7 District ("CS-GID") to be used for the Coyote Springs Development, with the remaining
8 250 afa still owned by CSI. CSI also owned 1000 afa under Permit 74094 of which 750
9 afa were conveyed to the CS-GID to be used for the Coyote Springs Development, with
10 the remaining 250 afa still owned by CSI. CSI also owned 1600 afa under Permit 70430
11 of which 460 afa was relinquished as approved and permitted by the State Engineer
12 and accepted by the United States Fish and Wildlife Service ("USFWS") as required
13 mitigation arising from the Coyote Springs Development and for the protection of the
14 Moapa dace fish, thus leaving 1140 afa that continues to be owned by CSI. Further,
15 CSI continues to own 500 afa under Permit 74095. Thus, the total amount of water
16 permits held by CSI as of the date of this Petition is 2140 afa, and the total amount of
17 water rights held by the CS-GID is 2000 afa all of which is to be used for the Coyote
18 Springs Development¹, with 460 afa relinquished by CSI for protection of the
19 endangered Moapa dace. CSI also owns a few additional rights in the LWRFS
20 Hydrographic Basin outside of the Coyote Springs Valley. Furthermore, through a
21 purchase and option agreement dated October 17, 2005, and as amended from time to
22 time ("KS-Agreement"), CSI purchased from Lincoln County Water District ("LCWD")

23 _____
24 ¹ And pursuant to that certain Amended and Restated Coyote Springs Water and Wastewater Multi-Party
25 Agreement, dated July 7, 2015, regarding operation and management of the CS-GID, if the Coyote Springs
26 Development ceases to develop, then the water rights revert to CSI. Meaning, the CS-GID executes deeds
27 and other related instruments necessary to effectuate that reversion.

1 and Vidler Water Company ("Vidler") 246.96 acre feet of permitted water rights in Kane
2 Springs Valley and a contractual commitment from Lincoln County Water District to
3 provide CSI with 253.04 afa that CSI purchased and dedicated to Lincoln County Water
4 District (for an available total quantity of water equal to 500 afa) as evidenced by
5 Permits 72220 and 72221. Further subject to the KS-Agreement, CSI holds an option to
6 purchase from Vidler, an additional 500 afa of permitted Kane Springs Valley water
7 rights.

8 7. Directly relevant to CSI's interests, the total amount of water rights affected by
9 the State Engineer's decision is 4140 afa in Coyote Spring Valley and 1000 afa in the
10 Kane Spring Valley, in Clark and Lincoln Counties, Nevada, respectively.

11 8. The Southern Nevada Water Authority ("SNWA"), USFWS, CSI, Moapa Band of
12 Paiutes, and the Moapa Valley Water District ("MVWD") entered into a Memorandum of
13 Agreement dated April 20, 2006 and as amended from time to time (as amended, the
14 "2006 MOA") as a result of the State Engineer's Order 1169 and their respective
15 proposed development needs. The purpose of the 2006 MOA was to protect Muddy
16 River's flow rates for protection of the Moapa dace initially during the Order 1169 pump
17 test and then beyond. The 2006 MOA set forth certain rights and obligations of the
18 parties to the agreement. Among other things, CSI agreed to dedicate ten percent of its
19 initial water rights (4600 afa), which was a quantity of 460 afa, to the survival and
20 recovery of the Moapa dace pursuant to Section 3(a) of the MOA. The Biological
21 Opinion issued by USFWS described in File Nos. 84320-2008-F-0113 and 84320-2008-
22 I-0499, dated October 22, 2008] confirm CSI's obligation to dedicate this water as
23 appropriate mitigation for any take of the Moapa dace related to the development of
24 Coyote Springs community. USFWS determined that the best use of this 460 afa of
25 dedicated water would be for it to remain in the groundwater system in reliance on the
26 premise that the water makes its way in the underground system to the Muddy River

1 and the Muddy River Springs area, and thus also eventually to Lake Mead. In
2 accordance with Nevada water law, CSI recorded an Affidavit to Relinquish Water
3 Rights in Clark County and Lincoln County. The Affidavits were filed with the State
4 Engineer on May 24, 2016. These documents ensure the 460 afa will not be pumped
5 and remain in the State Engineer's count of appropriated water rights to prevent re-
6 appropriation in the future.

7 9. Since just before the year 2000, over 20 years ago, CSI commenced
8 development efforts of its property in the Coyote Spring Valley. CSI's first development
9 agreement in Clark County was dated September 2004, and since that time CSI has
10 prepared and processed permits and approvals for community infrastructure, maps and
11 plans, and recorded maps. CSI's development efforts include zoning entitlements for
12 golf course, resort, residential, multi-family, commercial, industrial, gaming enterprise,
13 among others. These efforts include recorded large parcel, parent final maps for
14 purpose of subsequent residential subdivision maps, all of which were for the
15 development of the community and master plan known as the Coyote Springs
16 Development. These efforts were engaged with many agencies, including, without
17 limitation, Clark County, Lincoln County, the Las Vegas Valley Water District
18 ("LVVWD"), Lincoln County Water District, Clark County Water Reclamation District,
19 Nellis Air Force Base, Nevada Department of Wildlife, USFWS, US Army Corp. of
20 Engineers, Bureau of Land Management, Clark County Regional Flood Control District,
21 Nevada Department of Transportation, Nevada Division of Environmental Protection,
22 Department of Air Quality, Southern Nevada Water Authority, Southern Nevada Health
23 District, and the State Engineer. CSI holds and has been issued, a variety of permits,
24 entitlements, bonds, improvements, maps and plans.

25 10. Based on those permits, entitlements, bonds, and approved plans, CSI
26 constructed significant infrastructure improvements to support the Coyote Springs

1 Development. CSI constructed a Jack Nicklaus Signature Golf Course ("Golf Course") at
2 a cost of \$40,000,000. The Golf Course was constructed to support future residential
3 development and the overall Coyote Springs Development; but for the full development
4 of Coyote Springs Development pursuant to its entitlements, the Golf Course would not
5 have been built as a stand-alone business; golf courses are built to sell homes. The
6 Golf Course was designed to also serve as natural storm water drainage for the Coyote
7 Springs Development.

8 11. The Golf Course opened in May 2008, and has operated since opening at a
9 monetary loss, and operations at a loss continue to the present. The Golf Course has
10 just over 25,000 rounds of golf played per year. Prior to COVID-19 over 60 full time
11 employees were employed; post-COVID-19, there remain just 25 personnel employed
12 in connection with the Coyote Springs Golf Club and the Coyote Springs Development.
13 Many more employees would be activated and employed if CSI were allowed to
14 proceed with its entitled and permitted development efforts.

15 12. CSI's many improvements for the Coyote Springs Development include the
16 \$40,000,000 Jack Nicklaus Signature Golf Course; a 325 acre flood control detention
17 basin (subject of a dam permit issued and renewed by the State Engineer); a
18 groundwater treatment plant permitted by Nevada Department of Environmental
19 Protection and to specifications required by the LVVWD and the CS-GID which includes
20 two 1,000,000 gallon water storage tanks designed and constructed to culinary water
21 standards; a wastewater treatment plant permitted by the Nevada Department of
22 Environmental Protection and to specifications required by the LVVWD and the CS-GID
23 and initial package treatment plant; and a 3-megawatt electrical substation and
24 appurtenant equipment operated by Lincoln County Power District.

25 13. The Coyote Springs Development drilled and operated four groundwater
26 production wells, two of which are fully equipped to LVVWD and CS-GID standards,

1 municipal water wells, all of which have been overseen, approved, and permitted by the
2 State Engineer. The two wells equipped to municipal standards were done so at a cost
3 greater than Twenty Million Dollars (\$20,000,000). Based on, and in reliance on these
4 approvals, and other approvals by the relevant government agencies, including the
5 State Engineer, CSI constructed miles of roadways, curbs, and installed associated
6 underground utilities, including water, sewer, gas and electricity in the Coyote Springs
7 Development. The total cost of construction and acquisitions for these improvements
8 and associated processing is well over Two Hundred Million Dollars (\$200,000,000).

9 14. CSI relied upon the approvals granted by the relevant agencies, some of which
10 are listed above, but most particularly the State Engineer, to proceed with these
11 construction projects. CSI, in particular has relied on the approvals of the State
12 Engineer recognizing that CSI must use its certificated and permitted water rights in the
13 Coyote Springs Development in order to support operation of the existing and operating
14 golf course and related facilities, and all of its residential subdivision development and
15 construction efforts in order to open a homebuilding center to the public and sell
16 residential homes, among other customary southern Nevada master planned
17 community commercial and public facility support amenities.

18 15. Eighteen years ago, prior State Engineer Hugh Ricci issued an order which held
19 in abeyance certain applications pending or to be filed for additional water rights in the
20 Coyote Spring Valley Basin 210 (and other basins), known as Order 1169 ("Order
21 1169"). At the time of Order 1169, various parties, including CSI, MVWD, SNWA,
22 among others, had water right applications pending for determination. The State
23 Engineer determined there was insufficient information and data concerning the deep
24 carbonate aquifer underlying the hydrographic basins in question. Based on the need
25 for additional information and data, the State Engineer exercised his authority under
26 NRS 533.368 to order a hydrological study of the basins in question. In taking this step,

1 the State Engineer studied available water to issue a permit for pending applications,
2 and in so doing the State Engineer determined that certain applicants, including CSI,
3 already had a vested interest in water rights permitted from the carbonate aquifer
4 system, thereby acknowledging the existence and validity of CSI's 4600 afa referenced
5 in paragraph 6 above. The study requested was to occur over a five-year period and
6 fifty-percent (50%) of the water rights then permitted in the Coyote Springs Valley Basin
7 were to be pumped for at least two consecutive years. The applicants, which included
8 CSI, were to pay for the studies and were to file a report with the State Engineer within
9 180 days of the end of the fifth (5th) consecutive year following commencement of the
10 test.

11 16. CSI, SNWA, MVWD, among others, thereafter performed the required pump
12 tests on the wells in the Coyote Springs Valley Basin from 2010 to 2012 and filed their
13 reports in 2013.

14 17. On January 29, 2014, State Engineer Jason King issued Ruling 6255 ("Ruling
15 6255") out of the Order 1169 pump tests. In Ruling 6255, the State Engineer ruled that
16 pumping groundwater in Coyote Spring Valley Basin for new applications would
17 decrease flows at existing springs and could impact existing water rights held by parties
18 such as CSI's then existing 4600 afa of permitted water rights. The State Engineer also
19 found that the Muddy River and Muddy River Springs were fully appropriated and
20 pumping of groundwater could, in the future, potentially reduce flows in the Muddy River
21 that might cause a conflict with existing water rights. The State Engineer decided this
22 conflict with existing rights was not in the public interest and allowing appropriation of
23 additional groundwater resources could impair protection of springs and the habitat of
24 the Moapa dace that lives in the headwaters of the Muddy River. Based on those
25 findings, the State Engineer denied the then-pending new water right applications.
26 Ruling 6255 protects existing water rights (such as CSI's then owned 4600 afa) from

1 any new appropriations by denying the pending applications on the basis that existing
2 water rights must be protected.

3 18. CSI's existing water rights in what is now designated "Lower White River Flow
4 System Hydrographic Basin" are part of the rights the State Engineer ruled must be
5 protected in Ruling 6255. CSI has historically pumped, and continues to pump,
6 between 1400 afa and 2000 afa from its wells in the Coyote Spring Valley Basin. Golf
7 Course operations use, on average, 1100 afa, and beyond that water is used to support
8 construction activity in the Coyote Springs Development. Irrigation of Golf Course
9 Operations and other landscaping areas will be replaced by grey-reclaimed water in the
10 future after residential development is underway.

11 19. Through the specific plan, development agreement, entitlement and zoning
12 process, and creation of the CS-GID, CSI adopted aggressive water conservation plans
13 that it stands ready to implement. These plans include reuse of groundwater once it
14 makes its ways through the residential infrastructure, including grey-water use on golf
15 courses, common areas, and public parks. Coyote Springs Development's water
16 conservation target is for each equivalent-residential-unit to achieve 0.36 afa. Treated
17 effluent from CSI's wastewater treatment plant will be recycled within the development
18 and any portion not reused is designed to recharge the aquifer and flow to the Muddy
19 River and ultimately to Lake Mead.

20 20. Of the 4140 afa CSI has available for immediate development of the Coyote
21 Springs Development, CSI intends to support its existing entitled residential units within
22 its subdivisions, plus related resort, commercial and industrial development. Return
23 flows from the subdivision and effluent from its treatment plants will be returned to the
24 aquifer or recycled.

25 21. As CSI processed the final governmental approvals of what would be its first
26 residential subdivision map for 575 units in "Village A" of the Coyote Spring

1 Development, on May 16, 2018, State Engineer Jason King sent a letter to LVVWD
2 regarding Coyote Spring Valley Basin Water Supply, with a copy to CSI's
3 representative, Mr. Albert Seeno III.² The State Engineer stated that the pump tests
4 from Order 1169 through the present clearly indicate that pumping at the level during
5 the two year pump test caused unprecedented declines in groundwater levels.

6 22. In the State Engineer's May 16, 2018 letter, he stated (for the first time), that any
7 groundwater to be pumped across a *five-basin area* [emphasis in original] would be
8 limited to ensure no conflict with Muddy River Springs or the Muddy River as they are
9 the most senior rights in the then-identified five-basin area. The State Engineer further
10 said that carbonate pumping will be limited to a fraction of the 40,300 acre feet already
11 appropriated in the identified five-basin area. Following that sweeping statement, the
12 State Engineer specifically addressed the purpose of the then instant letter by stating:

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

19 This May 16, 2018 letter went on to close with a desire that the water rights holders in
20 the area plus the Nevada Division of Water Resources work together to reach a
21 resolution for the entirety of the five basin area.

22 23. Subsequently, in communications by email between Albert Seeno III with the
23 State Engineer, on May 17, 2018, the State Engineer advised that he would neither
24
25

26 ² The May 16, 2018 letter was rescinded pursuant to a settlement agreement between CSI and the State
27 Engineer. See paragraph 26 below.

1 sign-off nor approve any subdivision map submitted by CSI if they were based on
2 water rights CSI owned or had dedicated to the CS-GID.

3 24. On May 18, 2018, in a conversation with Albert Seeno III, the State Engineer
4 advised CSI not to spend one dollar more on the Coyote Springs Development Project
5 and that processing of CSI's maps had stopped. The State Engineer stated that he
6 was going to prepare a new draft order that would supersede or dramatically modify
7 Order 1169 and Ruling 6255, in approximately 30 days. The State Engineer admitted
8 to Albert Seeno III that this was uncharted territory and further, that his office has
9 never granted rights and then just taken them away.

10 25. Following his conversation with State Engineer Jason King, on May 18, 2018,
11 Albert Seeno III emailed Jason King and asked if anyone had filed an impairment claim
12 or any type of grievance with regard to CSI's and/or CS-GID's water rights and/or the
13 pumping CSI had performed over the prior 12 years. On May 21, 2018, the State
14 Engineer responded that no one had asserted a conflict or impairment regarding CSI's
15 pumping of the CS-GID and CSI's water rights.

16 26. On June 8, 2018, CSI filed a Petition for Review of the State Engineer's May 16,
17 2018, letter challenging the State Engineer's decision to place a moratorium on
18 processing CSI's subdivision maps. After a court-ordered settlement meeting on
19 August 29, 2018,, the parties agreed to settle and dismiss the case. In that settlement
20 agreement dated August 29, 2018, the State Engineer agreed to rescind his May 16,
21 2018, letter and to process CSI's subdivision maps without prejudice.

22 27. Thereafter, the State Engineer began a public workshop process to review the
23 water available for pumping in an area that the State Engineer began calling the Lower
24 White River Flow System ("LWRFS") which includes the Coyote Spring Valley

1 hydrographic basin³. This public process included public workshops, a working group
2 of stakeholders, and included facilitation of a meeting of the Hydrologic Review Team
3 (“HRT”) established pursuant to that certain 2006 Memorandum of Agreement among
4 some of the parties involved in the new LWRFS process.⁴

5 28. On September 7, 2018, the Office of the State Engineer issued two conditional
6 approvals of subdivision maps submitted for review by CSI. The first conditional
7 approval was for the Large Lot Coyote Springs—Village A, consisting of eight lots,
8 common area, and rights of way totaling approximately 643 acres in Clark County and
9 requiring the statutory 2.0 afa per lot, for a total of 16 afa. The second conditional
10 approval was for the Coyote Springs—Village A subdivision map, consisting of 575
11 lots, common areas and rights of way for approximately 142.71 acres in Clark County
12 and requiring an estimate demand of 408.25 afa of water annually based on .71 afa per
13 residential unit. The two subdivision maps were conditionally approved subject to a
14 showing by CSI (or its agent) that sufficient water was available without affecting senior
15 water rights in the Muddy River and the Muddy River Springs.

16 29. Following this brief public input process, the State Engineer issued a draft order
17 at a public workshop held on September 19, 2018. The September 19, 2018, draft
18 order contained a preliminary determination that there were 9,318 afa of water rights
19 with a priority date of March 31, 1983, or earlier, that could be safely pumped from five-
20 basins composing the initial-LWRFS basins without affecting the flows in the Muddy
21

22 ³ The Lower White River Flow System as so named, was identified colloquially prior to January 2019, and in
23 Rescinded Order 1303 dated January 11, 2019 these same hydrographic basins were identified as a single
24 administrative unit, and then even further, in his June 15, 2020 Order#1309 the State Engineer specifically
25 named and identified the Lower White River Flow System Hydrographic Basin which is fully described in this
26 Petition.

26 ⁴ On July 24, 2018, the State Engineer held a Public Workshop and on August, 23, 2018 facilitated the
27 meeting of the HRT.

1 River and without affecting the endangered Moapa dace fish. The draft order included
2 a moratorium on processing of subdivision maps unless demonstrated to the State
3 Engineer's satisfaction that an adequate supply of water was available "in perpetuity"
4 for the subdivision proposed to be mapped.

5 30. On October 5, 2018, CSI submitted a series of comment letters to the State
6 Engineer regarding the September 19, 2018, draft order. CSI commented on the total
7 lack of technical information necessary to perform a comprehensive review of the State
8 Engineer's conclusions in the draft order. CSI requested that the State Engineer
9 provide public access to the cited 30,000 pages of documentation used to support his
10 conclusions in the draft order.

11 31. In the October 5, 2018 CSI comment letters from CSI and its qualified expert,
12 CSI also pointed out to the State Engineer that his use of the 9318 afa limit for pumping
13 in the basin was not supported by substantial evidence and that the State Engineer's
14 own data supported a figure of at least 11,400 afa that could be pumped without any
15 effect on the flows in the Muddy River or any effects on the Moapa dace. CSI also
16 criticized reliance on only three-years of pump data to establish the limitation of 9318
17 afa when data from more than three years was available.

18 32. On October 23, 2018, CSI provided additional comments on the September 19,
19 2018 draft order. CSI noted again that the State Engineer's own data supported a
20 determination that the correct amount of pumping that could be sustained in the
21 LWRFS was at least 11,400 afa and not 9,318 afa. However, even assuming that
22 9,318 afa was the correct number, CSI was still entitled to at least 1,880 afa of water
23 for its subdivisions.

24 33. On January 11, 2019, State Engineer Jason King issued Rescinded Order 1303.

25 34. On May 13, 2019 the State Engineer amended Rescinded Order 1303. In
26 Rescinded Order 1303, the State Engineer declared that Coyote Spring Valley, Muddy

1 River Springs Area, Hidden Valley, Garnet Valley, California Wash, and the
2 northwestern part of the Black Mountains Area were designated as a joint
3 administrative unit for purposes of administration of water rights, known as the Lower
4 White River Flow System or the Six-Basin Area. Rescinded Order 1303 also declared
5 a temporary moratorium on approvals regarding any final subdivision or other
6 submissions concerning development and construction submitted to the State Engineer
7 for review. According to Rescinded Order 1303, any such submittal shall be held in
8 abeyance pending the conclusion of the public process to determine the total quantity
9 of groundwater that may be developed within the Lower White River Flow System.
10 Rescinded Order 1303 did provide an exception to the moratorium, that the State
11 Engineer could review and grant approval if a showing of an adequate and sustainable
12 supply of water to meet the anticipated "life of the subdivision" was made to his
13 satisfaction.

14 35. Rescinded Order 1303 raised five questions for stakeholders to review and to
15 which they could respond with technical, scientific data: (a) the geographic boundary
16 of the LWRFS, (b) aquifer recovery subsequent to the Order 1169 aquifer test, (c) the
17 long-term annual quantity and location of groundwater that may be pumped from the
18 LWRFS, (d) the effect of movement of water rights between alluvial and carbonate
19 wells within the LWRFS and (e) any other matter believed to be relevant to the State
20 Engineer's analysis (the "Five Topics Noticed for Determination").

21 36. In issuing Order 1309, the State Engineer went well beyond the scope of issues
22 within the Rescinded Order 1303's Five Topics Noticed for Determination.

23 37. Former State Engineer Jason King retired the same day that Rescinded Order
24 1303 was issued, January 11, 2019. Thereafter, Tim Wilson was appointed as Acting
25 State Engineer; and on December 12, 2019, Tim Wilson was appointed as the full
26 State Engineer.

1 38. On June 13, 2019, CSI submitted two-maps for signature and approval subject to
2 the exception written into Rescinded Order 1303: (i) its previously described Large Lot
3 Coyote Springs—Village A, consisting of eight lots, common area, and rights of way
4 totaling approximately 643 acres in Clark County and on the face of the map requiring
5 the statutory 2.0 afa per lot, for a total of 16 afa, and (ii) its Coyote Springs—Village A
6 subdivision map, consisting of 575 lots, common areas and rights of way for
7 approximately 142.71 acres in Clark County and requiring an estimate demand of
8 408.25 afa of water annually based on .71 afa per residential unit. These maps were
9 accompanied by a cover letter describing a request approval based on an attached
10 technical report which evidenced support for approval and identifying the technical and
11 hydrogeologic analysis supporting CSI's request for 2000 afa to be approved and
12 assigned to these maps for development within the Coyote Springs master planned
13 community.

14 39. The State Engineer held several workshops and meetings regarding Rescinded
15 Order 1303, on February 6, March 22, April 23, and July 24, 2019. These meetings
16 were workshops and held in anticipation and preparation for the scheduled hearing on
17 Rescinded Order 1303 scheduled for the end of September, early October, 2019.

18 40. The State Engineer identified dates for a hearing to be held on Rescinded Order
19 1303, to allow all interested parties to submit technical reports and studies in response
20 to the five questions raised by the State Engineer in Rescinded Order 1303, and cross
21 examine the others' experts, following which the State Engineer would take under
22 advisement all of the reports and testimony and render a decision in a new order.

23 41. Expert reports by interested parties were due July 3, 2019, and rebuttal reports
24 were due on August 16, 2019. CSI filed expert scientific, geophysical, hydrologic, and
25 hydrogeologic reports, and related rebuttal reports; all of which are reflected on the
26

1 State Engineer's administrative record supporting Rescinded Order 1303 on their
2 website.

3 42. The hearing on Rescinded Order 1303 took place in Carson City, Nevada
4 between September 23, 2019, and October 4, 2019.

5 43. Following the hearing on Rescinded Order 1303, the State Engineer allowed for
6 closing reports, which were due on or before December 3, 2019.

7 44. Initial reports and expert opinions and rebuttal reports, submitted by interested
8 parties, including those that demanded that the Kane Spring Valley be included within
9 the Lower White River Flow System (thus, turning a Six-Basin area into a Seven-Basin
10 area).

11 45. In addition to CSI's hydrogeologist and other experts at Stetson Engineering,
12 CSI, LCWD, and Vidler retained an expert in the area of geophysics, Zonge
13 International, to review underground faulting in the Coyote Spring and Kane Springs
14 hydrographic basins and identify faults that could act as barriers to flow from the Kane
15 Springs and Coyote Spring valleys east to the Muddy River and the Muddy River
16 Springs area.

17 46. Other than CSI and its team of experts in the fields of geology and hydrogeology,
18 water rights, climate, biology, and geophysics, from Stetson Engineering and Zonge
19 International, more than 15 additional other stakeholders were present and participated
20 at Rescinded Order 1303 Hearing, and each stakeholder presented expert witnesses⁵
21 to their previously submitted reports. All of this testimony, and all reports and rebuttal
22 reports submitted is a part of the State Engineer's files for Rescinded Order 1303
23 Hearing, and testimony preserved by a stenographer's transcript and video taken. CSI
24

25 ⁵ More than 25 experts presented testimony. See Nevada State Engineer website for LWRFS at
26 <http://water.nv.gov/news.aspx?news=LWRFS> and the tab "hearing documents."

1 disagrees with the summarization by the State Engineer of hearing testimony in Order
2 1309.

3 47. Order 1309 specifically delineated the following decisions⁶:

4 *1. The Lower White River Flow System consisting of the Kane*
5 *Springs Valley, Coyote Spring Valley, Muddy River Springs Area, California Wash,*
6 *Hidden Valley, Garnet Valley, and the northwest portion of the Black Mountains Area as*
7 *described in this Order, is hereby delineated as a single hydrographic basin. The Kane*
8 *Springs Valley, Coyote Spring Valley, Muddy River Springs Area, California Wash,*
9 *Hidden Valley, Garnet Valley and the northwest portion of the Black Mountains Area are*
10 *hereby established as sub-basins within the Lower White River Flow System*
11 *Hydrographic Basin.*

12 *2. The maximum quantity of groundwater that may be pumped*
13 *from the Lower White River Flow System Hydrographic Basin on an average annual*
14 *basis without causing further declines in the Warm Springs area spring flow in the*
15 *Muddy River cannot exceed 8,000 afa and may be less.*

16 *3. The maximum quantity of water that may be pumped from the*
17 *Lower White River Flow System Hydrographic Basin may be reduced if it is determined*
18 *that pumping will adversely impact the endangered Moapa dace.*

19 *4. All applications for the movement of existing groundwater rights*
20 *among sub-basins of the Lower White River Flow System Hydrographic Basin will be*
21 *processed in accordance with NRS 533.370.*

22 *5. The temporary moratorium on the subdivision of final subdivision*
23 *or other submission concerning development and construction submitted to the State*
24 *Engineer for review established under Interim Order 1303 is hereby terminated.*

25

26 ⁶ Exhibit "A" at 65-66.

27

28

1 6. *All other matters set forth in Interim Order 1303 that are not*
2 *specifically addressed herein are hereby rescinded.*

3 48. Order 1309 neither delivers evidence in support of, nor analysis to support, any
4 of the order and rulings the State Engineer made in Order 1309, Section X, Orders,
5 items 1, 2, 3, and 4, including, without limitation, the addition of Kane Springs Valley into
6 the newly designated Lower White River Flow System Hydrographic Basin.

7 49. In Order 1309, Section X, Orders, items 5 and 6, the State Engineer correctly
8 terminates the improper, arbitrary, and capricious Rescinded Order 1303 in its entirety,
9 including, without limitation, specifically terminating the improper moratorium instituted
10 in Rescinded Order 1303.

11 50. On June 17, 2020, 371 days following written submittal of a request for review
12 and approval for an exception pursuant to Rescinded Order 1303, and two days
13 following issuance of Order 1309, Steve Shell, Water Resource Specialist II, signed a
14 letter addressed to Coyote Springs Nevada at an address that the entity has not used
15 for over ten (10) years, and recommended disapproval for water service to be provided
16 by the CS-GID to the Coyote Springs Development ("Subdivision Map Denial Letter"). A
17 true and correct copy of the Subdivision Map Denial Letter is attached as Exhibit "B".
18 The request at issue was for review and approval of a final subdivision map for eight
19 large parcels intended to be further subdivided. This denial was premised on Order
20 1309 and a statement that "[CSI] groundwater permits have priority dates which may
21 exceed the threshold of allowable pumping within the definition of [Order 1309]".

22 51. The June 17, 2020 Subdivision Map Denial Letter received by CSI did not include
23 analysis or review of any facts or circumstances or analysis as to why the State
24 Engineer's office refused to process the request for map approval pursuant to the
25 exception provided in Rescinded Order 1303. The State Engineer's office did not

1 explain why other request made under the exception to the moratorium under
2 Rescinded Order 1303 were processed and CSI's was not.

3 **PETITION FOR JUDICIAL REVIEW**

4 52. This Petition is filed on the grounds that CSI is an aggrieved party by the decision
5 of the State Engineer on June 15, 2020 and the water rights owned or optioned by CSI,
6 in which CSI has a contractual interest, and the water rights CSI dedicated to the CS-
7 GID will be injured as a result of these decisions.

8 53. The purpose of the State Engineer's hearing leading to its Order 1309 was to
9 address the Five Topics Noticed for Determination:

- 10 a. The geographic boundary of the hydrologically connected
11 groundwater and surface water systems comprising the
12 Lower White River Flow System;
- 13 b. The information obtained from the Order 1169 aquifer test
14 and subsequent to the aquifer test and Muddy River
15 headwater spring flow as it relates to aquifer recovery since
16 the completion of the aquifer test;
- 17 c. The long-term annual quantity of groundwater that may be
18 pumped from the Lower White River Flow System, including
19 the relationships between the location of pumping on
20 discharge to the Muddy River Springs, and the capture of
21 Muddy River flow;
- 22 d. The effects of movement of water rights between alluvial
23 wells and carbonate wells on deliveries of senior decreed
24 rights to the Muddy River; and,
- 25 e. Any other matter believed to be relevant to the State
26 Engineer's analysis.

27 54. The State Engineer's determinations in his June 15, 2020 order regarding the
28 geographic boundary of the LWRFS, the aquifer recovery since completion of the Order
1169 aquifer test, the long-term annual quantity of groundwater that may be pumped
from the LWRFS, and the effects of movement of water rights between alluvial wells
and carbonate wells on deliveries of senior decreed rights to the Muddy River are

1 arbitrary, capricious, an abuse of discretion and devoid of supporting facts and
2 substantial evidence.

3 55. The State Engineer's Order 1309 is arbitrary⁷ and capricious⁸ due to the lack of
4 substantial evidence supporting its determination that the seven hydrographic basins
5 have a "close" hydraulic connection and must therefore be administered as a single
6 hydrographic basin. The State Engineer concluded in Order 1309 that there may be
7 discrete, local aquifers within the LWRFS with an uncertain hydrologic connection to the
8 Warm Springs Area.⁹ The State Engineer based this opinion on his recognition that
9 "The LWRFS has structural complexity and heterogeneity, and some areas have more
10 immediate and more complete connection than others"¹⁰. One basis for his findings was
11 from Bedroc who presented evidence that their groundwater wells in Coyote Spring
12 Valley are hydraulically disconnected from the regional carbonate aquifer of the
13 LWRFS.¹¹ The evidence and findings contained in Order 1309 are not sufficient to
14 support its designation of the basins as a single hydrographic basin.

15 56. In his June 15, 2020 Order 1309, the State Engineer inconsistently applies his
16 own criteria for determining those basins that should be included in the LWRFS based
17 on a "close hydraulic connection"¹². Order 1309 outlines six criteria that the State
18 Engineer relies on to support the finding of a close hydraulic connection, including
19 geologic structure and water level observations. The State Engineer's application of
20

21
22 ⁷ A finding is arbitrary if "it is made without consideration of or regard for facts, circumstances fixed by
23 rules or procedure." (Black's Law Dictionary, Arbitrary (10th ed. 2014).)

24 ⁸ A decision is capricious if it is "contrary to the evidence or established rules of law." (Black's Law
25 Dictionary, Capricious (10th ed 2014).)

26 ⁹ Exhibit "A" at. 65.

27 ¹⁰ Exhibit "A" at 59.

28 ¹¹ Exhibit "A" at 39,

¹² Exhibit "A" at 47.

1 these criteria to his decision regarding the Black Mountains Area, Kane Springs Valley,
2 and Lower Meadow Wash appears subjective, and is thus arbitrary and capricious.

3 57. For example, Order 1309 excludes from the LWRFS Hydrographic Basin the
4 entire Black Mountain Area due to, among other things, the lack of contiguity of
5 carbonate-rock aquifer and difference in groundwater levels. However, the substantial
6 evidence in the State Engineer's record shows contiguous carbonate rock extends
7 across the Muddy Mountain Thrust Fault between California Wash into the Black
8 Mountains Area¹³, similar to the occurrence of contiguous carbonate rock from Kane
9 Springs Valley into Coyote Spring Valley that is offset by a boundary fault¹⁴. Additional
10 evidence indicated a 150 foot difference in groundwater level between California Wash
11 and the Black Mountains Area, similar in magnitude to the 60 foot difference in
12 groundwater level between Kane Springs Valley and Coyote Spring Valley¹⁵.

13 58. While both the Black Mountains Area-California Wash and Kane Springs Valley-
14 Coyote Spring Wash boundaries exhibit the same physical expression reflective of a low
15 permeability boundary, the State Engineer's Order 1309 includes one, but not the other,
16 in the LWRFS Hydrographic Basin based on perceived "general hydrographic pattern".¹⁶
17 The State Engineer's reliance on these subjective criteria instead of objectively applied
18 criteria is arbitrary and capricious.

19 59. Order 1309 states "the LWRFS exhibits a direct hydraulic connection that
20 demonstrates that conjunctive management and joint administration of these
21 groundwater basins is necessary and supported by the best available science"¹⁷ and at
22

23 ¹³ Exhibit "A" at 15-18.

24 ¹⁴ Exhibit "A" at 19-22.

25 ¹⁵ Exhibit "A" at 52.

26 ¹⁶ Exhibit "A" at 51, 52.

27 ¹⁷ Exhibit "A" at 42.

1 the same time cites numerous documents that do not support this statement. For
2 example, the Order 1169 Aquifer Test Reports cited variously describe potential barriers
3 and flow paths within the LWRFS, while others postulate that the LWRFS is
4 hydraulically connected, and some address the entire LWRFS, while other reports only
5 address portions of the LWRFS.¹⁸ The underlying technical analyses in these cited
6 documents are admittedly unreliable and therefore Order 1309's findings regarding the
7 hydraulic connection within the LWRFS are arbitrary and capricious.

8 60. The State Engineer's determination in his June 15, 2020 order to include the
9 Kane Springs Valley Hydrographic Basin as part of the LWRFS Hydrographic Basin
10 relies on standards regarding hydrologic connections, hydraulic connections, and
11 "close" connections that were not previously known to those submitting evidence in
12 response to Rescinded Order 1303. Inclusion of the Kane Springs Valley Hydrographic
13 Basin into the LWRFS in Order 1309 was a violation of CSI's due process rights. CSI's
14 due process rights were violated because the State Engineer neither provided the
15 standards nor procedures nor analysis describing the method of making such a
16 determination. Therefore, pursuant to Nevada law, as a result, Order 1309 should be
17 voided.

18 61. Further the State Engineer's determination on June 15, 2020 in Order 1309 to
19 include the Kane Springs Valley Hydrographic Basin in the LWRFS Hydrographic Basin
20 is not supported by substantial evidence. See *Bacher v. Office of State Eng'r of State of*
21 *Nevada*, 122 Nev. 1110, 1121 (2006) ("This court has defined substantial evidence as
22 that which a reasonable mind might accept as adequate to support a conclusion.")
23 (internal quotation marks omitted). Furthermore, the State Engineer has not provided
24 "findings in sufficient detail to permit judicial review" as required. *Revert v. Ray*, 95 Nev.

25
26 ¹⁸ Exhibit "A" at 42, FN 244

1 782, 787 (1979) ("When these procedures, grounded in basic notions of fairness and
2 due process, are not followed, and the resulting administrative decision is arbitrary,
3 oppressive, or accompanied by a manifest abuse of discretion, this court will not
4 hesitate to intervene."). In his February 2, 2007 Ruling 5712, the State Engineer stated
5 that the then-available evidence supported the probability of a low-permeability structure
6 or change in lithology between Kane Springs Valley and the southern part of Coyote
7 Spring Valley and there was not substantial evidence that the appropriation of a limited
8 quantity of water in Kane Springs Valley Hydrographic Basin will have any measurable
9 impact on the Muddy River Springs. (5712, p. 21.) The State Engineer's determination
10 in his June 15, 2020 Order 1309 to include the Kane Springs Valley Hydrographic Basin
11 in the LWRFS Hydrographic Basin is not based on substantial evidence contrary to the
12 evidence supporting his determinations in Ruling 5712.

13 62. Finally, the State Engineer's determination in his June 15, 2020 order to include
14 the Kane Springs Valley Hydrographic Basin in the LWRFS Hydrographic Basin is
15 arbitrary and capricious as the substantial evidence, as viewed through the State
16 Engineer's own proposed standards regarding hydrologic connections, hydraulic
17 connections, and "close" connections that it uses in Order 1309, does not satisfy his
18 own standards for the purposes of creating a LWRFS Hydrographic Basin.

19 63. The State Engineer's June 15, 2020 Order 1309 subjectively applies criteria for
20 determining whether the Lower Meadow Valley Wash should be included in the
21 LWRFS. In Order 1309, the State Engineer finds that "while carbonate rocks may
22 underlie the Lower Meadow Valley Wash and be contiguous with carbonate rocks to the
23 south and west, data are lacking to characterize the potential hydraulic connection that
24 may exist."¹⁹ The State Engineer further acknowledges that a connection exists, but
25

26 ¹⁹ Exhibit "A" at 50.

1 determines that the Lower Meadow Valley Wash may be managed outside the LWRFS.
2 Accordingly, Order 1309's exclusion of the Lower Meadow Valley Wash from the
3 LWRFS is inconsistent with his decision to include the Kane Springs Valley, as both
4 basins are upgradient of the Muddy River Springs Area, and based on the State
5 Engineer's findings in Order 1309, both basins have a hydraulic connection to the
6 LWRFS. Additional record evidence demonstrates that groundwater from the Lower
7 Meadow Wash directly support streamflow in the Muddy River and groundwater
8 resources in the carbonate aquifer. Further, both Kane Springs Valley and Meadow
9 Valley Wash have relatively little or no groundwater development. Given the similarities
10 between the Lower Meadow Valley Wash and Kane Springs Valley, the inconsistent
11 treatment of the two in regard to their incorporation into the LWRFS is inconsistent and
12 accordingly arbitrary and capricious.

13 64. The State Engineer's determination that pumping groundwater in the Coyote
14 Springs Basin will have an adverse impact on flows in the Muddy River or on the Moapa
15 dace lacks substantial supporting record evidence and is thus arbitrary and capricious.
16 As described above, the State Engineer relied on outdated and inadequate data in
17 making these determinations. The record evidence before the State Engineer
18 demonstrates that he failed to account for factors such as the effect of faults,
19 groundwater barriers, and hydrogeologic parameters between Coyote Spring Valley
20 pumping and the Muddy River Spring Area.

21 65. The State Engineer's determination in his June 15, 2020 order that the maximum
22 quantity of groundwater that may be pumped from the LWRFS Hydrographic Basin on
23 an average annual basis without causing further declines in Warm Springs area spring
24 flow and flow in the Muddy River cannot exceed 8,000 afa is not supported by
25 substantial evidence. This is the case as the State Engineer also misinterprets the
26 evidence from the hearing following Rescinded Order 1303 regarding the effect of

1 groundwater pumping within the LWRFS on the Moapa dace. Furthermore, CSI has
2 already performed and completed its required mitigation for development of Coyote
3 Springs as required by USFWS. CSI was required to set aside 460 afa to protect the
4 endangered Moapa dace and USFWS deemed this dedication as appropriate mitigation
5 for any take of the Moapa dace related to development of the Coyote Springs
6 Development. Ignoring these significant considerations was arbitrary and capricious,
7 rendering Order 1309 unlawful.

8 66. Order 1309's use of the term "maximum quantity" of groundwater that may be
9 pumped is further confused by the Order's qualifier "on an average annual basis".²⁰ The
10 use of the "average annual basis" suggests that pumping may be less than 8,000 afa in
11 some years and more than 8,000 afa in others. Accordingly, Order 1309's pumping
12 limitations is vague and lacks direction for how the average annual basis will be used to
13 enforce the maximum quantity of groundwater that may be pumped. Order 1309 further
14 does not distinguish the quantity of pumping that can occur from each of the two
15 aquifers that compose the LWRFS, the Basin Fill and Carbonate aquifers. Accordingly,
16 Order 1309 is arbitrary and capricious as it "lacks specific standards, thereby
17 encouraging, authorizing, or even failing to prevent arbitrary and discriminatory
18 enforcement." *Silvar v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 122 Nev. 289,
19 293 (2006).

20 67. Further, the State Engineer's determination in his June 15, 2020 Order 1309 that
21 the maximum quantity of groundwater that may be pumped from the LWRFS on an
22 average annual basis without causing further declines in Warm Springs area spring flow
23 and flow in the Muddy River cannot exceed 8,000 afa is not supported by substantial
24 evidence as there is no evidence in the record regarding the effects of this quantity of
25

26 ²⁰ Exhibit "A" at 65.

1 water being pumped within the newly defined LWRFS.²¹ Absent such evidence, the
2 State Engineer refers to "Pumpage inventories for 2018 that were published after the
3 completion of the hearing report a total of 8,300 afa."²² Further, the State Engineer
4 identifies that additional inquiry and evidence is still necessary to support this
5 conclusion. Accordingly, the State Engineer's determination regarding the maximum
6 quantity of groundwater that may be pumped from the LWRFS on an average annual
7 basis is not supported by substantial record evidence.

8 68. The State Engineer's determination in his June 15, 2020 Order 1309 that the
9 maximum quantity of groundwater that may be pumped from the LWRFS on an average
10 annual basis without causing further declines in Warm Springs area spring flow and flow
11 in the Muddy River cannot exceed 8,000 afa is not supported by substantial evidence as
12 the State Engineer recognizes that there may be discrete, local aquifers within the
13 LWRFS with an uncertain hydrologic connection to the Warm Springs area and that
14 determination of the effect of moving water rights into these areas may require
15 additional scientific data and analysis.²³ However, Order 1309 does not include any
16 plan to gather such data or conduction such analysis.

17 69. The State Engineer's determination in his June 15, 2020 Order 1309 that the
18 maximum quantity of groundwater that may be pumped from the LWRFS on an average
19 annual basis without causing further declines in Warm Springs area spring flow and flow
20 in the Muddy River cannot exceed 8,000 afa is further arbitrary and capricious and
21

22
23 ²¹ Order 1309 states "Groundwater level recovery reached completion approximately two to three years after
24 the Order 1169 aquifer test pumping ended" and pumping at that time averaged 9,318 afa. (Exhibit "A" at
25 55.) Order 1309's determination to then to base maximum pumping on 2018 when it finds that groundwater
levels had recovered by 2015-2016 is arbitrary and capricious and unsupported by substantial evidence.

26 ²² Exhibit "A" at 55.

27 ²³ Exhibit "A" at 64-65.

1 violates Nevada law as Order 1309 contains no mechanism for the implementation of
2 this limitation to ensure that the Nevada doctrines of prior appropriation²⁴ and that the
3 limit and definition of a water right is its reasonable use.²⁵

4 70. The State Engineer's determination in Order 1309 regarding the movement of
5 water rights within the LWRFS is inconsistent, arbitrary, and capricious. The statement
6 in Order 1309 stating "The State Engineer also finds that any movement of water rights
7 into carbonate-rock aquifer and alluvial aquifer wells in the Muddy River Springs Area
8 that may increase the impact to Muddy River decreed rights is disfavored"²⁶ implies that
9 the some water rights in LWRFS have less impact than others. If there are water rights
10 within the LWRFS that have less impact than others, then the system cannot be
11 homogeneous and be considered as one administrative unit. Accordingly, Order 1309's
12 determination regarding the boundaries of the LWRFS are arbitrary and capricious and
13 not supported by substantial evidence.

14 71. Throughout Order 1309, the State Engineer "*recognizes*" that Order 1309 will
15 serve as an initial step toward management of the newly defined LWRFS Hydrographic
16 Basin [emphasis added]. The word "recognize" is neither a finding nor a ruling, it is
17 simply the observation of something by the State Engineer. The State Engineer also
18 identifies the need for "an effective management scheme" to "provide for the flexibility to
19 adjust boundaries based on additional information, retain the ability to address unique
20 management issues on a sub-basin scale, and maintain partnership with water users
21 who may be affected by management actions throughout the LWRFS."²⁷ However, the
22

23 ²⁴ *Steptoe Livestock Co. v. Gulley*, 53 Nev 163, 171-173, 205 P.772 (1931); *Jones v. Adams* 19 Nev. 78,
24 87, (1885).

25 ²⁵ NRS 533.035.

26 ²⁶ Exhibit "A" at 64.

27 ²⁷ Exhibit "A" at 53.

1 State Engineer's Order 1309 provides for neither a management scheme nor a plan for
2 the development of such a management scheme. Accordingly, the State Engineer's
3 Order 1309 is incomplete and as a result, his issuance of Order 1309 is both arbitrary
4 and capricious.

5 72. In his Order 1309, the State Engineer repeatedly identifies that additional
6 information is necessary to administer the newly created LWRFS Hydrographic Basin
7 the manner that he proposes – as a single hydrographic basin from which only 8,000
8 afa may be pumped. As such additional information is not part of the record underlying
9 Order 1309, the State Engineer's Order 1309 is incomplete, is not supported by
10 substantial evidence, and his issuance of Order 1309 is both arbitrary and capricious.

11 73. THEREFORE, for the foregoing reasons, and for others that may be discovered
12 and raised during the pendency of this Petition for Judicial Review, Petitioner Coyote
13 Springs Investment, LLC hereby requests that this Court reverse the decision of the
14 State Engineer made on June 15, 2020 regarding the geographic boundary of the
15 LWRFS, the aquifer recovery since completion of the Order 1169 aquifer test, the long-
16 term annual quantity of groundwater that may be pumped from the LWRFS, and the
17 effects of movement of water rights between alluvial wells and carbonate wells on
18 deliveries of senior decreed rights to the Muddy River for the reasons discussed in this
19 Petition.

20

21 Dated: July 9, 2020

Brownstein Hyatt Farber Schreck, LLP

22

BY: /s/ Bradley J. Herrema

23

BRADLEY J. HERREMA

24

Bar No. 10368

100 North City Parkway, Suite 1600

Las Vegas, NV 89106

25

Email: bherrema@bhfs.com

Attorneys for Coyote Springs

26

Investment, LLC 21256970

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28

CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I hereby certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and that on the 9th day of July, 2020, I served, or caused to be served, a true and correct copy of the foregoing PETITION FOR JUDICIAL REVIEW OF NEVADA STATE ENGINEER ORDER 1309, to the following:

[X]: Via HAND DELIVERY:

Tim Wilson, P.E., State Engineer
Nevada Division of Water Resources
Department of Conservation and Natural Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701

[X]: Via U.S. Postal Service Certified Mail, Return Receipt Requested, by placing a true and correct copy of the foregoing document in an envelope, postage prepaid, and properly addressed, to the following:

Robert O. Kurth, Jr. 3420 North Buffalo Drive Las Vegas, NV 89129	Laura A. Schroeder Theresa A. Ure 10615 Double R Blvd., Suite 100 Reno, NV 89521
Kent R. Robison Therese M. Shanks Robison, Sharp, Sullivan & Brust 71 Washington Street Reno, NV 89503	Paulina Williams Baker Botts, L.L.P. 98 San Jacinto Blvd., Suite 1500 Austin, TX 78701
Sylvia Harrison Sarah Ferguson McDONALD CARANO LLP 100 W. Liberty Street, 10th Floor Reno, NV 89501	Severin A. Carlson Kaempfer Crowell, Ltd. 50 West Liberty Street, Suite 700 Reno, NV 89511
Karen Peterson ALLISON MacKENZIE, LTD. 402 North Division Street Carson City, NV 89703	Dylan V. Frehner Lincoln County District Attorney P.O. Box 60 Pioche, NV 89043
Alex Flangas 50 West Liberty Street, Suite 700 Reno, NV 89501	Beth Baldwin Richard Berley ZIONTZ CHESTNUT Fourth and Blanchard Building 2101 Fourth Ave., Suite 1230 Seattle, WA 98121-2331

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Steve King, Esq. 227 River Road Dayton, NV 89403	Greg Morrison 50 W. Liberty Street, Suite 750 Reno, NV 89501
Justina Caviglia 6100 Neil Road Reno, NV 89511	Luke Miller Office of Regional Solicitor U.S. Dept. of the Interior 2800 Cottage Way, Suite E1712 Sacramento, CA 95825
Karen Glasgow Office of the Regional Solicitor U.S. Dept. of the Interior 333 Bush Street, Suite 775 San Francisco, CA 94104	Larry Brundy P.O. Box 136 Moapa, NV 89025
Casa De Warm Springs, LLC 1000 N. Green Valley Pkwy., #440-350 Henderson, NV 89074	Clark County 500 S. Grand Central Pkwy. Sixth Floor Las Vegas, NV 89155-1111
Clark County Coyote Springs Water Resources GID 1001 S. Valley View Blvd. Las Vegas, NV 89153	Mary K. Cloud P.O. Box 31 Moapa, NV 89025
Don J. and Marsha L. Davis P.O. Box 400 Moapa, NV 89025	Dry Lake Water, LLC 2470 St. Rose Pkwy., Suite 107 Henderson, NV 89074
Kelly Kolhoss P.O. Box 232 Moapa, NV 89025	Lake and Las Vegas Joint Venture 1600 Lake Las Vegas Parkway Henderson, NV 89011
Laker Plaza, Inc. 7181 Noon Rd. Everson, WA 98247-9650	State of Nevada Dept. of Transportation 1263 S. Stewart Street Carson City, NV 89712
State of Nevada Dept. of Conservation and Natural Res. 901 S. Stewart Street, Suite 5005 Carson City, NV 89701	Pacific Coast Building Products, Inc. P.O. Box 364329 Las Vegas, NV 89036
S & R, Inc. 808 Shetland Road Las Vegas, NV 89107	Technichrome 4709 Compass Bow Lane Las Vegas, NV 89130

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William O'Donnell 2780 S. Jones Blvd., Suite 210 Las Vegas, NV 89146	Global Hydrologic Services, Inc. Mark D. Stock 561 Keystone Avenue, #200 Reno, NV 89503-4331
Patrick Donnelly Center for Biological Diversity 7345 S. Durango Dr. B-107, Box 217 Las Vegas, NV 89113	Lisa Belenky Center for Biological Diversity 1212 Broadway, #800 Oakland, CA 94612

DATED this 9th day of July, 2020.

/s/ Paula Kay
an employee of Brownstein Hyatt Farber
Schreck, LLP

IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

#1309

ORDER

**DELINEATING THE LOWER WHITE RIVER FLOW SYSTEM HYDROGRAPHIC
BASIN WITH THE KANE SPRINGS VALLEY BASIN (206), COYOTE SPRING
VALLEY BASIN (210), A PORTION OF BLACK MOUNTAINS AREA BASIN (215),
GARNET VALLEY BASIN (216), HIDDEN VALLEY BASIN (217), CALIFORNIA
WASH BASIN (218), AND MUDDY RIVER SPRINGS AREA (AKA UPPER MOAPA
VALLEY) BASIN (219) ESTABLISHED AS SUB-BASINS, ESTABLISHING A
MAXIMUM ALLOWABLE PUMPING IN THE LOWER WHITE RIVER FLOW
SYSTEM WITHIN CLARK AND LINCOLN COUNTIES, NEVADA,
AND RESCINDING INTERIM ORDER 1303**

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**I. BACKGROUND OF THE ADMINISTRATION OF THE LOWER WHITE
RIVER FLOW SYSTEM BASINS**

WHEREAS, the State Engineer has actively managed and regulated the Coyote Spring Valley Hydrographic Basin (Coyote Spring Valley), Basin 210, since August 21, 1985; the Black Mountains Area Hydrographic Basin (Black Mountains Area), Basin 215, since November 22, 1989; the Garnet Valley Hydrographic Basin (Garnet Valley), Basin 216, since April 24, 1990; the Hidden Valley Hydrographic Basin (Hidden Valley), Basin 217, since April 24, 1990; the California Wash Hydrographic Basin (California Wash), Basin 218, since April 24, 1990; and the

EXHIBIT A

EXHIBIT A

**Document (Order 1309) Located at JA Vol. 2 at JA_326
through JA 393**

EXHIBIT B

EXHIBIT B



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

June 17, 2020

To: Emillia K. Cargill
Chief Operating Officer
Senior Vice President and General Council
Coyote Springs Investment, LLC
300 S 4th St Ste 1700
Las Vegas, NV 89101

Re: Final Subdivision Review No. 13217-F

Name: Coyote Springs Village A

County: Clark County – Highway 93 and Highway 168

Location: A portions of Sections 15, 16, 21, 22 and 23, Township 13 South, Range 63, East, MDB&M.

Plat: Final: Eight large parcels intended for further subdivision.

**Water Service
Commitment**

Allocation: An estimated 2,000 acre-feet annually from Coyote Springs Investments, LLC permits.

**Owner-
Developer:** Coyote Springs Nevada, LLC
1050 Indigo Drive, Suite 200
Las Vegas, NV 89415

Engineer: Stetson Engineers, Inc.
785 Grand Avenue, Suite 262
Carlsbad, CA 92008

Water

Supply: Coyote Springs Water Resources General Improvement District

General: A final subdivision map was presented and reviewed by this office on June 13, 2019, as described on the Coyote Springs Village A map.

As described in the State Engineer's letter of September 7, 2018, tentative approval was granted.

On June 15, 2020, the State Engineer issued Order #1309 which defined the maximum groundwater which can be pumped from the Lower White River Flow System as being 8,000 acre-feet annually, or less.

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

As provided in Nevada Revised Statutes (NRS) 278.377, a copy of this certificate must be furnished to the subdivider who in turn shall provide a copy of the certificate to each purchaser of land before the time the sale is completed. Any statement of approval is not a warranty or representation in favor of any person as to the safety or quantity of such water.

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

Best regards,



Steve Shell
Water Resource Specialist II

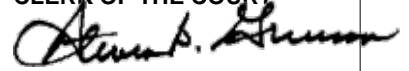
SS/lr

cc: Division of Real Estate
Public Utilities Commission of Nevada
Southern Nevada Health District (Clark County)
Clark County Zoning Commission
Coyote Springs Water Resources General Improvement District
Coyote Springs Investments

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Water, LLC

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7/10/2020 2:11 PM
Steven D. Grierson
CLERK OF THE COURT



CASE NO: A-20-817840-P
Department 28

DISTRICT COURT

CLARK COUNTY, NEVADA

APEX HOLDING COMPANY, LLC, a Nevada
limited liability company; DRY LAKE WATER,
LLC, a Nevada limited liability company,

Case No.:
Dept. No.:

Petitioners,

vs.

PETITION FOR JUDICIAL REVIEW OF
ORDER 1309

TIM WILSON, P.E., Nevada State Engineer,
DIVISION OF WATER RESOURCES,
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES

Respondent.

Petitioners, APEX HOLDING COMPANY, LLC (“APEX”), and its wholly owned subsidiary, DRY LAKE WATER, LLC (“DRY LAKE”), by and through the law firm of Marquis Aurbach Coffing, hereby file this Petition for Judicial Review of Order 1309 issued on June 15, 2020, by Respondent, TIM WILSON, P.E., Nevada State Engineer, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES. The full text of Order 1309 is attached hereto and incorporated herein. This Petition for Judicial Review of Nevada State Engineer (“NSE”) Order 1309 is filed pursuant to NRS 533.450.

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1 **I. JURISDICTIONAL STATEMENT**

2 Under NRS 533.450, any order or decision of the State Engineer is subject to judicial
3 review “in the proper court of the county in which the matters affected or a portion thereof are
4 situated.” The real property to which the water at issue in this appeal is appurtenant lies within
5 Clark County, Nevada; therefore, the Eighth Judicial District Court of the State of Nevada in and
6 for Clark County is the proper venue for judicial review.

7 Further, the subject matter of the appeal involves decreed waters of the Muddy River
8 Decree. Under NRS 533.450(I), “on stream systems where a decree of court has been entered,
9 the action must be initiated in the court that entered the decree.” This court has proper
10 jurisdiction of the Muddy River Decree, *Muddy Valley Irrigation Company, et al, vs. Moapa Salt*
11 *Lake Produce Company, et al*, Case No. 377, which was entered in the Tenth Judicial District of
12 the State of Nevada, in and for the County of Clark in 1920.¹

13
14 The NSE Order 1309 was entered on June 15, 2020, based in whole or part on prior NSE
15 Orders 1169, 1169A, 1303, and the evidence and law offered at hearing upon each Order.

16 This Petition is timely filed and will be timely served as required under NRS 533.450.

17
18 Petitioners, APEX and DRY LAKE, have standing to file this Petition as APEX is one of
19 the land owners, and DRY LAKE is one of the water rights owners and beneficial users of the
20 groundwater for providing the beneficial use of water by service to those lands, which are subject
21 of, adversely impacted by, and which were a party to the proceedings which resulted in NSE
22 Order 1309, and participating in those proceedings for the purpose of developing a
23 comprehensive water management program agreed to by all water rights owners in the Garnet
24 Valley and Black Mountain aquifers, and as necessary the Lower White River Flow System

25
26
27 ¹ In 1920, the Tenth Judicial District consisted of Clark County and Lincoln County. In 1945, Clark
28 County was designated as the Eighth Judicial District.

1 (“LWRFS”).²

2 Apex and Dry Water acknowledge that another Petition concerning the same order was
3 filed on or around June 17, 2020, by LAS VEGAS VALLEY WATER DISTRICT (“LVVWD”)
4 and SOUTHERN NEVADA WATER AUTHORITY (“SNWA”). Apex and Dry Water are
5 informed and believe that other petitions challenging that same order have been or will be filed
6 as well. However, this Petition raises for judicial review different parts of NSE Order 1309 and
7 substantial different and additional matters of law and evidence than that prior Petition by
8 LVVWD and SNWA.
9

10 Other Parties to the proceedings which have resulted in NSE Order 1309 have been
11 notified of this Petition as required by law as evidenced by the certificate of service attached
12 hereto.

13 **II. FACTUAL BACKGROUND**

14 **A. SUBSTANTIAL INTERESTS IN THE LWRFS BY PETITIONERS APEX
15 AND DRY LAKE.**

16 APEX is the owner of lands in the LWRFS groundwater basin area, which is the subject
17 of NSE Order 1309, and for that reason APEX formed DRY LAKE to be the owner of water
18 rights in the Garnet Valley and Black Mountain aquifers of the LWRFS, which are critical and
19 essential for the service of water supply to those APEX lands.

20 The APEX lands were carved out of the sovereign lands of the United States of America

21 ² DRY LAKE owns 178 acre feet of Garnet Basin water rights, base permit numbers 66784 (131.16 AF) and 66785
22 (46.84 AF). These base permits have designated points of diversion in various locations within Apex Industrial Park
23 under some or all of the Permit Numbers 66784 for 156.84 AF with Priority date 3/6/1987, 66785 for 46.84 AF with
24 Priority date 8/25/2000, 72098 for 13.16 AF with Priority date 8/25/2000, 77389 for 80 AF with Priority date
25 8/25/2000, 79948 for 30 AF with Priority date 8/25/2000, 81344 for 8 AF with Priority date 8/25/2000, 84041 for 40
26 AF with Priority date 7/21/2014. Permit number 72098 for 13.17 acre feet has been moved to the Loves Well,
27 79948 for 30.00 acre feet moved to Loves Well, 81344 for 8.00 acre feet moved to Loves Well, 84041 for
28 40.00 acre feet moved to Loves Well, 77389 for 80.00 acre feet moved to Solo Mountain, and
Straggler 6.83 acre feet. DRY LAKE owns 1,392.06 acre feet of Black Mountain water rights, base permit
numbers 68350 (119.44 AF), 68351 (542.98 AF), 68352 (137.58 AF) and 68353 (592.06 AF). The Black Mountain
water rights were successfully moved by the NSE into the Garnet Basin to three different locations within the Apex
Industrial Park under Permit Numbers 88873T, 88874T, 88875T, 88876T, and 88877T for Permits No. 68350 for
119.44 Acre Feet with Priority Date 10/18/88, 68351 for 542.98 Acre Feet with Priority Date 6/21/88, 68352 for
137.58 Acre Feet with Priority Date 10/18/88 and 68353 for 592.06 Acre Feet with Priority Date 10/10/90.

1 and managed by the Bureau of Land Management (“BLM”), to fulfill the purposes of the “Apex
2 Project, Nevada Land Transfer and Authorization Act of 1989,” Public Law 101-67, 101st
3 Congress, 103 STAT 168 (“Act of Congress”).³

4 The lands owned by APEX, and by necessary implication the water rights owned by
5 DRY LAKE required to serve those lands, were impressed with a public trust, and carved out of
6 the USA public domain, and sold to APEX by the authority of the Act of Congress for the
7 specific intent and purpose of serving the crucial national security interest, and the public health,
8 safety, and welfare interests of the citizens of the United States of America, Clark County and
9 the State of Nevada.

10
11 The specific intent and purpose of the Act of Congress would be totally frustrated and
12 defeated without the water supply by DRY LAKE provided to APEX.

13 The Act of Congress occurred during the same contemporaneous time that the NSE
14 issued Order 1309 and the predecessor orders leading up to Order 1309, Orders 1169, 1169A,
15 1303, and other relevant proceedings, studies and hearings relating thereto, and also referred to
16 herein below.

17 The NSE, SNWA and LVVWD and other relevant governmental and private parties were
18 knowledgeable of, and at all relevant times informed participants in the process leading up to the
19 Act of Congress, acquisition of the lands by APEX, and formation of DRY LAKE and its
20 acquisition of water rights to serve APEX, and commencement of DRY LAKE service of water
21 to those APEX lands.

22
23 The NSE by Order 1309, and the other orders resulting in Order 1309, and to some
24 demonstrable extent SNWA, LVVWD and other relevant governmental and private parties, have
25 repeatedly taken actions which have had the deleterious effect of interfering with the intent and
26 purpose of the Act of Congress, and otherwise defeat, frustrate, delay, prevent or avoid any water

27
28 ³ See <https://www.govinfo.gov/content/pkg/STATUTE-103/pdf/STATUTE-103-Pg168.pdf>.

1 supply being provided to APEX by DRY LAKE.

2 The NSE has taken the proper statutory and factual action granting temporary permit
3 transfer status of Black Mountain water rights to the Garnet Valley of the LWRFS owned by
4 DRY LAKE to serve APEX and fulfill the intent and purpose of the Act of Congress. That
5 proper action by the NSE has been opposed by the SNWA and other relevant governmental and
6 private parties that own senior water rights in the LWRFS and the Muddy River Flow System
7 (“MRFS”), or which have an interest in the protection of the habitat for the Moapa Dace.
8

9 This Petition raises for consideration by the Court the following factual evidence and
10 legal issues: first, fully implementing the intent and purpose of the Act of Congress. Second, this
11 Petition also raises for the Court the factual evidence and law disputing Order 1309 evidence that
12 there is an interrelationship and tributary nature of the groundwater pumping in the LWRFS by,
13 *inter alios*, APEX and DRY LAKE with the MRFS. Third, this Petition also raises for the Court
14 the LWRFS tributary or non-tributary interconnection to the natural springs, surface water and
15 groundwater of the MRFS which would have the effect of subjecting LWRFS water rights to
16 regulation and curtailment under the laws, rules and regulations governing the Colorado River
17 Flow System pursuant to the Colorado River Compact 1922 and Boulder Canyon Project Act
18 1928, and *et. seq.* eleven or more laws, rules, treaties, regulations, or minutes (“Law of the
19 River”).⁴ Fourth, this Petition also raises to the Court the resulting facts alleged by NSE Order
20 1309 requiring a limitation on groundwater pumping and permission to maintain and utilize
21 temporary permits of transfer groundwater rights from Black Mountain Basin to Garnet Valley
22 Basin of the LWRFS, by, *inter alios*, APEX and DRY LAKE. Fifth, this Petition raises the legal
23 and factual issues arising from the NSE limiting and preventing evidence and facts at the hearing
24 resulting in NSE Order 1309. Finally, this Petition also may relate to the other factual or legal
25 positions which may be developed in the hearing conducted by the Court.
26

27 _____
28 ⁴ See, for example, <https://www.usbr.gov/lc/region/pao/lawofrvr.html>.

1 **B. ORDER 1303.**

2 On January 11, 2019, the State Engineer issued Interim Order 1303 to obtain stakeholder
3 input on four specific factual matters: 1) the geographic boundary of the LWRFS, 2) aquifer
4 recovery since the 1169 pump test, 3) long-term annual quantity that may be pumped from the
5 LWRFS, and 4) effects of moving water rights between the carbonate and alluvial system to
6 senior water rights on the Muddy River.⁵ After factual findings were made on those questions,
7 the State Engineer was to evaluate groundwater management options for the LWRFS.
8

9 On May 13, 2019, the State Engineer amended Order 1303 and modified certain
10 deadlines for filing reports. On July 25, 2019, the State Engineer issued a Notice of Pre-Hearing
11 Conference. On August 23, 2019, the State Engineer held a prehearing conference. At the
12 prehearing conference, Hearing Officer Fairbank unequivocally stated that “the purpose of the
13 hearing is not to resolve or address allegations of conflict between groundwater pumping within
14 the LWRFS and Muddy River decreed rights.”⁶ On August 23, 2019, the State Engineer issued a
15 Notice of Hearing, and again clarified the limited scope of the hearing.
16

17 In July and August 2019, reports and rebuttal reports were submitted discussing the four
18 matters set forth in Order 1303. Several parties filed objections to witnesses and evidence. Most
19 of the objections were related to the scope of the topics in the submitted evidence. On August
20 23, 2019, the State Engineer issued an Order on Objections to Witnesses and Evidence. The
21 State Engineer agreed that “the evidence presented in the hearing is to be limited to the four
22 issues identified in the Notice of Hearing.” The State Engineer allowed all evidence to be
23 presented, but again warned that the “scope of the testimony shall be limited to the four issues
24

25 ⁵ Exhibit 3 at 2 (“The State Engineer directed the participants to limit the offer of evidence and testimony
26 to the salient conclusions, including directing the State Engineer and his staff to the relevant data,
27 evidence and other information supporting those conclusions. The State Engineer further noted that the
28 hearing on the Order 1303 reports was the first step in determining to what extent, if any, and in what
manner the State Engineer would address future management decisions, including policy decisions
relating to the [LWRFS] basins.”)

⁶ Exhibit 4, at 12:6-15.

1 identified in Order 1301” and cautioned that while some evidence could be submitted outside the
2 specific scope but that the State Engineer “may order a line of questioning to cease or to remain
3 limited to the relevant issues that are the subject of the hearing.”⁷

4 **C. NSE ORDER 1309 FACTS SUPPORTING THIS PETITION.**

5 On June 15, 2020, the NSE Order 1309 determined that “reductions in flow that have occurred
6 because of groundwater pumping in the headwaters basins (i.e., LWRFS) is not conflicting with
7 the Decreed rights (i.e., the senior rights of SNWA, LVVWD and others).”⁸

8 A study by the United States Department of the Interior, Geologic Survey (“USGS”) in
9 1989, which is contemporaneous with the Act of Congress referred to above,⁹ concluded at page
10 2 of that 1989 report by the USGS as follows:

11
12 Large-scale development (sustained withdrawals) of water from the carbonate-
13 rock aquifers would result in water-level declines and cause the depletion of large
14 quantities of stored water. Ultimately, these declines would cause reductions in
15 the flow of warm-water springs that discharge from the regional aquifers. Storage
16 in other nearby aquifers also might be depleted, and water levels in those other
17 aquifers could decline. In contrast, isolated smaller ground-water developments,
18 or developments that withdraw ground water for only a short time, may result in
19 water-level declines and springflow reductions of manageable or acceptable
20 magnitude.

21 Confidence in predictions of the effects of development, however, is low; and it
22 will remain low until observations of the initial hydrologic results of development
23 are analyzed. A strategy of staging developments gradually and adequately
24 monitoring the resulting hydrologic conditions would provide information that
25 eventually could be used to improve confidence in the predictions.

26 The NSE confirmed the statement above that “Confidence in predictions of the effects of
27 development, however, is low;” unless there were additional studies, and as cited in NSE Order
28 1309 at pages 7-10 the evidence submitted by parties to the hearings and studies on Order 1303
and 1309 was conflicting and inconsistent with the finding of adverse impact of pumping in the

24 _____
25 ⁷ August 23, 2019, Order on Objections.

26 ⁸ Exhibit 1 at 61.

27 ⁹ Memorandum dated August 3, 1984, from Terry Katzer, Nevada Office Chief, Water Resources
28 Division, United States Department of Interior Geologic Survey, Carson City, Nevada to Members of the
Carbonate Terrane Study.

1 LWRFS to the natural springs, and surface water of the MRFS.

2 By its terms, the 2006 Memorandum of Agreement (“MOA”) between SNWA and other
3 parties¹⁰ and all actions, evidence and resulting NSE Order 1169 and its subsequent Orders
4 1169A, 1303, and 1309 developed by or because of such MOA, are binding only upon and
5 enforceable against the parties to the MOA, and to the NSE to the extent adopted by the NSE,
6 and are not binding upon or enforceable against APEX or DRY LAKE, *inter alios*.

7
8 There is a factual admission against interest by the NSE, SNWA and LVVWD, and the
9 other parties to the MOA, that they deliberately designed and started a study process with the
10 NSE entitled Southern Nevada Water Authority Order 1169 Report (“Study”),¹¹ which actually
11 reached a conclusion directly and immediately beneficial to the interests of senior water rights
12 owners in the LWRFS and MRFS, and the Moapa Dace, and directly and immediately
13 detrimental to the interests of APEX, DRY LAKE, and *inter alios*.

14 Some water rights owners (i.e., SNWA and LVVWD, and the other parties to the MOA)
15 with water rights interests in both the LWRFS and MRFS, entered into the MOA which resulted
16 in NSE Order 1169, and its subsequent Orders 1169A, 1303, and 1309. Then, some water rights
17 owners, which are parties to the MOA, developed the Study¹² of the LWRFS and MRFS, in such
18 a way that NSE Order 1309 now seeks to apply limitations developed by the MOA and Study to
19 all water rights owners in the LWRFS. That application of the MOA and Study to all water
20 rights owners in the LWRFS restricts all water rights owners of their beneficial use of water
21 rights in the LWRFS to, and for, the benefit and protection of the natural springs, streams and

22
23 ¹⁰ NSE Ex. 236, 2006 Memorandum of Agreement between the Southern Nevada Water Authority,
24 United States Fish and Wildlife Service, Coyote Springs Investment LLC, Moapa Band of Paiute Indians,
25 and Moapa Valley Water District, Hearings on Interim Order 1303, official records of the Division of
26 Water Resources.

27 ¹¹ NSE Ex. 245, Hearing on Interim Order 1303, official records of the Division of Water Resources.

28 ¹² See MOA Pumping Study performed by the parties to the MOA pursuant to Order 1169,
http://water.nv.gov/mapping/order1169/Order_1169_Final_Reports/SNWA%20Order%201169%20Report.pdf.

1 groundwater tributary to the MRFS. That action started by NSE Order 1169, implemented by the
2 MOA and Study, and culminated in NSE Order 1309, which exclusively benefits some water
3 rights owners, which are the parties to the MOA, and specifically and exclusively damages all
4 water rights owners in the LWRFS, all without protections of due process, equal protection, and
5 other Constitutional and legal rights accorded for all water rights owners in the LWRFS;
6 especially damaging APEX, DRY LAKE, and *inter alios*.

7
8 Some water rights owners, as parties to the MOA and Study, admit that some water rights
9 owners as Petitioners now seek court orders modifying NSE Order 1309 in such a way as to
10 grant them more rights to water in the LWRFS and MRFS, at the expense of and direct and
11 immediate damage to all water rights owners in the LWRFS; especially damaging APEX, DRY
12 LAKE, and *inter alios*.

13 APEX and DRY LAKE do not support any conclusion of fact or law, which due to the
14 MOA and Study, and all actions, evidence and resulting NSE Order 1169, and its subsequent
15 Orders 1169A, 1303, and 1309 developed by or because of such MOA and Study, which would
16 have the effect of: first, that thereby subjects the DRY LAKE water rights to the adverse
17 restriction or limitation on beneficial use of groundwater due to the alleged tributary nature of
18 such groundwater pumping in the LWRFS to the natural springs, streams and groundwater
19 tributary to the MRFS, and thus, second, because of that tributary Order 1309, finds that the
20 LWRFS is tributary to the Colorado River Flow System, and thus, third, subjects the LWRFS to
21 severe restrictions imposed by the allocation methods of water use between states by restrictions
22 and limitations pursuant to the Law of the River.¹³

24 APEX and DRY LAKE take the factual and legal position that if any restrictions or
25 limitations on the use of ground or surface water in the LWRFS is determined to be necessary for
26 meeting the requirements of the Moapa Dace or senior surface or ground water rights in the

27 _____
28 ¹³ See, for example, <https://www.usbr.gov/lc/region/pao/lawofrvr.html>.

1 MRFS or the Colorado River Flow System, it is the sole and exclusive obligation and
2 responsibility of some water rights owners, who are the parties to the MOA, Study and NSE,
3 who agreed between themselves to the exclusion of all water rights owners, that there was a
4 detrimental impact on existing water rights and the environment by pumping of groundwater in
5 the LWRFS.¹⁴

6 The NSE issued Order 1303, based upon the MOA, and Order 1169, which started a
7 hearing process resulting in Order 1309 before the Court today, where only four factual issues
8 (and no legal issues) could be addressed. This is based upon the factual assumption and
9 conclusion of the MOA and resulting Study pumping tests of the LWRFS that groundwater use
10 in the LWRFS was tributary to the MRFS, and, thus, the LWRFS had to be limited and restricted
11 on beneficial use of water rights to protect the Moapa Dace and the senior water rights of the
12 parties to the MOA; which is thereby detrimental to the property rights in water by all water
13 rights owners in the LWRFS; especially damaging APEX, DRY LAKE, and *inter alios*..

14 By written admission of the NSE and parties to the MOA, the limitation against APEX
15 and DRY LAKE to submit additional evidence and law other than to the four factual issues, was
16 and is arbitrary and capricious, and a denial of the protections of due process, equal protection,
17 and other Nevada Constitutional and legal rights for the APEX and DRY LAKE water rights,
18 and also, incidentally, all water rights owners in the LWRFS.

19 To the extent that APEX and/or DRY LAKE did or did not participate in the process by
20 the NSE and MOA parties resulting in Order 1309, APEX and/or DRY LAKE so acted to avoid
21 being complicit in, or a party to, the denial of the protections of due process, equal protection,
22 and other Constitutional and legal rights for the APEX and DRY LAKE water rights, and also,
23 incidentally, all water rights owners in the LWRFS. APEX and DRY LAKE only participated to
24 the extent necessary to be a part of any comprehensive or conjunctive use management plan
25
26
27

28 ¹⁴ Petition at lines 8-15, page 3.

1 voluntarily developed by 100% of all water rights owners of the LWRFS and MRFS as stated in
2 NSE Order 1303.¹⁵

3 The NSE and parties to the MOA knew, and have known at all relevant times, that neither
4 the NSE or MOA parties have the right, duty, power or responsibility to impose a comprehensive
5 or conjunctive use management plan or any other management plan, which thereby would erase
6 the protection of prior appropriation for all water rights owners in the LWRFS, in favor of the
7 prior rights of appropriation of some water rights owners, SNWA, and the parties to the MOA.¹⁶

8 As stated in Order 1309, all factual calculations of groundwater water usage and the
9 resulting impact of that groundwater usage on LWRFS or MRFS water rights or the Moapa Dace
10 were “estimates,” “assumptions,” “considered to be,” and other words connoting approximation
11 and guess to the extent that the range of values testified to were between 4,000 acre feet per year
12 (“AFY”) or less and 10,000 AFY or more.¹⁷

13 The NSE stated that the hearings which resulted in Order 1309 were “... not to resolve or
14 address allegations of conflict between groundwater pumping within the LWRFS and ... MRFS
15 ... decreed rights.” However, by Order 1309, the NSE then went forward and found and ordered
16 upon that finding in Order 1309 that LWRFS groundwater pumping did, in fact, capture MRFS
17 flows and therefore must be limited to 8,000 AFY, pending further investigations.¹⁸

18
19
20
21
22 ¹⁵ Petition, lines 18-19, page 4. *See*, for example, the guidance of the reasoning in the contemporaneous
23 *Diamond Valley Aquifer* case striking down as arbitrary and capricious, pursuant to NRS 533.325 and
24 NRS 533.345, the NSE Order 1302, (*Bailey vs. Wilson*, Case No. CV-1902-348 consolidated with case
25 nos. CV-1902-349 and CV-1902-350, Seventh Judicial District, April 27, 2020 [*Bailey vs. Wilson*].)

26 ¹⁶ *See Bailey vs. Wilson*, and *see also, Ormsby County v. Kearny*, 37 Nev. 314, 142 P. 803, 820 (1914).

27 ¹⁷ Order 1309 at pages 57 and 61. *See also*, for example, the MOA Pumping Study performed by the
28 parties to the MOA pursuant to Order 1169,
[http://water.nv.gov/mapping/order1169/Order_1169_Final_Reports/SNWA%
20Order%201169%20Report.pdf](http://water.nv.gov/mapping/order1169/Order_1169_Final_Reports/SNWA%20Order%201169%20Report.pdf).

¹⁸ Petition, at lines 11-24, page 6, and Order 1309.

1 Congress for the purpose of serving the crucial national interest, and the public health, safety,
2 and welfare interests of Clark County and the State of Nevada. As such, to the extent that NSE
3 Order 1309 defeats or interferes with achieving the intent and purposes of the Act of Congress,
4 NSE Order 1309 is invalid and unenforceable.

5 **D. THE NSE ORDER 1309 CONFLICTS WITH A PRIOR CONTROLLING**
6 **DECISION AND REGULATION AND IS VIOLATIVE OF NEVADA**
7 **CONSTITUTION AND LAW.**

8 The LWRFS previously has been declared as water eligible for “Intentionally Created
9 Surplus Credits” for the Colorado River System, as being not tributary to the MRFS, except by
10 importation. Thus, the findings of the tributary nature of the LWRFS to the MRFS, and thence
11 to the Colorado River Flow System in NSE Order 1309, is contrary to prior studies and
12 regulations under the Law of the River.

13 **E. THE SEO HAS NO AUTHORITY TO REGULATE OR RESTRICT**
14 **LWRFS WATER USE FOR PROTECTION OF THE MOAPA DACE AS**
15 **PARTIES TO NSE ORDER 1169 AND THE MOA VOLUNTARILY HAVE**
16 **ALREADY ADDRESSED AND RESOLVED THE ISSUE.**

17 *See, for example the following quote from the MOA Study conducted under Order 1169:*

18 “SNWA conducts biological resource monitoring and habitat restoration in
19 accordance with a 2006 Memorandum of Agreement (MOA) and associated
20 Biological Opinion to conserve the endangered Moapa dace during development
21 of its permitted groundwater rights Coyote Spring Valley. In April 2006, the
22 MOA was entered into by the following five parties: SNWA, USFWS, CSI,
23 MBPI, and MVWD, to conserve and recover the Moapa dace while developing
24 and using permitted water rights.” Paragraph N of the MOA states: “... the
25 Parties have identified certain conservation measures with the objective of making
26 measurable progress toward the conservation and recovery of the Moapa dace,
27 and have agreed to coordinate the monitoring, management, and mitigation
28 measures” As of 2013, all efforts associated with the MOA have been or are
being implemented. In addition to the trigger elevations established under the
MOA at the USGS 09415920 Warm Springs West near Moapa, Nevada (Warm
Springs West) gage, under which groundwater development by the section
3.0203.0 Order 1169 Monitoring and Related Studies Parties would be
incrementally curtailed if flows declined to specific levels, the MOA Parties
agreed to a series of conservation measures for the Moapa dace. These measures
included contributions of roughly \$1.275 million for Moapa dace habitat
restoration, the development of an ecological model of Moapa dace habitat,
installation of fish barriers, and eradication of non-native fish. To date, the
Parties have provided the identified funds; completed habitat restoration specified
under the MOA with additional restoration ongoing; substantially completed the
ecological model; installed one fish barrier with another planned; and efforts to

1 eradicate non-native fish have been implemented and are continuing as needed.
2 In 2007, SNWA purchased the 1,220-acre parcel formally known as the "Warm
3 Springs Ranch," which was the largest tract of private property along the Muddy
4 River and contains the majority of the historical habitat for the endangered Moapa
5 dace. SNWA renamed the property the Warm Springs Natural Area (WSNA) and
6 is managing it as a natural area for the benefit of native species and for the
7 recovery of the endangered Moapa dace, as described in the WSNA Stewardship
8 Plan dated June 2011. Stream restoration activities on the WSNA began in late
9 2008 and continued through 2012, resulting in improvements to habitat where the
10 Moapa dace currently are present. The population count of the Moapa dace is a
11 key indicator of species well-being in the headwaters of the Muddy River. Recent
12 population counts indicate the Moapa dace population began to rise during 2010
13 and 2011 and nearly doubled in 2012. Thus, the MOA conservation actions have
14 resulted in measurable progress towards conservation and recovery of the Moapa
15 dace, during which groundwater development for beneficial use and to meet the
16 objectives of the Order 1169 Study has occurred. Figure10 shows the population
17 of the Moapa dace from 1994 to the present.”¹⁹

11 **F. THE DUTIES OF THE NSE DO NOT EXTEND TO THE ACTIONS**
12 **TAKEN UNDER NSE ORDER 1309, AND THEREFORE NSE ORDER**
13 **1309 IS ARBITRARY AND CAPRICIOUS AND CONTRARY TO**
14 **NEVADA CONSTITUTION AND LAW.**

14 “The mission of the Nevada Division of Water Resources (NDWR) is to
15 conserve, protect, manage and enhance the State's water resources for Nevada's
16 citizens through the appropriation and reallocation of the public waters. In
17 addition, the Division is responsible for quantifying existing water rights;
18 monitoring water use; distributing water in accordance with court decrees;
19 reviewing water availability for new subdivisions and condominiums; reviewing
20 the construction and operation of dams; appropriating geothermal water; licensing
21 and regulating well drillers and water rights surveyors; reviewing flood control
22 projects; monitoring water resource data and records; and providing technical
23 assistance to the public and governmental agencies.”²⁰

19 Nothing said therein permits the NSE to make a determination of tributary connection,
20 which would have the immediate effect of making waters of the public of Nevada and water
21 rights of the LWRFS subject to the Law of the River, and, thus, subject to curtailment for the
22 benefit of other states in the Colorado River Flow System.

25 _____
26 ¹⁹ See

26 [http://water.nv.gov/mapping/order1169/Order_1169_Final_Reports/SNWA%20Order%201169%20Repor](http://water.nv.gov/mapping/order1169/Order_1169_Final_Reports/SNWA%20Order%201169%20Report.pdf)
27 [t.pdf](http://water.nv.gov/mapping/order1169/Order_1169_Final_Reports/SNWA%20Order%201169%20Report.pdf) at Section 3.4.2, page 19.

28 ²⁰ See <http://water.nv.gov/> and see also <https://www.leg.state.nv.us/NRS/NRS-532.html>.

1 **G. THE NSE ORDER 1309 WAS ISSUED ON A FLAWED FACTUAL BASIS**
2 **OF THE CONNECTION BETWEEN LWRFS PUMPING AND MRFS**
3 **SENIOR WATER RIGHTS, WHICH IS DIRECTLY CONTRARY TO THE**
4 **FINDINGS OF THE MOA PUMPING STUDY.**

5 “This clearly demonstrates that nearby carbonate pumping is not influencing
6 Muddy River flows at the Moapa gage and is therefore not influencing senior
7 Muddy River surface-water rights.” “Thus, the conclusions drawn in the previous
8 section regarding the lack of influence of carbonate pumping on flows in the
9 Muddy River are supported, as is the conclusion that NVE alluvial pumping is
10 capturing water that would have otherwise constituted Muddy River water
11 apportioned under the 1920 Muddy River decree.”

12 **H. DUE PROCESS AND EQUAL PROTECTION, DEPRIVATION AND**
13 **VIOLATION.**

14 The SEO restricted the presentation of all forms of evidence by APEX and DRY LAKE,
15 inter alios, including facts and law, as evidence in arriving at NSE Order 1309. NSE Order 1309
16 was based solely upon four factual issues, which already had presumed that the waters of the
17 LWRFS were tributary to the MRFS.

18 **I. VIOLATION OF THE PRECEDENTIAL RULING AGAINST THE NSE**
19 **IN THE DIAMOND VALLEY CASE (BAILEY VS. WILSON).**

20 The well-reasoned and substantial contemporaneous District Court case of *Bailey vs.*
21 *Wilson* is instructive regarding the exercise of powers by the NSE. Simply, what Order 1309
22 does is subvert the priority of the appropriation system of Nevada, which the case of *Bailey vs.*
23 *Wilson* holds as arbitrary and capricious and contrary to Nevada law. There is no law authorizing
24 the NSE to voluntarily give to the other Colorado Basin States non-tributary waters of the
25 LWRFS in Nevada, which belongs to the people of Nevada subject to the doctrine of prior
26 appropriation. Instead by Order 1309, the NSE adopts the words and arguments of the
27 Department of the Interior (USFWS, NPS, Bu Rec and etc. federal agencies), which are in
28 charge of administering the Law of the River, and, thus, have adverse interests to the public of
29 Nevada, who otherwise would enjoy the sole and exclusive use of the waters of the LWRFS. As
30 *Bailey vs. Wilson* holds, the sole right, duty and responsibility of the NSE is to work toward the
31 jointly created comprehensive and conjunctive management plan by all water rights owners in
32 the LWRFS or have the Legislature of Nevada create the basis for the NSE to declare a Critical
33 Management Area, pursuant to NRS 534.037.100. And even then, no law can be passed which

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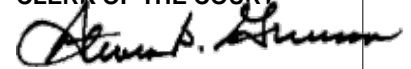
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I hereby further certify that I issued and caused to be served the foregoing **PETITION**
FOR JUDICIAL REVIEW OF ORDER 1309 with a copy of this document via process server
on the 13th day of July, 2020:

Tim Wilson P.E., State Engineer
Nevada Division of Water Resources Dept. of Conservation and Natural Resources
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/s/ Cheryl Becnel
An employee of Marquis Aurbach Coffing



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6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 APEX HOLDING COMPANY, LLC, a Nevada
9 limited liability company; DRY LAKE WATER,
10 LLC, a Nevada limited liability company,

11 Petitioners,

12 vs.

13 TIM WILSON, P.E., Nevada State Engineer,
DIVISION OF WATER RESOURCES,
14 DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES

15 Respondent.

Case No.: A-20-817840-P
16 Dept. No.: 28

17 **APPENDIX IN SUPPORT OF PETITION FOR JUDICIAL REVIEW OF ORDER 1309**

18 Petitioners, APEX HOLDING COMPANY, LLC (“APEX”), and its wholly owned
19 subsidiary, DRY LAKE WATER, LLC (“DRY LAKE”), by and through their attorneys of
20 record, the law firm of Marquis Aurbach Coffing, hereby submits their Appendix in Support of
21 Petition for Judicial Review of Order 1309 as follows:

Exs.	Description	Bates No.
22 1	ORDER #1309	PET 0001-069
23 2	INTERIM ORDER #1303	PET 070-086
24 3	NOTICE OF HEARING	PET 087-113
25 4	TRANSCRIPT OF PUBLIC HEARING 26 8/8/19 PRE-HEARING CONFERENCE	PET 114-122

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Dated this 10th day of July, 2020.

MARQUIS AURBACH COFFING

By /s/ Christian T. Balducci
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IN SUPPORT OF PETITION FOR JUDICIAL REVIEW OF ORDER 1309 with a copy of
this document via process server on the 13th day of July, 2020:

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Nevada Division of Water Resources Dept. of Conservation and Natural Resources
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Carson City, NV 89701

/s/ Cheryl Becnel
An employee of Marquis Aurbach Coffing

Exhibit 1

Exhibit 1

PET 001

**Document (Order 1309) Located at JA Vol. 2 at
JA 326 through JA 393**

Exhibit 2

Exhibit 2

PET 070

**Document (Order 1303) Located at JA Vol. 2 at JA 394
through JA 412**

Exhibit 3

Exhibit 3

PET 087

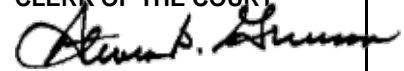
**Document (Notice of Hearing) Located at JA Vol. 2 at
JA 464 through JA 484**

Exhibit 4

Exhibit 4

PET 114

**Document (August 8, 2019 Transcripts) Located at JA Vol. 2 at
JA 703 through JA 736**



CASE NO: A-20-817876-P
Department 24

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27 **CLARK COUNTY, NEVADA**

28 CENTER FOR BIOLOGICAL DIVERSITY,

Petitioner,

vs.

TIM WILSON, P.E., Nevada State Engineer,
DIVISION OF WATER RESOURCES,
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,

Respondents.

Case No. _____

Dept No. _____

**PETITION FOR JUDICIAL REVIEW OF
ORDER 1309**

1 Petitioner, the CENTER FOR BIOLOGICAL DIVERSITY, by and through its counsel,
2 Julie Cavanaugh-Bill of CAVANAUGH-BILL LAW OFFICES, LLC, hereby requests, pursuant
3 to NRS § 533.450(1), that this Court review Order 1309, issued by Respondents TIM WILSON,
4 P.E., Nevada State Engineer, and DIVISION OF WATER RESOURCES, DEPARTMENT OF
5 CONSERVATION AND NATURAL RESOURCES on June 15, 2020, and attached hereto as
6 Exhibit 1. Petitioner alleges as follows:

7 **PARTIES**

8 1. Respondent TIM WILSON, P.E. is the State Engineer of the State of Nevada,
9 Division of Water Resources, and is sued in his official capacity.

10 2. Respondent DIVISION OF WATER RESOURCES, DEPARTMENT OF
11 CONSERVATION AND NATURAL RESOURCES is a governmental division of the State of
12 Nevada.

13 3. Petitioner, the CENTER FOR BIOLOGICAL DIVERSITY (“the Center”), is a
14 national, non-profit conservation organization incorporated in California and headquartered in
15 Tucson, Arizona. The Center has over 74,000 members including members who reside in Nevada.
16 The Center has offices throughout the United States and Mexico, including in Arizona, California,
17 Florida, Hawaii, Idaho, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon,
18 Washington, Washington D.C., and La Paz, Baja California Sur, Mexico. Many of the Center’s
19 members who reside in Nevada and neighboring states live, visit, or recreate in and near areas
20 directly affected by Order 1309. In particular, the Center and its members have educational,
21 scientific, biological, aesthetic and spiritual interests in the survival and recovery of the Moapa
22 dace, a small fish endemic to the Muddy River Springs Area within the Lower White River Flow
23 System. The Moapa dace is imperiled by diminishing spring flows caused by groundwater
24 pumping in the Lower White River Flow System, and is listed as endangered under the Federal
25 Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.* To protect its interests in the survival and
26 recovery of the Moapa dace the Center submitted technical reports pursuant to Nevada State
27 Engineer Order 1303 and participated in a public hearing before the State Engineer, held between
28

1 September 23, 2019 and October 4, 2019, the ultimate outcome of which was Order 1309. The
2 Center is aggrieved by the State Engineer’s decision because the interests of the Center and its
3 members in the survival and recovery of the Moapa Dace will suffer long-term harmful impacts
4 from the groundwater drawdown and springflow reductions authorized under Order 1309.

5 **JURISDICTION AND VENUE**

6 4. This Court has jurisdiction over this action pursuant to NRS § 533.450 (Orders and
7 decisions of the State Engineer subject to judicial review).

8 5. The Court has the authority to review the State Engineer’s Order, and grant the
9 relief requested, pursuant to NRS § 533.450. All requirements for judicial review have been
10 satisfied.

11 6. Venue is proper before this Court pursuant to NRS § 533.450. Clark County is a
12 “county in which the matters affected or a portion thereof are situated.” NRS § 533.450(1).
13 Therefore, the Eighth Judicial District Court of the State of Nevada in and for Clark County is the
14 proper venue for judicial review.

15 7. In addition, the subject matter of the petition involves decreed waters of the Muddy
16 River Decree. Under NRS § 533.450(1), “on stream systems where a decree of court has been
17 entered, the action must be initiated in the court that entered the decree.” This court has proper
18 jurisdiction over the Muddy River Decree, *Muddy Valley Irrigation Company et al., v. Moapa Salt*
19 *Lake Produce Company*, Case No. 377, which was entered in the Tenth Judicial District of the
20 State of Nevada, in and for Clark County, in 1920.¹

21 8. The State Engineer’s order and the matters affected by it are the subject of related
22 litigation pending before this Court. *See* Petition for Judicial Review of Order 1309, *Las Vegas*
23 *Valley Water Dist. & S. Nev. Water Auth. v. Nev. State Eng’r*, Case No. A-20-816761-C (June 17,
24 2020).

25 _____

26 ¹ In 1920, the Tenth Judicial District consisted of Clark County and Lincoln County. In 1945, Clark
27 County was designated as the Eighth Judicial District.

28

1 **FACTUAL BACKGROUND**

2 **I. The Lower White River Flow System**

3 9. The Lower White River Flow System (“LWRFS”) is a geographically vast complex
4 of hydrologically connected groundwater aquifers in Southern Nevada. The groundwater in these
5 aquifers is contained within and flows through a fairly continuous layer of carbonate rock that
6 extends below several geographically distinct basins or valleys in Clark and Lincoln counties,
7 including Coyote Springs valley, the Black Mountains region, Garnet Valley, the California Wash
8 basin, Hidden Valley, Kane Springs Valley,² and the Muddy River Springs Area (“MRSA”).³

9 10. This carbonate-rock aquifer complex is “highly transmissive,” meaning that
10 pumping from anywhere within the carbonate aquifer system rapidly affects groundwater levels
11 and spring flows throughout the entire Lower White River Flow System.⁴

12 11. The interconnected, highly transmissive carbonate-rock aquifers of the Lower
13 White River Flow System ultimately discharge (*i.e.*, exit the aquifer) into the Colorado River.⁵ The
14 main points of discharge are the Muddy River Springs, located in the Muddy River Springs Area
15 within and adjacent to the Moapa National Wildlife Refuge in Clark County.⁶ The springs form

17 ² In Order 1309, the State Engineer determined that Kane Springs Valley should be included within
18 the boundary of the Lower White River Flow System due to a “close hydraulic connection.”
19 Exhibit 1 at 52 (CBD000052) (exhibits referenced in this Petition are filed concurrently in a
20 separate Appendix, references to the bates stamped page numbers in the Appendix are provided
21 as “CBD___”). The Center agrees with and supports the State Engineer’s conclusion on this
22 issue as set forth in Order 1309.

23 ³ Exhibit 1 at 46, 51-54 (CBD000046, CBD000051-54).

24 ⁴ Exhibit 7 at 26 (CBD000170).

25 ⁵ *Id.* at 21 (CBD000165).

26 ⁶ *Id.*

1 the headwaters of the Muddy River, which then flows from the Refuge area into the Colorado
2 River at Lake Mead.⁷ Significantly smaller quantities of groundwater may discharge from the
3 Lower White River Flow System through other springs near the shore of Lake Mead, or seep
4 directly into the Colorado River through a hydrologically distinct “basin-fill” aquifer in the Muddy
5 River Springs area.⁸

6 12. The Muddy River springs are thus directly connected to the regional carbonate-rock
7 aquifers of the Lower White River Flow System.⁹ Because of this connection, flows from the
8 springs can change rapidly in direct response to changes in carbonate groundwater levels.¹⁰ Put
9 differently, groundwater withdrawals from anywhere within the carbonate aquifer complex
10 intercept, or “capture,” water that would otherwise flow from the Muddy River springs and into
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15 ⁷ See generally *id.*

16 ⁸ *Id.* at 25-26 (CBD000169-70). The “basin-fill” and carbonate aquifers in the Lower White River
17 Flow system exist within different geologic layers and are fed by different sources of water.
18 Data on the effects of groundwater pumping indicates that the basin fill aquifers in the Muddy
19 River Springs area are connected to the carbonate aquifer, while the basin fill aquifers in
20 Coyote Springs Valley to the northwest are separate from the carbonate. *Id.* at 13
21 (CBD000157). Consequently, the carbonate aquifer near the Muddy River Springs feeds water
22 into, or “recharges,” the basin fill aquifer, but there is no such connection between the
23 carbonate and basin fill in the Coyote Springs Valley. *Id.* There is no evidence that the basin
24 fill recharges the carbonate anywhere in the Lower White River Flow system. *Id.*

25 ⁹ *Id.* at 15 (CBD000159); Exhibit 8 at 29 (CBD000200).

26 ¹⁰ Exhibit 8 at 29 (CBD000200).

1 the Muddy River.¹¹ Over the long term, pumping from the carbonate aquifer captures discharge—
2 including spring flow—at nearly a one-to-one ratio.¹²

3 13. Springflows in the Muddy River Springs Area are dependent on the elevation of
4 groundwater within the carbonate aquifer; as carbonate groundwater levels decline, springflows
5 decrease, beginning with the highest-elevation springs.¹³ Over time, as groundwater levels
6 continue to decline, pumping will gradually and increasingly affect lower-elevation discharge as
7 well.¹⁴ The higher-elevation Muddy River springs are therefore more rapidly and more severely
8 affected by carbonate groundwater pumping than lower-elevation springs and other sources of
9 discharge, and the higher-elevation springs—which harbor the vast majority of Moapa dace—will
10 dry up before flows are significantly reduced in the lower-elevation springs or the Muddy River
11 system more generally.¹⁵

12 14. Springflows and groundwater levels in the Muddy River Springs Area began to
13 decline in the 1990s as carbonate groundwater pumping increased.¹⁶ From 2000 to 2010 carbonate
14 pumping rose from about 4,800 to about 7,200 acre-feet per year,¹⁷ while spring flows (as
15 measured at the Warm Springs West gauge in the Moapa National Wildlife Refuge) declined from
16 about 4.0 cubic feet per second (cfs) to as low as 3.4 cfs between the 1990s and mid-2000s.¹⁸ The

19 ¹¹ *Id.*
20 ¹² *Id.*
21 ¹³ *Id.*
22 ¹⁴ *Id.*
23 ¹⁵ *Id.*; Exhibit 4 at 24 (CBD000108).
24 ¹⁶ Exhibit 7 at 24 (CBD000168).
25 ¹⁷ *Id.* at 22 (CBD000166).
26 ¹⁸ *Id.* at 16 (CBD000160).
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1 smaller, high-altitude Muddy River springs are currently flowing at little more than half of their
2 1990s average.¹⁹

3 **II. The Moapa Dace**

4 15. The Moapa dace (*Moapa coriacea*) is endemic to the Muddy River Springs Area.²⁰
5 The dace was federally listed as endangered in 1967.²¹

6 16. The Moapa dace is found only in the upper tributaries of the Muddy River.²²
7 Approximately 95 percent of the total population occurs within 1.78 miles of one major tributary
8 that flows from three high-elevation spring complexes within the Muddy River Springs area.²³

9 17. Threats to the Moapa Dace include non-native predatory fishes, habitat loss from
10 water diversions and impoundments, wildfire risk from non-native vegetation, and groundwater
11 development in the Lower White River Flow System which, as noted, decreases spring flows in
12 the Muddy River Springs area.²⁴

13 18. The Moapa Dace is vulnerable to unpredictable catastrophic events due to its
14 limited distribution and small population size.²⁵

15 **III. Order 1169 Pump Test**

16 19. The State Engineer issued Order 1169 in March 2002 after receiving several
17 applications to appropriate groundwater from the Coyote Springs Valley, Black Mountains Area,
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20 ¹⁹ *Id.* at 22-24 (CBD000166-68).

21 ²⁰ Exhibit 1 at 4 (CBD000004).

22 ²¹ *Id.*

23 ²² Exhibit 4 at 24 (CBD000108).

24 ²³ *Id.*

25 ²⁴ *Id.* at 15 (CBD000099).

26 ²⁵ *Id.*

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1 Garnet Valley, Hidden Valley, California Wash, and Muddy River Springs Area hydrographic
2 basins.²⁶

3 20. Order 1169 held in abeyance all pending groundwater applications in the Coyote
4 Springs Valley, Black Mountains Area, Garnet Valley, Hidden Valley, Muddy River Springs Area,
5 and Lower Moapa Valley hydrographic basins pending a test of the regional carbonate aquifer
6 system.²⁷ The State Engineer explained that he did not believe it prudent to issue additional
7 groundwater rights in the regional carbonate aquifer complex until a significant portion of then-
8 existing groundwater rights were pumped for a substantial period of time to determine whether
9 development of those water rights would adversely impact senior water rights or the
10 environment.²⁸

11 21. Order 1169 required that at least 50 percent, or 8,050 acre-feet per year, of then-
12 existing water rights in Coyote Spring Valley be pumped for at least two consecutive years.²⁹ In
13 April 2002 the State Engineer added the California Wash basin to the Order 1169 pump test
14 basins.³⁰

15 22. The Order 1169 pump test began in November 2010 and concluded in December
16 2012.³¹ During the test an average of 5,290 acre-feet per year was pumped from carbonate-aquifer
17 wells in Coyote Springs Valley and a cumulative total of 14,535 acre-feet per year was pumped
18 throughout the Order 1169 study basins.³²

20 ²⁶ Exhibit 1 at 3 (CBD000003).

21 ²⁷ *Id.*

22 ²⁸ *Id.*; Exhibit 2 at 7 (CBD000075).

23 ²⁹ Exhibit 1 at 3 (CBD000003).

24 ³⁰ *Id.*

25 ³¹ *Id.* at 5 (CBD000005).

26 ³² *Id.* at 6 (CBD000006).

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1 23. The Order 1169 pump test results demonstrated that there is a “unique” and “direct
2 hydraulic connection” between the regional carbonate aquifer complex and the Muddy River
3 springs, and that pumping from anywhere within the carbonate aquifer complex captures flows
4 that would otherwise ultimately discharge from the Muddy River springs.³³ The pump test caused
5 “sharp declines” in groundwater levels and flows from the highest-elevation Muddy River springs,
6 which are considered the “canary in the coalmine” regarding the impacts of pumping on
7 streamflow and Moapa dace habitat.³⁴

8 24. On January 29, 2014, after reviewing the pump test results, the State Engineer
9 found that “pumping under the Order 1169 test measurably reduced flows in headwater springs of
10 the Muddy River,” and that, “if pending water right applications were permitted and pumped in
11 addition to existing groundwater rights in Coyote Spring Valley and the other Order 1169 basins,
12 headwater spring flows would be reduced in tens of years or less to the point that there would be
13 a conflict with existing rights.”³⁵

14 25. The State Engineer also found that, “to permit the appropriation of additional
15 groundwater resources in the Coyote Spring Valley . . . would impair protection of these springs
16 and the habitat of the Moapa dace and therefore threatens to prove detrimental to the public
17 interest.”³⁶

18 26. Finally, the State Engineer concluded that “only a small portion” of existing water
19 rights, “may be fully developed without negatively affecting the endangered Moapa dace and its
20 habitat or the senior decreed rights on the Muddy River.”³⁷

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22 ³³ Exhibit 3 at 7-11 (CBD000086-90); Exhibit 5 at 26 (CBD0000137).

23 ³⁴ Exhibit 3 at 7-11 (CBD000086-90); Exhibit 5 at 25 (CBD0000136).

24 ³⁵ Exhibit 5 at 26 (CBD0000137).

25 ³⁶ *Id.*

26 ³⁷ Exhibit 6 at 2 (CBD000142).

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1 27. Carbonate groundwater levels have not recovered since the completion of the Order
2 1169 pump test and continue to decline despite a subsequent decrease in groundwater pumping.³⁸
3 Groundwater levels at the EH-4 monitoring well—a key location for evaluating pumping impacts
4 to the Muddy River springs—reached an all-time low point on November 9, 2018.³⁹ Groundwater
5 levels at other monitoring wells briefly recovered from the pump test but began trending downward
6 again in early 2016.⁴⁰

7 28. Spring flows have also exhibited a declining trend in recent years. Flows at the
8 Warm Springs West gauge briefly recovered after the pump test from 3.3 to 3.6 cfs, but have been
9 declining ever since.⁴¹ As of fall 2019, flows at Warm Springs West were approximately 3.2 cfs.⁴²

10 **IV. Order 1303**

11 29. On January 11, 2019, the State Engineer issued Interim Order 1303 to obtain
12 stakeholder input on four specific factual matters related to information obtained during and after
13 Order 1169 pump test: (1) the geographic boundary of the Lower White River Flow System, (2)
14 aquifer recovery since the Order 1169 pump test, (3) the long-term annual quantity of groundwater
15 that may be pumped from the Lower White River Flow System, and (4) effects on senior water
16 rights of moving water rights between the carbonate and alluvial (or basin-fill) system.⁴³

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³⁸ Exhibit 7 at 16 (CBD000160); Exhibit 8 at 3, 23-24 (CBD000174, CBD000194-95).

³⁹ Exhibit 8 at 23 (CBD000194).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Exhibit 9 at 1519 (CBD000218).

⁴³ Exhibit 1 at 10 (CBD000010).

1 30. On July 3, 2019, the Center submitted a technical report prepared by Dr. Tom
2 Myers,⁴⁴ outlining responses to the four Order 1303 questions.⁴⁵ On August 16, 2019, the Center
3 submitted a rebuttal report prepared by Dr. Myers, offering rebuttals to positions that other parties
4 to the Order 1303 proceedings put forward in their July reports.⁴⁶ Dr. Myers’s analysis of pumping
5 rates, groundwater levels, and springflow demonstrated that current carbonate pumping rates are
6 unsustainable, and that any pumping from the carbonate aquifer would ultimately reduce
7 springflow in the Muddy River Springs Area and harm the Moapa dace.⁴⁷

8 31. Between September 23, 2019, and October 4, 2019, the State Engineer held a
9 hearing on the stakeholder reports submitted pursuant to Order 1303. During the hearing, the
10 Center presented expert testimony from Dr. Myers explaining further the basis for his conclusion
11 that any additional carbonate pumping would reduce both groundwater levels and flows from the
12 Muddy River Springs, thus adversely affecting the Moapa dace and senior decreed water rights.

13 32. Dr. Myers’s conclusions are based on the fundamental hydrologic principle that in
14 any groundwater system the amount of discharge (water flowing out of the system) must equal the
15 amount of recharge (water flowing into the system).⁴⁸ Pumping upsets this balance by removing
16 groundwater that would otherwise exit the system as springflow or some other form of discharge.⁴⁹
17 Over time, the system may reach a new equilibrium or “steady state” in which the reduction in
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20 ⁴⁴ Dr. Myers holds Masters and Doctorate degrees in hydrology/hydrogeology and has over thirty-
21 seven years of experience in this field. *See generally* Exhibit 10 (CBD000219-29).

22 ⁴⁵ *See generally* Exhibit 7 (CBD000145-71)

23 ⁴⁶ *See generally* Exhibit 8 (CBD000172-201)

24 ⁴⁷ Exhibit 7 at 25 (CBD000169); Exhibit 8 at 24 (CBD000195).

25 ⁴⁸ *See* Exhibit 7 at 17 (CBD000161); Exhibit 8 at 24-27 (CBD000195-198).

26 ⁴⁹ *See* Exhibit 8 at 24-27 (CBD000195-198).

1 discharge equals the amount being pumped.⁵⁰ But unless and until this occurs pumping will
2 continue to reduce the amount of water that exits the system.⁵¹ In the context of the Lower White
3 River Flow system, the application of this principle is that carbonate groundwater pumping will
4 reduce springflows in the Muddy River Springs Area unless and until the system reaches a steady
5 state.⁵²

6 33. Dr. Myers’s reports and testimony explained that the Lower White River Flow
7 System has not reached a steady state because groundwater levels and springflows continue to
8 decline despite recent reductions in pumping and increasing annual precipitation rates.⁵³ After the
9 conclusion of the Order 1169 pump test, and especially since 2014, total pumping has decreased
10 and remained between 7,000 and 8,000 acre-feet per year—roughly equivalent to 1995-97 levels.⁵⁴
11 Precipitation, meanwhile, increased from 2014 through 2018.⁵⁵ Despite this reduction in pumping
12 and increase in precipitation, carbonate groundwater levels and springflows have steadily
13 declined.⁵⁶ As Dr. Myers explained, these decreases indicate that the system has not reached a
14 steady state, and that even with current pumping levels, “it is only a matter of time before the
15 spring flow on which the [Moapa] dace depends decreases significantly or is completely lost.”⁵⁷

16 34. Dr. Myers explained that there is very little recharge in the Lower White River Flow
17 System, meaning that very little water enters the carbonate aquifer system from precipitation and
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19 ⁵⁰ *Id.* at 27 (CBD000198).

20 ⁵¹ *Id.*

21 ⁵² *Id.*

22 ⁵³ *See* Exhibit 9 at 1513-14 (CBD000212-13).

23 ⁵⁴ Exhibit 1 at 55 (CBD000055); Exhibit 8 at 22 (CBD000193).

24 ⁵⁵ Exhibit 8 at 3 (CBD000174).

25 ⁵⁶ *Id.* at 23 (CBD000194).

26 ⁵⁷ Exhibit 7 at 25 (CBD000169); *see also* Exhibit 8 at 27-28 (CBD000198-99).

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1 other sources.⁵⁸ Springflows will, therefore, not recover significantly even if pumping is stopped,
2 and any damage done to the Moapa dace and its habitat from excessive pumping rates will be long-
3 term and possibly irreversible.⁵⁹

4 35. Dr. Myers also explained that carbonate pumping impacts Muddy River flows:
5 “carbonate pumping would eventually dry the Muddy River Springs, but carbonate groundwater
6 flow also supports basin fill water through direct discharge from the carbonate to the basin fill and
7 secondary recharge of springflow into the basin fill. The long-term decline of flow in the Muddy
8 River indicates there is a limit to the amount of even basin fill groundwater that can be pumped
9 without affecting Muddy River flows. . . . Because the spring flow is directly responsible for
10 Muddy River flows, preventing any additional carbonate pumpage is also necessary for protecting
11 downstream water rights.”⁶⁰

12 36. Several other stakeholders presented hydrological analyses that agreed with Dr.
13 Myers. The Southern Nevada Water Authority, for instance, stated that “any groundwater
14 production from the carbonate system within the [Lower White River Flow System] will ultimately
15 capture discharge to the [Muddy River Springs Area].”⁶¹ Modeling presented by National Park
16 Service, meanwhile, “confirm[ed] that [groundwater] drawdown will increase and springflow
17 [will] decrease regardless of pumping rate.”⁶²

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⁵⁸ Exhibit 7 at 4, 17 (CBD000148, CBD000161).

⁵⁹ Exhibit 8 at 28 (CBD000199).

⁶⁰ Exhibit 7 at 26 (CBD000170).

⁶¹ *Id.*

⁶² Exhibit 8 at 27 (CBD000198).

1 **V. Order 1309**

2 37. On June 15, 2020, the State Engineer issued Order 1309, which set forth the State
3 Engineer’s conclusions regarding the four factual matters on which the State Engineer sought
4 stakeholder input.⁶³

5 38. Order 1309 acknowledged that groundwater levels in the regional carbonate aquifer
6 have “not recovered to pre-Order 1169 test levels,” and that insufficient data exist to determine
7 whether groundwater levels were approaching a “steady state.”⁶⁴ Nevertheless, the State Engineer
8 “agreed” with a minority of stakeholders who argued that water levels in the Muddy River Springs
9 Area “may be approaching steady state.”⁶⁵

10 39. In order 1309, the State Engineer also acknowledged that current pumping is
11 capturing Muddy River flows, noting that Muddy River flows in headwaters at the Moapa Gage
12 have declined by over 3,000 afy.⁶⁶ The State Engineer made a finding that “capture or potential
13 capture of the waters of a decreed system does not constitute a conflict with decreed right holders
14 if the flow of the source is sufficient to serve decreed rights.”⁶⁷ The State Engineer provided a
15 discussion of how those rights could potentially be met even with reduced headwater flows and
16 then concluded that up to 8,000 acre-feet per year could continue to be pumped from the regional
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18 ⁶³ The Center agrees with and supports the State Engineer’s conclusions on criteria 1 (the
19 geographic boundary of the Lower White River System). The Center takes no position on the
20 State Engineer’s conclusions regarding criteria 4 (movement of water rights).

21 ⁶⁴ Exhibit 1 at 57 (CBD000057).

22 ⁶⁵ *Id.*

23 ⁶⁶ Exhibit 1 at 61 (CBD000061) (“Flow in the Muddy River at the Moapa Gage has averaged
24 approximately 30,600 afa since 2015, which is less than the predevelopment baseflow of about
25 33,900.” (Footnotes omitted).

26 ⁶⁷ *Id.* at 60 (CBD000060).
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1 that “issuing a permit to withdraw groundwater that reduces the flow” of the Muddy River Springs
2 would harm the Moapa dace and violate the ESA.⁷³ The State Engineer further determined that a
3 minimum spring flow of 3.2 cfs is necessary to maintain adequate habitat for the Moapa dace, and
4 that more than 3.2 cfs may be required to support the recovery of the species.⁷⁴ However, in
5 determining the amount of groundwater that could be sustainably pumped, the State Engineer
6 failed to adequately consider how pumping would affect Moapa dace populations and habitat.⁷⁵
7 The State engineer’s determination regarding the long-term annual quantity of water that can be
8 sustainably pumped is based on two conclusions: first, that “reductions in flow that have occurred
9 because of groundwater pumping . . . [are] not conflicting with Decreed rights,”⁷⁶ and second, that
10 “spring discharge may be approaching a steady state.”⁷⁷ As noted, the “steady-state” hypothesis is
11 not consistent with the available data, which show a continuing decline in groundwater levels and
12 springflow.⁷⁸ And neither the alleged “steady state” of the carbonate aquifer, nor the alleged
13 absence of conflicts with senior decreed rights relate to whether the level of groundwater pumping
14 ultimately selected (or any particular level of groundwater pumping) will provide sufficient flow
15 from the Muddy River springs to ensure the long-term survival and recovery of the Moapa dace.
16 Thus, the State Engineer failed to explain the basis for his conclusion that pumping at current
17 levels will adequately protect the Moapa dace, and failed to comply with Nevada water law, which
18 requires him to consider environmental impacts as a component of the public interest.

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21 ⁷³ Exhibit 1 at 45 (CBD000045). The Center agrees with and supports the State Engineer’s analysis
22 of potential ESA liability.

23 ⁷⁴ *Id.*

24 ⁷⁵ *See id.* at 59-61 (CBD000059-61).

25 ⁷⁶ *Id.* at 61 (CBD000061).

26 ⁷⁷ *Id.* at 63 (CBD000063).

27 ⁷⁸ *See, e.g.,* Exhibit 7 at 24 (CBD000168); Exhibit 8 at 25, 28 (CBD000196, CBD000199).

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1 43. The State Engineer also failed to properly consider the public interest because,
2 based on the evidence in the record, the 8,000 afy permitted under Order 1309 is excessive and
3 allows too much pumping to adequately protect the Moapa dace. As explained above, spring flows
4 at the Muddy River springs continue to decline, even though groundwater pumping from the
5 carbonate aquifer in the Lower White River Flow System has averaged 7,000-8,000 afy since the
6 Order 1169 pump test.⁷⁹ Allowing this level of pumping to continue will result in additional and
7 sustained spring flow declines and associated reductions in Moapa dace habitat. Even though the
8 Order requires that additional data be obtained and commits to reassessing the pumping limit in
9 the future, that approach poses unacceptable risks for the Moapa dace because declines in spring
10 flows are not easily restored. Experience from the pump test and other evidence provided at the
11 Order 1303 hearing show that even if pumping is reduced in the future, recovery of spring flows
12 can take many years or even decades.⁸⁰ Accordingly, the State Engineer’s conclusion that
13 maintaining pumping at current levels will adequately protect the Moapa dace is arbitrary,
14 capricious, irrational, and not supported by substantial evidence.

15 44. The evidence in the record also shows that groundwater development anywhere
16 within Lower White River Flow System ultimately captures a portion of fully-decreed Muddy
17 River Flow and that since groundwater development began, Muddy River flows in the headwaters
18 at the Moapa Gage have declined by over 3,000 afy.⁸¹ Therefore, the State Engineer’s conclusion
19 that pumping up to 8,000 afy from the regional carbonate aquifer does not constitute a conflict
20 with decreed right holders is unsupported.

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23 ⁷⁹ Exhibit 1 at 55 (CBD000055).

24 ⁸⁰ *See, e.g.*, Exhibit 7 at 23-24 (CBD000167-68); Exhibit 8 at 28 (CBD000199).

25 ⁸¹ Exhibit 1 at 61 (CBD000061) (“Flow in the Muddy River at the Moapa Gage has averaged
26 approximately 30,600 afa since 2015, which is less than the predevelopment baseflow of about
27 33,900.” (Footnotes omitted).

28

1 CONCLUSION

2 For the reasons stated above, and for others that may be raised during the pendency of this
3 appeal, Petitioner respectfully requests judgment as follows:

- 4 a. For an Order amending Order 1309 to remove or strike findings made therein
5 regarding the amount of water that can be sustainably pumped from the Lower
6 White River Flow System; amending Order 1309 to remove or strike the findings
7 and conclusions therein that pumping in the Lower White River Flow System will
8 not conflict with Muddy River decreed rights; directing the State Engineer to fully
9 consider the environmental consequences of groundwater pumping within the
10 Lower White River Flow System; and directing the State Engineer to prohibit all
11 carbonate groundwater pumping within the geographic boundary of the Lower
12 White River Flow System, including Kane Springs Valley, until a new sustainable
13 limit is determined by the State Engineer after remand.
- 14 b. For costs of suit and reasonable attorney’s fees; and
- 15 c. For such other and further relief as this Court deems just and equitable.

16 Respectfully Submitted this 13th day of July, 2020.

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I, an employee of the Center for Biological Diversity, hereby
3 certify that on July 13, 2020, I served complete copies of the foregoing NOTICE OF AND
4 PETITION FOR JUDICIAL REVIEW and the separate APPENDIX WITH EXHIBITS 1-10 by
5 personally delivering true copies thereof to the following addresses:

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11 By: /s/ Scott Lake
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18 Pursuant to NRCP 5(b), I, an employee of the Center for Biological Diversity, hereby
19 certify that on July 13, 2020, I served complete copies of the foregoing NOTICE OF AND
20 PETITION FOR JUDICIAL REVIEW and the separate APPENDIX WITH EXHIBITS 1-10 by
21 placing true copies thereof in the United States mail, Certified Mail – Return Receipt Requested,
22 postage prepaid, addressed as follows:

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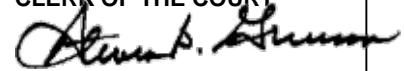
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CASE NO: A-20-817876-P
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25 *Attorneys for Petitioner*

26 **DISTRICT COURT**
27 **CLARK COUNTY, NEVADA**

28 CENTER FOR BIOLOGICAL DIVERSITY,

Petitioner,

vs.

TIM WILSON, P.E., Nevada State Engineer,
DIVISION OF WATER RESOURCES,
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,

Respondents.

Case No. _____

Dept No. _____

**APPENDIX TO PETITION FOR
JUDICIAL REVIEW OF ORDER 1309:
EXHIBITS**

LIST OF EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>	<u>Page Count</u>
1	Nevada State Engineer, Order No. 1309 (June 15, 2020)	68
2	Nevada State Engineer, Order No. 1169 (March 8, 2002)	11
3	Nevada State Engineer, Interim Order No. 1303 and Addendum (May 15, 2019)	17
4	U.S. Fish & Wildlife Service, Intra-Service Programmatic Biological Opinion for the Proposed Muddy River Memorandum of Agreement, File No. 1-5-05-FW-536 (Excerpt) (Jan. 30, 2016)	15
5	Nevada State Engineer, Ruling No. 6254 (Jan. 29, 2014)	29
6	State of Nevada, Department of Conservation and Natural Resources, Division of Water Resources, Notice Re: Public Workshop Regarding Existing Water Right Use and Groundwater Pumping in the Lower White River Flow System (June 14, 2018)	4
7	Tom Myers, Ph.D., Technical Memorandum Re: Groundwater Management and the Muddy River Springs, Report in Response to State Engineer Order 1303 (June 1, 2019)	27
8	Tom Myers, Ph.D., Technical Memorandum Re: Groundwater Management and the Muddy River Springs, Rebuttal in Response to Stakeholder Reports Filed with Respect to Nevada State Engineer Order 1309 (August 16, 2019)	30
9	Transcript of Proceedings, Public Hearing Regarding Existing Water Right Use and Groundwater Pumping in the Lower White River Flow System (Excerpt) (Oct. 2, 2019)	17
10	Curriculum Vitae of Tom Myers, Ph.D	11

Exhibit 1

**Document (Order 1309) Located at JA Vol. 2 at JA 326
through JA 393**

Exhibit 2

**Document (Order 1169) Located at JA Vol. 3 at JA 824
through JA 834**

Exhibit 3

**Document (Order 1303) Located at JA Vol. 2 at JA 394
through JA 410**

**Document (Addendum to Order 1303) Located at JA Vol. 3 at
JA 411
through JA 412**

Exhibit 4

**Document (U.S. Fish and Wildlife Service, 2006. Intra-Service
Programmatic Biological Opinion for the Proposed Muddy River
MOA) Located at JA Vol. 22 at JA 10328
through JA 10445**

Exhibit 5

**Document (Ruling 6254) Located at JA Vol. 3 at JA 891
through JA 919**

Exhibit 6



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

June 14, 2018

Re: Public Workshop Regarding Existing Water Right Use and Groundwater Pumping in the Lower White River Flow System

Dear Water Right Holder:

Please take notice that the Nevada State Engineer has set an initial Public Workshop for **July 24, 2018, from 9:00 a.m. to 12:00 p.m. at the Moapa Valley Community Center, 320 N. Moapa Valley Blvd., Overton, Nevada.** The purpose of this Public Workshop is to provide an overview of the status of groundwater use and recovery following the conclusion of the State Engineer Order 1169 aquifer pumping test, to address the feasibility of developing appropriated groundwater rights both within the carbonate and alluvial aquifers within the *Lower White River Flow System (LWRFS)* (as depicted on the enclosed map), and to take public comment on proposed management options. The records of the Nevada State Engineer show that you are the holder of one or more groundwater rights within the *LWRFS*.

The State Engineer issued Order 1169 on March 8, 2002, holding in abeyance carbonate-rock aquifer system groundwater applications pending or to be filed in Coyote Spring Valley (Basin 210), Black Mountains Area (Basin 215), Garnet Valley (Basin 216), Hidden Valley (Basin 217), Muddy River Springs Area (a.k.a. Upper Moapa Valley; Basin 219), and Lower Moapa Valley (Basin 220). The California Wash (Basin 218) was added to the Order 1169 basins on April 18, 2002. The purpose of Order 1169 was to allow for a carbonate aquifer pumping test for further study of the carbonate-rock aquifer system, which was not well understood. The State Engineer wished to determine whether additional (new) appropriations could be developed from the carbonate-rock aquifer system.

The Order 1169 aquifer pumping test began on November 15, 2010, and was declared complete through the issuance of Order 1169A on December 21, 2012. Following the

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conclusion of the aquifer pumping test, pumping test participants and other interested parties submitted reports to the State Engineer addressing the information gained from the test.

During the Order 1169 aquifer pumping test, an average of 5,300 acre-feet per year of permitted rights was pumped from carbonate wells in Coyote Spring Valley with a cumulative total of approximately 10,200 acre-feet per year of water was pumped from the carbonate aquifer within the *LWRFS*. The results of the 2-year test demonstrate that pumping from the *LWRFS* aquifer caused unprecedented declines in groundwater levels and flows in the Petersen and Peterson East springs, two high-altitude springs that are considered to be the early warning indicator springs for the overall condition of the Muddy River. These springs are at the headwaters of the Muddy River, which serves as the primary water source for the decreed senior water rights of the fully appropriated Muddy River. Additionally, these same springs are a critical part of the source of water that supplies the habitat of the endangered Moapa Dace, a fish federally listed as an endangered species since 1967. Based upon these findings, on January 29, 2014, the State Engineer issued Rulings 6254, 6255, 6256, 6257, 6259, 6260, and 6258 denying pending applications in Coyote Spring Valley, Garnet Valley, Hidden Valley, Muddy River Springs Area, Black Mountains Area, and California Wash.

Based upon model results and observations made during the carbonate aquifer pumping test, it is asserted by some study participants that pumping at the Order 1169 rate could result in both of the high-altitude springs going dry in 3 years or less. In the five years since completion of the aquifer pumping test, monitoring of pumpage and water levels has continued and the additional data is providing the State Engineer a better understanding of the amount of groundwater pumping that may be sustainable in the *LWRFS*. Since completion of the aquifer pumping test, groundwater levels and spring flows have remained relatively flat while precipitation has been about average and carbonate pumping has averaged 7,300 afa.

There exists over 50,000 acre-feet of groundwater appropriations in the *LWRFS* dating as far back as 1919. Pumping 10,200 afa of these rights from carbonate wells during the Order 1169 pumping test yielded an unacceptable loss in spring flow and aquifer storage within the *LWRFS*. Carbonate aquifer pumping effects to spring flow coupled with alluvial aquifer pumping impacts on Muddy River flows may directly affect senior decreed rights. This leads the State Engineer to believe that only a small portion of the permitted water rights in the *LWRFS* may be fully developed without negatively affecting the endangered Moapa Dace and its habitat or the senior decreed rights on the Muddy River.

The purpose of the Public Workshop is to apprise the water right holders and other stakeholders in the *LWRFS* of the serious concerns related to the anticipated effects of full development of existing rights in the basins. The Public Workshop will also provide water right holders an update on the current status of the water resources in the *LWRFS* in the five years since the completion of the aquifer pumping test, address concerns relating to the location and effects of groundwater pumping, and the opportunity to comment on how best to proceed in developing the water resources in the *LWRFS*. As the driest state in the nation, the Nevada State

Engineer has the responsibility to conserve, protect, manage, and enhance the State's water resources for all Nevada citizens.

In advance of the Public Workshop, Orders 1169 and 1169A, and Rulings 6254, 6255, 6256, 6257, 6259, 6260, and 6258 may be accessed from the Division of Water Resources website at <http://water.nv.gov> under the "hearings" tab, then searching within the "Rulings" and "Orders" tabs. Further, a copy of the planned presentation for the Public Workshop will be made available on the Nevada Division of Water Resources' website at <http://water.nv.gov> under the "Recent News" column, no later than **July 17, 2018**. If you do not have internet access and would like a copy of the rulings, orders, or proposed presentation, please contact the Division of Water Resources at (775) 684-2800.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the Public Workshop. If special arrangements for the Public Workshop are required, please notify the Division at the above address or phone number at least five working days before the Workshop. You may also contact the Division if you have questions concerning the Public Workshop scheduled in this matter.

Sincerely,



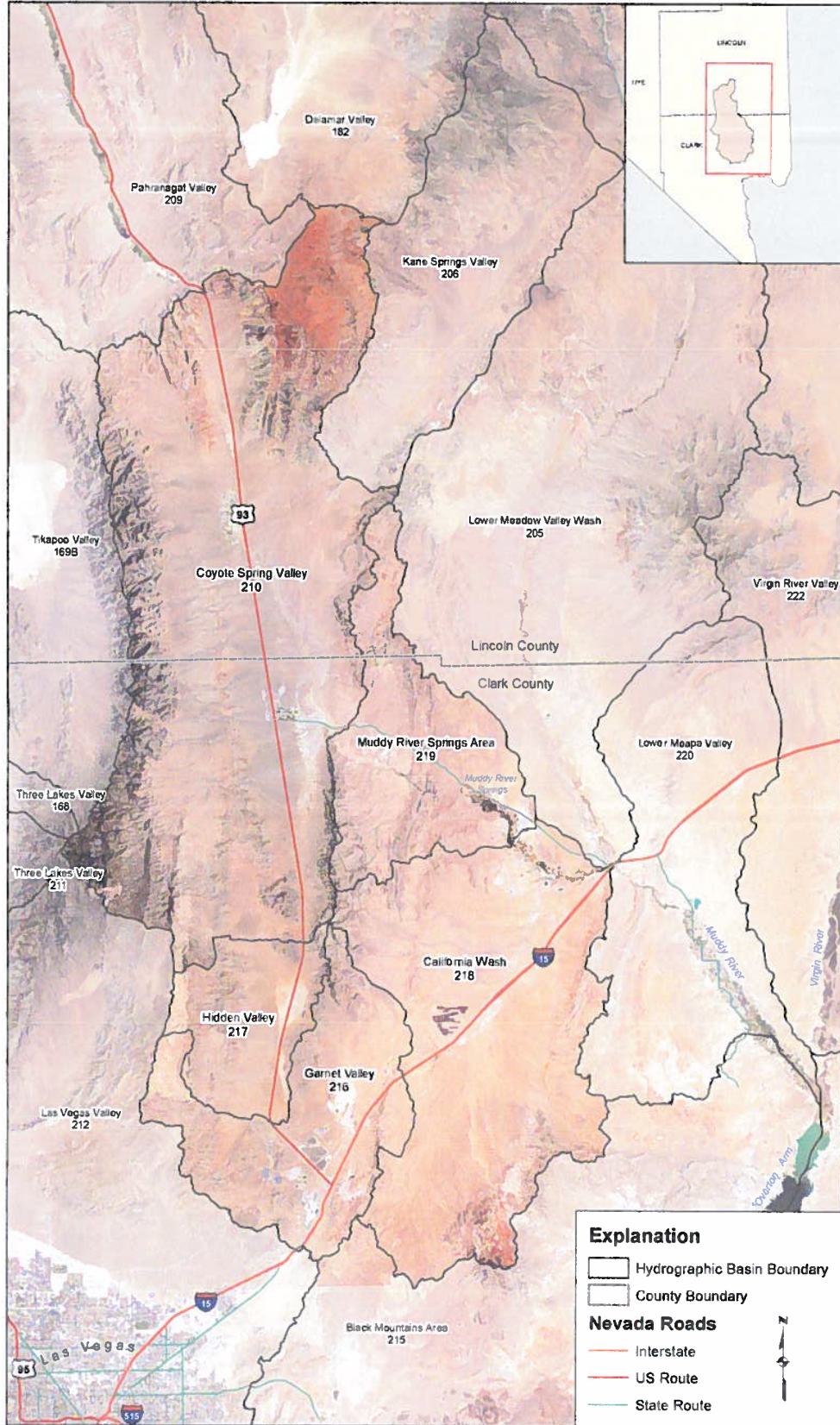
Micheline N. Fairbank
Deputy Administrator

MNF/jm
Enclosure

cc: Bradley Crowell, Director, Nevada Department of Conservation and Natural Resources (via e-mail)
Dominique Etchegoyhen, Deputy Director, Nevada Department of Conservation and Natural Resources (via e-mail)
Jim Lawrence, Deputy Director, Nevada Department of Conservation and Natural Resources (via e-mail)
Clark County Commission
Lincoln County Commission

LOWER WHITE RIVER FLOW SYSTEM

Coyote Spring Valley, Muddy River Springs Area, Hidden Valley, Garnet Valley, California Wash, and a portion of Black Mountains Area



June 2018

0 5 10 20 Miles

Nevada Division of Water Resources
Office of the State Engineer

Summer 2017 imagery from the
National Agriculture Imagery Program (NAIP)

Jason King, P.E.
State Engineer

CBD000144

Exhibit 7

Document (Dr. Tom Myers Technical Memorandum) Located at JA
Vol. 15 at JA 7088 through JA 7114

Exhibit 8

Document (Dr. Tom Myers Technical Memorandum Rebuttal)

Located at JA Vol. 15 at JA 7115 through JA 7144

Exhibit 9

**Document (October 2, 2019 Transcript) Located at JA Vol. 44 at
JA 17950 through JA 18007**

Exhibit 10

**Document (Dr. Tom Myers CV) Located at JA Vol. _____ at
_____ through _____**

FILED

2020 JUL 13 PM 12:06

1 Case No. CV0702520

2 Dept. No. _____

LISA O. LLOYD
LINCOLN COUNTY CLERK
LA
DEPUTY

6 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF LINCOLN

9 LINCOLN COUNTY WATER DISTRICT,
10 a political subdivision of the State of Nevada,
11 and VIDLER WATER COMPANY, INC.,
12 a Nevada corporation,

Petitioners,

13 vs.

14 TIM WILSON, P.E., NEVADA STATE ENGINEER,
15 DIVISION OF WATER RESOURCES,
16 DEPARTMENT OF CONSERVATION AND
17 NATURAL RESOURCES,

Respondent.

PETITION FOR JUDICIAL REVIEW
(Exempt from Arbitration: Judicial
Review of Administrative Decision)

18 Petitioners, LINCOLN COUNTY WATER DISTRICT, a political subdivision of the
19 State of Nevada, by and through its attorney, DYLAN V. FREHNER, ESQ., LINCOLN COUNTY
20 DISTRICT ATTORNEY, and VIDLER WATER COMPANY, INC., a Nevada corporation, by and
21 through its attorneys, ALLISON, MacKENZIE, LTD., petition and allege as follows:

22 1. Petitioner, LINCOLN COUNTY WATER DISTRICT ("LINCOLN"), is a
23 political subdivision of the State of Nevada, created for the purpose of providing adequate and
24 efficient water service within Lincoln County, Nevada.

25 2. Petitioner, VIDLER WATER COMPANY, INC. ("VIDLER"), is a Nevada
26 corporation authorized to conduct business in the state of Nevada.

27 3. Petitioners, LINCOLN and VIDLER own groundwater permits with a priority
28 date of February 14, 2005 and jointly own groundwater right applications filed on April 10, 2006 to

1 appropriate water in the Kane Springs Valley Hydrographic Basin (206) ("Kane Springs") for
2 municipal use purposes with a place of use in the Coyote Spring Valley Hydrographic Basin (210).
3 The permits and pending applications are more specifically described below. The Kane Springs
4 hydrographic basin and the points of diversion in the permits and applications are located entirely in
5 Lincoln County, Nevada. Petitioners, LINCOLN and VIDLER are senior water right permit holders
6 and jointly hold senior groundwater right applications in Kane Springs.

7 4. Respondent, TIM WILSON P.E., NEVADA STATE ENGINEER, DIVISION
8 OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL
9 RESOURCES ("STATE ENGINEER"), is empowered to act pursuant to the provisions of Chapters
10 533 and 534 of the Nevada Revised Statutes. The Nevada Legislature has provided that, subject to
11 existing rights, all underground waters within the boundaries of the state of Nevada are subject to
12 appropriation for beneficial use under the laws of the state and it is the charge of the STATE
13 ENGINEER to put water to beneficial use for the economic benefit of the state of Nevada. The
14 Office of the State Engineer is a creature of statute; it has no inherent power and its powers and
15 jurisdiction are limited as provided by statute.

16 5. This Petition is brought pursuant to the procedures authorized and provided in
17 NRS 533.450. Specifically, Petitioners are aggrieved by an order of the STATE ENGINEER that
18 affects Petitioners' interests and Petitioners may obtain judicial review in the proper court of the
19 county in which the matters affected are situated. Petitioners' interests and the matters affected by
20 the STATE ENGINEER's Order 1309, including the Kane Springs basin, are situated entirely in
21 Lincoln County, Nevada. Jurisdiction and venue of Petitioners' Petition for Judicial Review are
22 properly before this Court pursuant to NRS 533.450. A true and correct of Order 1309 is attached
23 hereto as **Exhibit "1"**.

24 6. A Notice of this Petition has been served on the STATE ENGINEER and all
25 persons affected by Order 1309 of the STATE ENGINEER as required by NRS 533.450(3).

26 7. The STATE ENGINEER's administration of the Lower White River Flow
27 System Basins started with Order 1169 issued in March 2002. Order 1169 required all pending
28 applications in certain basins be held in abeyance pending an aquifer test of the carbonate-rock

1 aquifer system to better determine whether the pending applications and future applications could be
2 developed from the carbonate-rock aquifer. Kane Springs was not included in Order 1169 in March
3 2002 as part of the administration of the Lower White River Flow System Basins.

4 8. On February 14, 2005, LINCOLN/VIDLER filed Applications 72218, 72219,
5 72220 and 72221 to appropriate groundwater in Kane Springs.

6 9. On August 1, 2006, LINCOLN/VIDLER and the UNITED STATES
7 DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE ("USFWS") entered into
8 an Amended Stipulation for Withdrawal of Protests for Applications 72218, 72219, 72220 and
9 72221 ("Amended Stipulation for Withdrawal of Protests"). The Amended Stipulation for
10 Withdrawal of Protests contains among other things, triggers acceptable to USFWS to reduce
11 Petitioners' groundwater pumping for protection of the Moapa dace. From 2006 to date, Petitioners
12 and USFWS have performed and continue to perform under the terms of the Amended Stipulation
13 for Withdrawal of Protests.

14 10. On February 2, 2007, the STATE ENGINEER issued Ruling 5712, which
15 partially approved Applications 72218, 72219, 72220 and 72221, granting LINCOLN/VIDLER
16 1,000 acre feet annually ("afa") of water rights in Kane Springs. In Ruling 5712, the STATE
17 ENGINEER specifically determined Kane Springs would not be included in the Order 1169 study
18 area because there was no substantial evidence that the appropriation of a limited quantity of water
19 in Kane Springs will have any measurable impact on the Muddy River Springs that warrants the
20 inclusion of Kane Springs in Order 1169. The STATE ENGINEER denied the request to hold the
21 LINCOLN/VIDLER applications in abeyance and include Kane Springs within the provisions of
22 Order 1169. The STATE ENGINEER specifically rejected the argument that the Kane Springs
23 rights could not be appropriated based upon senior appropriated rights in the down gradient basins.
24 None of the parties to the Memorandum of Understanding ("MOU") entered into on April 20, 2006
25 by certain water right holders in the Coyote Spring Valley and California Wash hydrographic basins
26 and none of the Order 1169 study participants objected to or appealed the STATE ENGINEER's
27 determinations that Kane Springs would not be included in Order 1169 and Petitioners could
28

1 appropriate and develop their water rights notwithstanding senior appropriated rights in the down
2 gradient basins.

3 11. LINCOLN/VIDLER filed a Petition for Judicial Review with the Seventh
4 Judicial District Court on March 1, 2007, challenging the validity of the STATE ENGINEER's
5 decision in Ruling 5712.

6 12. Following the filing of the Petition for Judicial Review, LINCOLN/VIDLER
7 met with the STATE ENGINEER on March 15, 2007, regarding their pending Applications 74147,
8 74148, 74149 and 74150. LINCOLN/VIDLER requested that they perform additional data
9 collection, testing and study in Kane Springs to support the pending applications. The STATE
10 ENGINEER informed LINCOLN/VIDLER he would consider granting to LINCOLN/VIDLER
11 additional unappropriated water rights in Kane Springs pursuant to their pending Applications
12 74147, 74148, 74149 and 74150 if LINCOLN/VIDLER collected the additional data upgradient in
13 the Kane Springs basin and performed the testing and additional study to support the pending
14 applications.

15 13. LINCOLN/VIDLER and the STATE ENGINEER thereafter stipulated to the
16 dismissal of the Petition for Judicial Review regarding Applications 72218, 72219, 72220 and 72221
17 and Ruling 5712.

18 14. The rights the STATE ENGINEER granted to LINCOLN/VIDLER in Ruling
19 5712 and now held by LINCOLN/VIDLER were and are rights vested under Nevada law.

20 15. On April 29, 2009, the Acting STATE ENGINEER issued Ruling 5987
21 summarily denying Applications 74147, 74148, 74149 and 74150 without holding a hearing or
22 contacting LINCOLN/VIDLER to get any information about the additional data collection, testing
23 and study the STATE ENGINEER stated he would review.

24 16. LINCOLN/VIDLER filed a Petition for Judicial Review with the Seventh
25 Judicial District Court on May 29, 2009 challenging the validity of the STATE ENGINEER's
26 decision in Ruling 5987.

27 17. On April 27, 2010, LINCOLN/VIDLER and the STATE ENGINEER entered
28 into a settlement agreement to resolve LINCOLN/VIDLER's Petition for Judicial Review

1 challenging Ruling 5987. The settlement agreement required, among other things, the STATE
2 ENGINEER to reinstate 74147, 74148, 74149 and 74150 with the same priority as their original
3 application date.

4 18. LINCOLN/VIDLER and the STATE ENGINEER thereafter stipulated to the
5 dismissal of the Petition for Judicial Review regarding Applications 74147, 74148, 74149 and 74150
6 and Ruling 5987.

7 19. On October 29, 2008, LINCOLN/VIDLER obtained a Biological Opinion
8 from the USFWS that pumping of groundwater pursuant to Applications 72218, 72219, 72220 and
9 72221 for their Kane Springs groundwater project was not likely to jeopardize the continued
10 existence of the endangered Moapa dace; the project could contribute to groundwater level declines
11 and spring flow reductions, however, implementation of the project's conservation actions will
12 minimize these impacts. With regard to incidental take, the Biological Opinion stated the level of
13 anticipated take is not likely to result in jeopardy to the Moapa dace based in part on the
14 implementation of the conservation measures for the project. Since 2008, Petitioners has spent
15 substantial sums, including the direct payment of \$50,000, to the USFWS as part of the project's
16 conservation measures in reliance on the Biological Opinion, Ruling 5712 and the settlement
17 agreements entered into with the STATE ENGINEER to resolve Petitioners' appeals of Rulings
18 5712 and 5987 involving Petitioners' water rights and applications in Kane Springs. None of the
19 parties to the April 20, 2006 Memorandum of Understanding and none of the Order 1169 study
20 participants objected to or appealed the Biological Opinion issued by the USFWS for the
21 LINCOLN/VIDLER groundwater applications in Kane Springs.

22 20. In reliance on the STATE ENGINEER's approval of Applications 72218,
23 72219, 72220 and 72221, Ruling 5712, the issuance of permits to Petitioners and the settlement with
24 the STATE ENGINEER, LINCOLN/VIDLER have expended significant time and money since
25 2005 in furtherance of perfecting their water rights in the Kane Springs basin in the approximate
26 sum of \$4,237,000.

27 21. In reliance upon the STATE ENGINEER's representations regarding the
28 additional data collection, testing and study, and his statements that he would consider any new data

1 and results regarding the basin, LINCOLN/VIDLER have expended significant time and money to
2 collect data, test and study the Kane Springs basin and to prepare the data and information to be
3 presented to the STATE ENGINEER to support pending Applications 74147, 74148, 74149 and
4 74150 in the approximate sum of \$543,000.

5 22. Petitioners were not and have never been an Order 1169 study participant.
6 Petitioners are not and have never been a party to the Memorandum of Understanding entered into
7 on April 20, 2006 by certain water right holders in the Coyote Spring Valley and California Wash
8 hydrographic basins whereby such parties voluntarily agreed to certain groundwater pumping
9 restrictions, among other things, to further their shared common interest in the conservation and
10 recovery of the Moapa dace and its habitat, an endangered species under the Endangered Species
11 Act.

12 23. Between 2010 and 2014, the Order 1169 basins were studied and tested, and
13 the Order 1169 study participants were involved and participated in aquifer tests, the submission of
14 reports, proceedings and actions taken by the STATE ENGINEER pursuant to Order 1169. The
15 basins that were included in the Order 1169 aquifer test were acknowledged to have a unique
16 hydrologic connection and share the same supply of water. The Kane Springs basin was not
17 included in the Order 1169 aquifer testing, monitoring or measurements and Kane Springs basin
18 water right holders, including Petitioners, were not involved and did not participate in the aquifer
19 testing, submission of reports, proceedings and actions taken by the STATE ENGINEER pursuant to
20 Order 1169 from 2010 to 2014. After the aquifer test, no Order 1169 study participants
21 recommended that Kane Springs be included in the Order 1169 study area nor did the STATE
22 ENGINEER make a determination that Kane Springs should be included in the Order 1169 study
23 area based upon the Order 1169 testing and proceedings. One study participant's report (Southern
24 Nevada Water Authority) noted there "was a lack of pumping responses north of the Kane Springs
25 Fault and west of the MX-5 and CSI wells near the eastern front of the Las Vegas Range."

26 24. On January 11, 2019, the STATE ENGINEER issued Interim Order 1303
27 designating the Lower White River Flow System ("LWRFS"), a multi-basin area known to share a
28 close hydrologic connection, as a joint administrative unit for purposes of administration of water

1 rights. Pursuant to Interim Order 1303, all water rights within the LWRFS were to be administered
2 based upon their respective dates of priority in relation to other rights within the regional
3 groundwater unit. Kane Springs was not included as part of the LWRFS multi-basin area in Interim
4 Order 1303.

5 25. After an administrative hearing, the STATE ENGINEER issued Order 1309
6 on June 15, 2020 delineating the Lower White River Flow System Hydrographic Basin to include
7 those certain hydrographic basins subject to Order 1169 and Order 1303 and for the first time
8 included the Kane Springs basin as part of the Lower White River Flow System Hydrographic
9 Basin.

10 26. In Order 1309, the STATE ENGINEER stated it was necessary for spring
11 flow measured at the Warm Springs West gage to flow at a minimum rate in order to maintain
12 habitat for the Moapa dace. The STATE ENGINEER determined in Order 1309 that liability under
13 the Endangered Species Act for a "take" would extend to groundwater users within the LWRFS and
14 would so extend to the State of Nevada through the Division of Water Resources as the government
15 agency responsible for permitting water use. The STATE ENGINEER concluded that it was against
16 the public interest to allow groundwater pumping that will reduce spring flow in the Warm Springs
17 area to a level that would impair habitat necessary for the survival of the Moapa dace and could
18 result in take of the endangered species.

19 27. In Order 1309, the STATE ENGINEER relied upon six criteria from Rulings
20 6254-6261 as the standard of general applicability for inclusion into the geographic boundary of the
21 LWRFS, thereby adopting policies in Order 1309 that the STATE ENGINEER then expanded for
22 general application.

23 28. Order 1309 is in excess of the jurisdiction and statutory authority of the
24 STATE ENGINEER because Nevada law does not authorize the STATE ENGINEER to designate a
25 multi-basin area and effectively reprioritize basin specific water rights by administering them based
26 upon their respective dates of priority in relation to other rights within the multi-basin groundwater
27 area or designate a multi-basin area via an *ad hoc* ruling. By including Kane Springs in the LWRFS
28 in Order 1309 and limiting pumping in the LWRFS to 8,000 afa, the STATE ENGINEER has made

1 exercising Petitioners' water rights impracticable for no legitimate government reason by
2 reprioritizing Petitioners' water rights holding senior status in Kane Springs to the most junior water
3 rights in the multi-basin LWRFS, destroying Petitioners' property rights, denying Petitioners all
4 viable economic use of their property and eviscerating contractual rights related to the water rights,
5 and interfering with Petitioners' investment backed expectations, all in violation of and to the
6 prejudice of Petitioners' constitutional rights.

7 29. Order 1309 is arbitrary and capricious and constitutes an abuse of discretion
8 in violation of Petitioners' rights because in the Ruling 5712 contested proceedings, the STATE
9 ENGINEER denied the request to hold the LINCOLN/VIDLER applications in abeyance and
10 include Kane Springs within the provisions of Order 1169 determining there was no substantial
11 evidence that the appropriation of the water granted to Petitioners in Kane Springs will have any
12 measurable impact on the Muddy River Springs that warranted the inclusion of Kane Springs in
13 Order 1169. The STATE ENGINEER specifically rejected the argument that Petitioners' Kane
14 Springs rights could not be appropriated based upon senior appropriated rights in the down gradient
15 basins. The STATE ENGINEER is precluded from re-adjudicating and relitigating issues already
16 determined in a contested proceeding and resolved by settlement agreements with Petitioners
17 resulting from Petitioners' appeals of Rulings 5712 and 5987. In addition, there was no evidence
18 presented in the proceedings leading up to the issuance of Order 1309 that appropriation of
19 Petitioners' water rights in Kane Springs will have any impact on the Muddy River Springs that
20 warrants inclusion of Kane Springs in the LWRFS as defined in Order 1309.

21 30. Order 1309 is arbitrary and capricious and constitutes an abuse of discretion
22 because the STATE ENGINEER failed to consider or address the Amended Settlement Agreement
23 entered into between Petitioners and USFWS and the Biological Opinion issued by the USFWS that
24 Petitioners' groundwater pumping project in Kane Springs was not likely to jeopardize the continued
25 existence of the endangered Moapa dace and the level of anticipated take is not likely to result in
26 jeopardy to the Moapa dace based in part on the implantation of the conservation measures for
27 Petitioners' project. In issuing Order 1309, the STATE ENGINEER failed to consider the unrefuted
28 expert opinion testimony in the record of the former USFWS Field Supervisor who signed the

1 Biological Opinion and helped negotiate the Amended Stipulation for Withdrawal of Protests that
2 Petitioners, as parties holding a Biological Opinion and the Amended Stipulation for Withdrawal of
3 Protests, are compliant with the Endangered Species Act. The STATE ENGINEER's determination
4 that liability under the Endangered Species Act for a "take" would extend to groundwater users
5 within the LWRFS not parties to the MOU and would so extend to the State of Nevada through the
6 Division of Water Resources as the government agency responsible for permitting water use is not
7 supported by substantial evidence or any evidence in the record, is contrary to the substantial
8 evidence of record and is contrary to law with respect to Petitioners' water rights and groundwater
9 pumping project in Kane Springs.

10 31. Order 1309 is arbitrary, capricious and constitutes an abuse of discretion
11 because it adopts, effects and defines the STATE ENGINEER's policy of general application for
12 creating a multi-area basin and inclusion into the geographic boundary of the LWRFS and
13 constitutes unlawful *ad hoc* rulemaking in violation of the STATE ENGINEER's statutory authority
14 thereby making Order 1309 void.

15 32. Petitioners were not given notice before the STATE ENGINEER applied the
16 *ad hoc* rule developed from Rulings 6255-6261 in Order 1309. LINCOLN/VIDLER were not
17 parties to those rulings and were unable to present evidence or arguments as to why the *ad hoc* rule
18 should not be applied to Petitioners and their water rights in Kane Springs because the *ad hoc* rule of
19 general applicability was announced after the hearing and after Petitioners had the opportunity to
20 present evidence on the issue before the STATE ENGINEER. Rulings from other proceedings
21 cannot be used to bind unrelated parties in later proceedings.

22 33. The STATE ENGINEER abused his discretion by failing to consider the best
23 available science presented to support the continued exclusion of Kane Springs from the boundaries
24 of the LWRFS and applying criteria or standards which intentionally ignore the best available
25 science to include Kane Springs in the boundaries of the LWRFS.

26 34. Order 1309 is arbitrary, capricious and constitutes an abuse of discretion
27 because it applies the *ad hoc* rule criteria subjectively and in an inconsistent manner.

28

1 35. Order 1309 is arbitrary, capricious, unlawful and constitutes an abuse of
2 discretion because the water right holders pumping closest to Warm Springs and impacting the
3 endangered Moapa dace are not affected by Order 1309 and are allowed to continue to pump their
4 water rights, while Petitioners' water rights, located the furthest distance from Warm Springs with
5 no evidence in the record that pumping of their water rights will impact the endangered Moapa dace,
6 are destroyed and rendered useless by Order 1309.

7 36. The STATE ENGINEER, like all administrative officers, is required to
8 provide due process of law to all parties. The STATE ENGINEER violated LINCOLN/VIDLER's
9 due process rights pursuant to both the Nevada and United States Constitutions.

10 37. Order 1309 violated LINCOLN/VIDLER's due process rights by applying the
11 criteria or standards from other contested administrative proceedings before the STATE ENGINEER
12 in which Petitioners were not parties, after the evidentiary hearing held to determine whether Kane
13 Springs and Petitioners' water rights were to be included within the boundaries of the LWRFS.
14 Petitioners received no prior notice the STATE ENGINEER would apply the criteria or standards
15 and were deprived of an opportunity to address the newly developed criteria or standards applied by
16 the STATE ENGINEER in Order 1309 to include Kane Springs and Petitioners' water rights in the
17 boundaries of the LWRFS.

18 38. In Order 1309, the STATE ENGINEER considered and relied upon evidence
19 submitted after the hearing in the parties' simultaneously submitted written closing statements for
20 which Petitioners had no opportunity to address, respond or refute, all in violation of Petitioners' due
21 process rights.

22 39. The Order 1309 proceedings violated Petitioners' due process rights because
23 certain former Division of Water Resource employees who participated in and were decision makers
24 in the STATE ENGINEER's proceedings and determinations resulting in Ruling 5712 and Order
25 1169, which excluded Kane Springs from the LWRFS and appropriated Kane Springs water rights
26 notwithstanding senior appropriated rights in the down gradient basins, testified as private
27 consultants and presented the same evidence relied upon by previous STATE ENGINEERS to
28 exclude Kane Springs from multi-basin joint administration to support the inclusion of Kane Springs

1 in the LWRFS. The STATE ENGINEER erred as a matter of law when he reweighed evidence
2 previously relied upon to exclude Kane Springs from the LWRFS and used the reweighed evidence
3 to include Kane Springs in the LWRFS, all in violation of Petitioners' due process rights.

4 40. The substantial rights of LINCOLN/VIDLER have been prejudiced because
5 Order 1309 violates constitutional and statutory provisions, is in excess of the statutory authority of
6 the STATE ENGINEER, is clearly erroneous in view of the reliable, probative and substantial
7 evidence, and is characterized by an abuse of discretion.

8 41. Order 1309 of the STATE ENGINEER is arbitrary and capricious, contrary to
9 and affected by error of law, without any rational basis, beyond the legitimate exercise of power and
10 authority of the STATE ENGINEER, all to the detriment and damage of Petitioners LINCOLN and
11 VIDLER.

12 42. The determinations in Order 1309 that 8,000 afa is the long terms annual
13 quantity of water that can be pumped and that Kane Springs should be included within the
14 boundaries of the LWRFS, among other determinations, are not supported by substantial evidence in
15 the record before the STATE ENGINEER and are without consideration of all the facts and
16 circumstances.

17 43. Petitioners LINCOLN and VIDLER have exhausted their administrative
18 remedies.

19 44. Petitioners have been required to engage the services of counsel to pursue
20 their rights, and as a proximate and necessary result of the STATE ENGINEER's illegal conduct
21 alleged above, Petitioners are entitled to reasonable attorney's fees and costs as special and
22 foreseeable damages, or in the alternative, as costs of suit.

23 45. For all the foregoing reasons, the STATE ENGINEER acted improperly as a
24 matter of law and did not and cannot conduct a fair assessment of the scientific evidence presented
25 and the facts and circumstances previously relied upon to exclude Kane Springs from the LWRFS
26 multi-basin area. The STATE ENGINEER's actions are inequitable under all the facts and
27 circumstances and the evidence presented, and equitable relief is warranted in the form of direction
28

1 by this Court to the STATE ENGINEER to exclude Kane Springs from the boundaries of the
2 LWRFS as defined in Order 1309.

3 WHEREFORE, Petitioners pray for judgment as follows:

- 4 1. That the Court vacate Order 1309;
- 5 2. That the Court exclude Kane Springs from the LWRFS;
- 6 3. That the Court restore currently held water right priorities and the perennial
7 yield determined for Kane Springs;
- 8 4. That the Court award Petitioners their attorney's fees and costs; and
- 9 5. That the Court award such other and further relief as seems just and proper in
10 the premises.

11 **AFFIRMATION**

12 The undersigned does hereby affirm that the preceding document **DOES NOT**
13 contain the social security number of any person.

14 DATED this 13th day of July, 2020.

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27 Attorneys for Petitioners, LINCOLN COUNTY
28 WATER DISTRICT and VIDLER WATER
COMPANY, INC.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON
3 MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be
4 served on all parties to this action as follows:

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10 DATED this 13th day of July, 2020.

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13 NANCY FONTENOT

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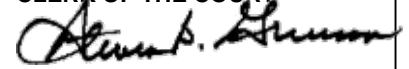
INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	Order 1309	68

4848-8027-8210, v. 1

EXHIBIT "1"

Document (Order 1309) Located at JA Vol. 2 at
JA 326 through JA 393



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DISTRICT COURT
CLARK COUNTY, NEVADA

16 MUDDY VALLEY IRRIGATION COMPANY,
17 Petitioner,
18 vs.
19 TIM WILSON, P.E., Nevada State Engineer,
20 DIVISION OF WATER RESOURCES,
21 DEPARTMENT OF CONSERVATION AND
22 NATURAL RESOURCES,
23 Respondent.

Case No.:
Dept. No.:

**PETITION FOR JUDICIAL REVIEW
OF ORDER 1309**

22 MUDDY VALLEY IRRIGATION COMPANY (“MVIC”), by and through its counsel,
23 STEVEN D. KING and DOTSON LAW, hereby files this Petition for Judicial Review of Order 1309
24 issued by Respondent TIM WILSON, P.E., Nevada State Engineer, DIVISION OF WATER
25 RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES on June
26 15, 2020. This Petition for Judicial Review is filed pursuant to NRS 533.450(1).

27 **I. JURISDICTIONAL STATEMENT**

28 NRS 533.450(1) provides that any order or decision of the State Engineer is subject to judicial
review “in the proper court of the county in which the matters affected or a portion thereof are

1 situated.” The real property to which the water at issue is appurtenant lies in Clark County, Nevada;
2 thus, the Eighth Judicial Court is the proper venue for this judicial review.

3 Additionally, the subject of this appeal involves decreed waters of the Muddy River Decree.
4 Under NRS 533.450(1), “on stream systems where a decree of court has been entered, the action must
5 be initiated in the court that entered the decree.” The Muddy River Decree, *Muddy Valley Irrigation*
6 *Company, et al. v. Moapa & Salt Lake Produce Company, et al.*, Case No. 377, was entered in the
7 Tenth Judicial District Court of the State of Nevada in and for Clark County in 1920.¹ This Decree is
8 attached hereto as **Exhibit 1**. Thus, this Court, without question, has jurisdiction over the instant
9 matter.

10 **II. FACTUAL BACKGROUND**

11 MVIC has been in existence as a Nevada corporation since 1895 for purposes which include
12 the acquisition of water rights and the construction, operation, and maintenance of their associated
13 irrigation works of diversion and distribution for MVIC’s and its shareholder’s “beneficial use” of
14 Muddy River water within the Moapa Valley.

15 Through the Muddy River Decree of 1920, it was determined that MVIC owns the majority of
16 the Muddy River decreed surface water rights and that those rights were appropriated and placed to
17 beneficial use prior to 1905 and are senior in priority to all Nevada groundwater rights within the
18 Lower White River Flow System (“LWRFS”). The Muddy River Decree states, in part:

19 [T]he Muddy Valley Irrigation Company is declared and decreed to
20 have acquired by valid appropriate and beneficial use and to be
21 entitled to divert and use upon the lands...all waters of said Muddy
22 River, its head waters, sources of supply and tributaries save and
except the several amounts and rights hereinbefore specified...

23 (See **Exhibit 1**, Muddy River Decree at 20:1-8, emphasis added.) The Muddy River Decree also
24 held that “the total aggregate volume of the several amounts and quantities of water awarded and
25 allotted...is the total available flow of said Muddy River and consumes and exhausts all of the
26 available flow of the said Muddy Valley River...” *Id.* at 22:28-23:1, emphasis added. MVIC’s
27 decreed rights were therefore entitled to protection from capture and depletion by other parties.

28 _____
¹ In 1920, the Tenth Judicial District included both Clark and Lincoln County. In 1945, Clark County was designated as the Eighth Judicial District.

1 In 2018, the State Engineer held several public workshops to review the status of groundwater
2 use and recovery following the conclusion of State Engineer Order 1169 from 2002, requiring a large
3 study to determine whether pumping in the LWRFS would have detrimental impacts on existing
4 water rights or the environment. Following the workshops, and as a result thereof, the State Engineer
5 drafted a proposed order and held a hearing on the proposed order on December 14, 2018.

6 On January 11, 2019, the State Engineer issued Interim Order 1303 to seek input on the
7 following specific matters: (1) the geographic boundary of the LWRFS, (2) aquifer recovery since
8 the pump test, (3) long-term annual quantity that may be pumped from the LWRFS, and (4) effects of
9 moving water rights between the carbonate and alluvial system to senior water rights on the Muddy
10 River. (See **Exhibit 2**, Interim Order 1303.) After factual findings were made on those questions, the
11 State Engineer was to evaluate groundwater management options for the LWRFS. The State
12 Engineer held a number of hearings, allowed the presentation of evidence and exchange of reports,
13 and eventually issued Order 1309 on June 15, 2020. (See **Exhibit 3**, Order 1309.)

14 MVIC took the position, and continues to take the position, that the Muddy River Decree
15 prevents the depletion of groundwater if that would reduce the flow of the Muddy River, as that
16 would conflict with MVIC's senior decreed rights. However, the State Engineer appears to have
17 taken a contrary position, stating that "reductions in flow that have occurred because of groundwater
18 pumping in the headwaters basins is not conflicting with Decreed rights." (**Exhibit 3**, Order 1309 at
19 p. 61.) Importantly, in making this determination, the State Engineer tacitly acknowledged that
20 groundwater pumping is in fact reducing flow and therefore conflicting with MVIC's senior decreed
21 rights.

22 **III. GROUNDS FOR THE PETITION**

23 The third inquiry the State Engineer sought input on was "[t]he long-term annual quantity of
24 groundwater that may be pumped from the Lower White River Flow System, including the relationships
25 between the location of pumping on discharge to the Muddy River Springs, and the capture of Muddy
26 River flow." (**Exhibit 2**, Order 1303 at p. 13.) The scope of the hearing was purportedly "not to
27 resolve or address allegations of conflict between groundwater pumping within the LWRFS and
28 Muddy River decreed rights;" rather, it was to determine what the impact is on decreed rights and

1 then address that at a future point in time. (**Exhibit 4**, Transcript of Proceedings, Public Hearing,
2 Pre-Hearing Conference, Thursday, August 8, 2019 at 12:6-15.) However, despite acknowledging
3 that current pumping is capturing Muddy River flows, the State Engineer went beyond the scope of
4 the hearing to determine that “capture or potential capture of flows of the waters of a decreed system
5 does not constitute a conflict.” (**Exhibit 3**, Order 1309 at p. 61.) The State Engineer stated that
6 “there is no conflict as long as the senior water rights are served.” (*Id.* at p. 60.) The State Engineer
7 then performed a coarse calculation to determine the consumptive use needs of the senior decreed
8 rights holders and concluded that the capture of 8,000 acre-feet of Muddy River flows by junior
9 groundwater users would not deprive the senior holders of any portion of their water rights.² (*Id.* at
10 pp. 60-61.)

11 One problem with the State Engineer’s analysis is that it contradicts the stated narrow purpose
12 of the hearing. As a result of this stated purpose, much of the evidence submitted was related to the
13 capture of the Muddy River water by junior groundwater pumpers. By making the findings it did
14 without MVIC having the opportunity to present evidence on that point, the State Engineer violated
15 MVIC’s due process rights. He also acted arbitrarily and capriciously because he ignored and/or
16 precluded the only evidence that existed related to conflicts and then applied an erroneous analysis
17 that no party had an opportunity to review or comment on. This is the classic definition of a violation
18 of due process rights.

19 Additionally, Order 1309 is contrary to law – particularly the Muddy River Decree. This is
20 because determining the consumptive needs of the senior decreed rights holders is irrelevant; as
21 MVIC’s senior decreed rights are not based on their alleged calculated needs. Rather, other than the
22 limited exceptions noted in the Muddy Valley Decree, MVIC is entitled to “all waters of said Muddy
23 River, its head waters, sources of supply and tributaries.” (*See Exhibit 1*, Decree at 20:1-8.) As the
24 Decree held that “the total aggregate volume of the several amounts and quantities of water awarded
25

26 ² The State Engineer’s analysis is contrary to the Muddy River Decree, and even if not it is
27 improperly premised upon inaccurate information as it did not correctly consider transmission losses,
28 or the gross amount of water necessary to apply to reach the fields in question, or operate those and
adequately flush salts. The analysis appears faulty in the applied acreage calculations and the net
irrigation water requirement.

1 and allotted...is the total available flow of said Muddy River and consumes and exhausts all of the
2 available flow of the said Muddy Valley River...” (*id.* at 22:28-23:1, emphasis added), a holding
3 which requires that MVIC’s decreed rights were therefore entitled to protection from capture and
4 depletion by other parties. Order 1309 arrives at the conclusion that if all decreed acres were planted
5 with a high-water-use crop like alfalfa, the net irrigation requirement would be 28,300 afa based upon
6 a consumptive rate of 4.7 afa. (**Exhibit 3**, Order 1309 at p. 61.) However, MVIC’s alleged
7 “requirement” is irrelevant to determining whether pumping interferes with MVIC’s decreed rights
8 because MVIC has rights to the “total aggregate volume” independent of its alleged requirements.³
9 (**Exhibit 1**, Decree at 22:28-23:1.) Thus, the State Engineer’s conclusion that reductions in flow
10 from groundwater pumping does not conflict with MVIC’s rights is erroneous, as anything that
11 depletes the aggregate volume, which the State Engineer recognized groundwater pumping does,
12 conflicts with MVIC’s rights as a matter of law.

13 **IV. CONCLUSION**

14 For the reasons described herein, MVIC respectfully requests that the Court order the State
15 Engineer to amend Order 1309 and strike the findings regarding conflicts with senior water rights.

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27 _____
28 ³ Though the State Engineer apparently believes MVIC’s requirements are limited, they in fact are not and all water is actually used. The analysis disregards the application of Nevada law, including, but not limited to, NRS 533.0245 or the actual operation diversion, delivery, and use of the water by MVIC for its shareholders and other laws and circumstances applicable to these Muddy River water rights.

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Affirmation Pursuant to NRS 239B.030

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

DATED this 14th day of July, 2020.

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of DOTSON LAW and that on
3 this date I caused to be served a true and correct copy of the foregoing by:

- 4 (BY MAIL) on all parties in said action, by placing a true copy thereof enclosed in a
5 sealed envelope in a designated area for outgoing mail, addressed as set forth below.
6 At Dotson Law, mail placed in that designated area is given the correct amount of
7 postage and is deposited that same date in the ordinary course of business, in a United
8 States mailbox in the City of Reno, County of Washoe, Nevada.
- 9 By electronic service by filing the foregoing with the Clerk of Court using the Tyler
10 Technologies E-filing system, which will electronically mail the filing to the below
11 listed individuals registered on the Court’s E-Service Master List.
- 12 (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand delivered
13 this date to the address(es) at the address(es) set forth below.
- 14 (BY FACSIMILE) on the parties in said action by causing a true copy thereof to be
15 telecopied to the number indicated after the address(es) noted below.
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DATED this 14th day of July, 2020.

/s/ L. MORGAN BOGUMIL
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INDEX OF EXHIBITS

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EXHIBIT 1

EXHIBIT 1

**Document (Muddy River Decree) Located at JA Vol. 13 at
JA 6634 through JA 6680**

EXHIBIT 2

EXHIBIT 2

**Document (Order 1303) Located at JA Vol. 2 at JA 394
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**Document (Addendum to Order 1303) Located at JA Vol. 2 at
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EXHIBIT 3

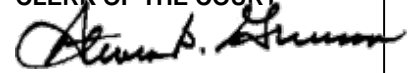
EXHIBIT 3

**Document (Order 1309) Located at JA Vol. 2 at
JA 326 through JA 393**

EXHIBIT 4

EXHIBIT 4

**Document (August 8, 2019 Transcripts) Located at JA Vol. 2 at
JA 703 through JA 736**



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CASE NO: A-20-818069-P
Department 18

*Attorneys for Georgia-Pacific Gypsum LLC
and Republic Environmental Technologies, Inc.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

GEORGIA-PACIFIC GYPSUM LLC,
AND REPUBLIC ENVIRONMENTAL
TECHNOLOGIES, INC.

CASE NO.:

DEPT. NO.:

Petitioners,

vs.

**PETITION FOR JUDICIAL REVIEW OF
ORDER 1309**

TIM WILSON, P.E. Nevada State Engineer,
DIVISION OF WATER RESOURCES, and the
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,

Respondent.

1. Petitioners Georgia-Pacific Gypsum LLC (“Georgia-Pacific”) and Republic Environmental Technologies, Inc. (“Republic”) (collectively, “Petitioners”), by and through counsel Sylvia Harrison, Esq., Lucas Foletta, Esq., and Sarah Ferguson, Esq. of the law firm of McDonald Carano LLP, hereby submit this Petition for Judicial Review of Order 1309 (“Petition”) issued by Respondent Tim Wilson, P.E. Nevada State Engineer, Division of Water Resources, Department of Conservation and Natural Resources on June 15, 2020, Ex. 1 (“Order 1309”). This Petition is filed pursuant to NRS 533.450(1).

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JURISDICTIONAL STATEMENT

2. Pursuant to NRS 533.450(1), any order or decision of the State Engineer is subject to judicial review “in the proper court of the county in which the matters affected or a portion thereof are situated.” NRS 533.450(1). As described below, the real property to which the water at issue in this appeal is appurtenant is situated within Clark County, Nevada, making the Eighth Judicial District Court of Nevada in and for Clark County the proper venue for judicial review.

FACTUAL BACKGROUND

Petitioners’ Interests Affected by Order 1309

3. Both Georgia-Pacific and Republic are long-established businesses located in Garnet Valley that use and rely on certificated, proven or otherwise fully used groundwater rights to support their operations. Both Georgia-Pacific and Republic participated in the proceedings before the State Engineer that resulted in the issuance of the Order 1309.

4. Georgia-Pacific has gypsum wallboard, gypsum plaster and polymer extrusion manufacturing operations located twenty miles north of the City of Las Vegas, Nevada, along U.S. Highway 91, in Apex, Nevada (the “Facility”), which has been in operation for four decades. The Facility currently employs approximately 150 people. The Facility has one permitted on-site well which is the only source of water available for production and domestic water usage. The Facility is permitted to withdraw 47 million gallons per year. The majority of the permitted water is used in wallboard production with the remainder being used in the polymer extrusion process as well as the site’s domestic water uses.

5. Republic’s Apex Regional Landfill complex (“Apex Landfill”) is located at 13550 N Highway 93, Las Vegas, Nevada and encompasses over 2,200 acres. Apex Landfill performs the critical task of providing environmentally safe and reliable daily waste disposal services for nearly 3 million residents and hundreds of businesses in the cities of Las Vegas, North Las Vegas, and Henderson, as well as Clark County. Additionally, the Apex Landfill site includes a sand and gravel operation operated by Las Vegas Paving Corp. which is Nevada’s top heavy civil construction company. To perform the daily operations, the site utilizes approximately 150 million gallons of water per year from its six permitted wells. A predictable and stable water

1 supply is critical to allow Apex Landfill to continue to provide uninterrupted service for its
2 millions of customers, as well as plan for meeting the increasing demand for future disposal
3 capacity.

4 6. As discussed below, the State Engineer’s issuance of Order 1309 will
5 impermissibly limit Petitioners’ right to appropriate water, long established under Nevada law,
6 immediately deprives Petitioners’ of the relative priority of their water rights, and will seriously
7 jeopardize the viability of their operations and threaten the loss of the significant benefits they
8 provide to the State and local economies. Petitioners are therefore aggrieved by the Order.

9 **Background to Issuance of Order 1309**

10 7. The general rule in Nevada is that one acquires a water right by filing an application
11 to appropriate water with the Nevada Division of Water Resources (“DWR”). If DWR approves
12 the application, a “Permit to Appropriate” issues. Nevada has adopted the principle of “first in
13 time, first in right,” also known as “priority.” The priority of a water right is determined by the
14 date a permit is applied for (the “Application Date”). If there is not enough water to serve all
15 water right holders in a particular hydrographic unit, “senior” appropriators are satisfied first in
16 order of priority: the rights of “junior” appropriators may be curtailed. The amount of
17 groundwater available for appropriation historically has been administered in Nevada based upon
18 “hydrographic basins,” which are generally defined by topography, more or less reflecting
19 boundaries between watersheds. The priority of groundwater rights is determined relative to the
20 water rights holder within the individual basins.

21 8. At issue in the instant matter is the administration of several hydrographic basins
22 which lie roughly along the southern (lower) course of the White River. The White River is a
23 small, partially ephemeral stream in Eastern Nevada. It is part of a hydrologic system generally
24 referred to as the Lower White River Flow System (“LWRFS”). Water resources in this area
25 include groundwater in alluvial valley-fill sediments, the so-called Carbonate Aquifer, and the
26 Muddy River.

27 9. Significant pumping of the Carbonate Aquifer in the LWRFS began in the 1980s
28 and 1990s. Initial assessments of the water available in the Carbonate Aquifer suggested it would

1 provide a new abundant source of water for Southern Nevada. By 2001, the State Engineer had
2 granted more than 40,000 acre feet of applications in the LWRFS. However, concerned over the
3 lack of information regarding the sustainability of water resources from the Carbonate Aquifer,
4 the State Engineer began hearings in July and August 2001 on water rights applications, leading
5 to the issuance of Order 1169 on November 15, 2010. Order 1169 held water rights applications
6 in abeyance in the LWRFS pending further studies and set up an ambitious test to “stress” the
7 Carbonate Aquifer through two years of aggressive pumping, combined with examination of water
8 levels in monitoring wells located throughout the LWRFS. The State Engineer’s conclusions from
9 the pump test found an “unprecedented decline” in high-altitude springs, an “unprecedented
10 decline” in water levels, and that additional pumping in the central part of Coyote Spring Valley
11 or the Muddy River Spring Area could not occur without conflict with existing senior rights,
12 including decreed surface water rights on the Muddy River, or potential impact to the habitat of
13 the Moapa Dace.

Interim Order 1303 Proceedings

14
15 10. Faced with the problem of resolving the competing interests for water resources in
16 the over-allocated basins, then-State Engineer Jason King issued Interim Order 1303 on January
17 11, 2019, Ex. 2. The ordering provisions in Interim Order 1303 provide in pertinent part:

18 1. The Lower White River Flow System consisting of the Coyote Spring Valley,
19 Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, and
20 the portion of the Black Mountains Area as described in this Order, is herewith
21 designated as a joint administrative unit for purposes of administration of water
22 rights. *All water rights within the Lower White River Flow System will be*
23 *administered based upon their respective date of priorities in relation to other*
24 *rights within the regional groundwater unit.*

25 Any stakeholder with interests that may be affected by water right development
26 within the Lower White River Flow System may file a report in the Office of the
27 State Engineer in Carson City, Nevada, no later than the close of business on
28 Monday, June 3, 2019.

Reports filed with the Office of the State Engineer should address the following
matters:

- a. The geographic boundary of the hydrologically connected groundwater and surface water systems comprising the Lower White River Flow System;
- b. The information obtained from the Order 1169 aquifer test and subsequent to the aquifer test and Muddy River headwater spring flow as it relates to aquifer recovery since the completion of the aquifer test;

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- c. The long-term annual quantity of groundwater that may be pumped from the Lower White River Flow System, including the relationships between the location of pumping on discharge to the Muddy River Springs, and the capture of Muddy River flow;
- d. The effects of movement of water rights between alluvial wells and carbonate wells on deliveries of senior decreed rights to the Muddy River; and,
- e. Any other matter believed to be relevant to the State Engineer's analysis.

Interim Ord. 1303 at 13-14, Ex. 2.

11. In July and August 2019, reports and rebuttal reports were submitted discussing the four matters set forth in Interim Order 1303. On July 25, 2019, the State Engineer issued a Notice of Pre-Hearing Conference. On August 9, 2019, the State Engineer held a prehearing conference. On August 23, 2019, the State Engineer issued a Notice of Hearing (amended on August 26, 2019), which included the following summary:

On August 9, 2019, the State Engineer held a pre-hearing conference regarding the hearing on the submission of reports and evidence as solicited in Order 1303.... The State Engineer established that the purpose of the hearing on the Order 1303 reports was to provide the participants an opportunity to explain the positions and conclusions expressed in the reports and/or rebuttal reports submitted in response to the Order 1303 solicitation. The State Engineer directed the participants to limit the offer of evidence and testimony to the salient conclusions, including directing the State Engineer and his staff to the relevant data, evidence and other information supporting those conclusions. *The State Engineer further noted that the hearing on the Order 1303 reports was the first step in determining to what extent, if any, and in what manner the State Engineer would address future management decisions, including policy decisions, relating to the Lower White River Flow System basins.* On that basis, the State Engineer then addressed other related matters pertaining to the hearing on the Order 1303 reports, including addressing the date and sequence of the hearing, as set forth in this Notice of Hr'g. Not. Of Hearing and Am. Notice of Hr'g, Ex. 3 (emphasis added).

The State Engineer conducted a hearing on the reports submitted under Order 1303 between September 23, 2019 and October 4, 2019.

12. As the Hearing Officer advised during the August 9, 2019 Pre-Hearing Conference, the Hearing was to be limited to the four questions “solicited in the Order 1303 report. This larger substantive policy determination is not part of the particular proceeding. *That’s part of later*

1 *proceedings....*” August 9, 2019 Pre-Hr’g. Conf. Trans. at 10:18-20, Ex.4. This was reiterated in
2 the Hearing Officer’s opening remarks at the hearing:

3 I want to just reiterate, and we’ve been trying to make this clear, that this is
4 not a contested or adversarial proceeding. *The scope of this proceeding is for the limited purpose of addressing those four issues plus the fifth.*

5 And while that fifth issue is [] not intended to expand the scope of this
6 hearing into making policy determinations with respect to management of the
7 Lower White River Flow System basin’s individual water rights, those different
8 types of things, *because those are going to be decisions that would have to be made in subsequent proceedings* should they be necessary. Sept. 23, 2019 Hr’g. Trans. Excerpt at 6:4-15, Ex. 5.

9 Participants submitted closing statements due on December 3, 2019.

10 Order 1309

11 13. The State Engineer issued Order 1309 on June 15, 2020. *See* Ord. 1309, Ex. 1.
12 Notably, following the submission by the participating stakeholders of closing statements at the
13 beginning of December, 2019, the State Engineer engaged in no additional public process
14 whatsoever and solicited no additional input regarding “future management decisions, including
15 policy decisions, relating to the Lower White River Flow System basins.” *See* Not. Of Hearing,
16 Ex. 3. Thus, the Order 1303 Hearing was not just the first step in the State Engineer’s decisions
17 concerning the LWRFS basin management set forth in Order 1309, it was the *only* step.

18 The first three ordering paragraphs state as follows:

19 1. The Lower White River Flow System consisting of the Kane Springs Valley,
20 Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden
21 Valley, Garnet Valley, and the northwest portion of the Black Mountains Area as
22 described in this Order, is hereby delineated as a single hydrographic basin. The
23 Kane Springs Valley, Coyote Spring Valley, Muddy River Springs Area,
24 California Wash, Hidden Valley, Garnet Valley and the northwest portion of the
25 Black Mountains Area are hereby established as sub-basins within the Lower
26 White River Flow System Hydrographic Basin.

27 2. The maximum quantity of groundwater that may be pumped from the Lower
28 White River Flow System Hydrographic Basin on an average annual basis without
causing further declines in Warm Springs area spring flow and flow in the Muddy
River cannot exceed 8,000 afa and may be less.

3. The maximum quantity of water that may be pumped from the Lower White
River Flow System Hydrographic Basin may be reduced if it is determined that
pumping will adversely impact the endangered Moapa dace. Ord. 1309 at 65, Ex
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14. The Order provides no guidance whatsoever as to how the new “single hydrographic basin” will be administered and no clear analysis as to the basis for the 8000 afa number for the maximum sustainable yield.

15. As a result of the consolidation of the basins, the relative priority of all water rights within the seven affected basins will be reordered and the priorities considered in relation to all water rights holders in the consolidated basins, rather than in relation only to the other users within the original separate basins. Petitioners’ water rights are some of the earliest priority rights relative to other users within the Garnet Valley hydrographic basin – a priority that would have protected their right to use water for the foreseeable life of their facilities.¹ Order 1309 results in the immediate loss of Petitioners’ priority relative to other water users in the consolidated administrative basins and significantly affects their security in this critical resource. Taken together with the arbitrary determination of the maximum pumping volume ordered in Paragraph 2, the reordering of priorities will subject any water rights with a priority date of March 31, 1983 or later to possible curtailment, based upon the volume of prior “senior” rights. This cutoff date would subject the Georgia Pacific water right (with a priority date of October 28, 1986) to curtailment, as well as all of Republic’s rights, other than two 1981 priority permits.

GROUND FOR THE PETITION

16. Petitioners specifically seek judicial review of Order 1309 pursuant to NRS 533.450(1) and request that this Court set aside the Order because the State Engineer’s substantive findings, conclusions, and decisions prejudice Petitioners substantial rights and are:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of statutory authority of the State Engineer;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;

¹ Republic’s water rights have priorities of October 20, 1981 (194 afa) and October 3, 1988 (274 afa). Georgia Pacific’s water rights have a priority of October 28, 1986 (144 afa).

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- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and
- (f) Arbitrary and capricious or characterized by abuse of discretion.

More specifically, and as will be articulated in more detail in Petitioners’ Memorandum of Points and Authorities supporting this Petition, the Order should be set aside for the following reasons:

The State Engineer Has Not Provided Appropriate Statutory Authority To Support Consolidation Of The LWRFS Into A Single Hydrographic Basin.

17. The State Engineer found authority to delineate the LWRFS as a single hydrographic basin in NRS 533.024(1)(e). Ord. 1309 at 42. However, because NRS 533.024(1)(e) is a statement of policy and not a grant of authority, it does not support the action taken by the State Engineer to completely upend the priority of certificated and proven water rights whose priorities have been in place for up to nearly 39 years.

18. NRS 533.024(1)(e) declares that it is the policy of the state to “[t]o manage conjunctively the appropriation, use and administration of all waters of this State, regardless of the source of the water.” NRS 533.024(1)(e). As a statement of policy, NRS 533.024(1)(e) does not constitute a grant of authority to the State Engineer. Statements of policy from the Legislature do not serve as a basis for government action, but rather inform the interpretation of specific statutes that authorize specific action. *See e.g., Pawlik v. Deng*, 412 P.3d 68, 71 (2018) quoting *J.E. Dunn Nw., Inc. v. Corus Constr. Venture, LLC*, 127 Nev. 72, 79, 249 P.3d 501, 505 (2011) (noting that “if the statutory language is subject to two or more reasonable interpretations, the statute is ambiguous, and we then look beyond the statute to the legislative history and interpret the statute in a reasonable manner ‘in light of the policy and the spirit of the law.’”). And while such statements of policy are accorded deference, the Nevada Supreme court has specifically held that they are not binding. *See e.g., McLaughlin v. Housing Authority of the City of Las Vegas*, 227 P.2d 206, 93 (1951) (“It has often been said that the declaration of policy by the legislature, though not necessarily binding or conclusive upon the courts, is entitled to great weight, and that

1 it is neither the duty nor prerogative of the courts to interfere in such legislative finding unless it
2 clearly appears to be erroneous and without reasonable foundation.”).

3 19. Thus, because NRS 533.024(1)(e) is a statement of policy and not a statutory grant
4 of authority, it does not confer upon the State Engineer the authority to delineate the LWRFS as a
5 single hydrographic basin. The authority to take that action must be rooted in a specific statutory
6 grant. However, in this case the State Engineer failed to identify any such grant, and there is no
7 such authority in Nevada’s water law. Consequently, it is unclear to Petitioners where authority
8 has been granted to the State Engineer to support the consolidation of the LWRFS into a single
9 hydrographic basin.

10 **The State Engineer’s Order Provides No Policies For Management Of LWRFS Nor Were**
11 **Petitioners’ Provided Opportunity To Provide Comment on Such Policies, Violating**
12 **Petitioners’ Due Process Rights**

13 20. In addition, the State Engineer’s decision in Order 1309 included no policies,
14 regulations, or administrative procedures to address the effects of the reordering of priorities that
15 will be the consequence of the administrative consolidation of the basin. *See* Ord. 1309, Ex. 1.

16 21. The hearing, guided by the Hearing Officer, focused on factual findings regarding
17 the LWRFS hydrographic basin. The Hearing Officer explicitly said that there would be further
18 proceedings to address the administration of the LWRFS. *See* August 9, 2019 Pre-Hr’g. Trans.,
19 10:18-20, Ex. 4; Sept. 23, 2019 Hr’g. Trans. Excerpt, Ex. 5. Consequently, participants and
20 experts did not have the opportunity to, and were actively discouraged from addressing policy
21 issues critical to the management of the LWRFS, including, but not limited to: whether Nevada
22 law allows the State Engineer to conjunctively manage multiple hydrographic basins in a manner
23 that modifies the relative priority of water rights due to the administration consolidation of basins;
24 whether the State Engineer would establish a “critical management area” pursuant to NRS 534.110
25 and, if so, whether he would develop a groundwater management plan or defer to the stakeholders
26 to develop one; whether Nevada law gives the State Engineer authority to designate a management
27 area that encompasses more than one basin; whether “safe-yield” discrete management areas
28 should be established within the proposed administrative unit; whether water rights holders enjoy
a “property right” in the relative priority of their water rights such that impairing that right may

1 constitute a “taking”; whether unused (or only sporadically used) senior water rights take
2 precedence over certificated or fully used junior rights, particularly where these junior rights are
3 in continuous use to support economically significant enterprises; whether States compel
4 quantification of federal reserved rights by a date certain; and whether the State Engineer should
5 approach the legislature to seek different or additional management tools or authority. *See* Dec.
6 2, 2019, Closing Arg. of Georgia Pacific and Republic Environmental Technologies, Inc., Ex. 6
7 (outlining policy questions for consideration by the State Engineer at later proceedings,
8 proceedings that never took place).

9 22. Then, without notice or providing additional proceedings for the participants,
10 including Petitioners, to address these critical questions, the State Engineer issued Order 1309. In
11 it, the State Engineer acknowledged Petitioners’ concerns:

12 Georgia-Pacific and Republic asserted that boundaries are premature
13 without additional data and without a legally defensible policy and management
14 tools in place. They expressed concern that creating an administrative unit at this
15 time inherently directs policy without providing for due process. The State
16 Engineer has considered these concerns and agrees that additional data and
17 improved understanding of the hydrologic system is critical to the process. He also
18 believes that the data currently available provide enough information to delineate
19 LWRFS boundaries, and that an *effective management scheme* will provide for
20 the flexibility to adjust boundaries based on additional information, retain the
21 ability to address unique management issues on a sub-basin scale, and maintain
22 partnership with water users who may be affected by management actions
23 throughout the LWRFS. Ord. 1309 at 53, Ex. 1.

24 23. Yet, despite the far-reaching impact of the consolidation of the basin and the State
25 Engineer’s admission that an “effective management scheme” is necessary for the administration
26 of the LWRFS, Order 1309 included no such scheme. *Id.* It implicates, but does not meaningfully
27 address, complex policy questions, nor were Petitioners’ given the opportunity to address these
28 issues, as promised. This is in clear violation of Petitioners’ procedural due process rights. *See*
e.g., Dutchess Business Services Inc. v. Nevada State Bd. of Pharmacy, 124 Nev. 701, 711, 191
P.3d 1159, 1166 (2008) (“Although proceedings before administrative agencies may be subject to
more relaxed procedural and evidentiary rules, due process guarantees of fundamental fairness

1 still apply. Administrative bodies must follow their established procedural guidelines and give
2 notice to the defending party of ‘the issues on which decision will turn and . . . the factual material
3 on which the agency relies for decision so that he may rebut it.’”) (internal citations omitted)
4 quoting *Bowman Transp. v. Ark.-Best Freight System*, 419 U.S. 281, 288–89 n. 4, 95 S.Ct. 438,
5 42 L.Ed.2d 447 (1974).

6 **The State Engineer Provided Inadequate Analysis and Factual Support for his**
7 **Determination of the Maximum Sustainable Pumping from the LWRFs, And Therefore,**
8 **The Factual Underpinning Of The Order Is Arbitrary, Capricious, And The Order Was**
9 **Made Upon Unlawful, Unconstitutional Procedure.**

10 24. Order 1309 includes no clear analysis as to the basis for the 8000 afa number for
11 the maximum sustainable yield set forth in Ordering Paragraph 2. As the Order acknowledges,
12 “the evidence and testimony presented at the 2019 hearing did not result in a consensus among
13 experts of the long-term annual quantity of groundwater that can be pumped. Recommendations
14 range from zero to over 30,000 afa.... There is a near consensus that the exact amount that can
15 be continually pumped for the long term-term cannot be absolutely determined with the data
16 available and that to make that determination will require monitoring of spring flow, water levels,
17 and pumping over time” Ord. 1309 at 57, Ex. 1.

18 25. The Order repeats this acknowledgement: ...“there is almost unanimous
19 agreement among experts that data collection is needed to further refine with certainty the extent
20 of groundwater development that can continually pumped over the long term.” Ord. 1309 at 62,
21 Ex. 1. However, the State Engineer discounts this uncertainty and finds “that the current data are
22 adequate to establish an approximate limit on the amounts of pumping that can occur within the
23 system, but [further data are] essential to refine and validate this limit.” *Id.* But Order 1309 does
24 not present the 8000 afa limitation as a temporary “approximation” subject to validation, but as
25 an absolute limitation with immediate weighty consequences and, further, keeps the Petitioners
26 and all other stakeholders in suspense as to what exactly those weighty consequences might be.
27 As discussed above, the Order is devoid of any direction or guidance as to any future refinement
28 or modification of this limitation. *See* Ord. 1309 Ex. 1.

1 26. Equally troubling is the cursory support for the 8000 afa limitation. Most of the
2 Order consists of selective and imprecise summaries of the participants’ presentations. There is
3 no technical analysis, no detailed consideration of the weight of evidence, nor discussion of the
4 numerous models proposed or challenged by the participants relevant to this issue. As to the
5 basis for the sustainable supply, the Order cites a number of estimations from other participants
6 that exceed this number, a few that are less, and then simply lands on 8000 afa, apparently based
7 on amounts of current pumping from the carbonate aquifer and the possibility that the spring
8 flow “may be approaching steady state.” Ord. 1309 at 63, Ex. 1.

9 27. Underscoring the arbitrariness of the conclusion in Ordering Paragraph 2, the
10 Order (Ex. 1) adds the Kane Springs Valley hydrographic basin to the joint administrative unit
11 but fails to acknowledge the additional water resources available from the Kane Springs basin.
12 Since Interim Order 1303 did not include the Kane Springs Valley hydrographic basin, the
13 participants’ assessment of the sustainable water resources of the LWRFS generally did not
14 consider Kane Springs water resources and the State Engineer made no effort to collect evidence
15 on this issue. According to the Division’s Hydrographic Basin Abstract, the Kane Springs Valley
16 Hydrographic Basin (Basin 206) has a perennial yield of 1000 afa (Nevada Division of Water
17 Resources, Hydrographic Area Summary, <http://water.nv.gov/DisplayHydrographicGeneralReport.aspx?basin=206>
18 (last visited July 14, 2020)); the contribution to the LWRFS may be more than 4000 afa.²
19 Nothing in the Order indicates that the State Engineer considered this resource in determining
20 the LWRFS limitation.

21 28. Given the immediate and far-reaching consequences of Order 1309, the public
22 deserves a careful and considered analysis of the limitation imposed supported by substantial

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25 ² “SNWA (2007) assessed local and regional flow in southeastern Nevada and found regional
26 inflow to Coyote Spring Valley was 50,700AFY of which ... Kane Springs Valley contributes
27 4,190 AFY....SNWA estimated local recharge to be 2,130 AFY... ” Coyote Springs Investment,
28 *LLC Report Submitted Pursuant to Nevada State Engineer Interim Order 1303* (July 2019) at 44
(citing Southern Nevada Water Authority, *Water-Resources Assessment and Hydrologic Report
for Cave, Dry Lake, and Delmar Valleys* (June 2007)).

1 evidence and not an arbitrary “guestimate,” or, in the alternative, the State Engineer should
2 provide a process for determining a limitation that can be adequately supported by empirical
3 evidence.

4 **The State Engineer Does Not Have Authority To Make A Ruling On The Endangered**
5 **Species Act and Failed to Provide Adequate Notice; Therefore, The Factual Underpinning**
6 **Of The Order Is Arbitrary, Capricious, And The Order Was Made Upon Unlawful,**
7 **Unconstitutional Procedure.**

8 29. Ordering Paragraph 3 states “The maximum quantity of water that may be pumped
9 from the Lower White River Flow System Hydrographic Basin may be reduced if it is determined
10 that pumping will adversely impact the endangered Moapa dace.” Ord. 1309 at 64, Ex. 1. This
11 portion of the Order is underpinned by the following specific findings:

12 **WHEREAS**, based upon the testimony and evidence offered in response to Interim
13 Order 1303, it is clear that it is necessary for spring flow measured at the Warm Springs
14 West gage to flow at a minimum rate of 3.2 cfs in order to maintain habitat for the
15 Moapa dace.²⁶¹ A reduction of flow below this rate may result in a decline in the dace
16 population. This minimum flow rate is not necessarily sufficient to support the
17 rehabilitation of the Moapa dace.

18 **WHEREAS**, the ESA prohibits any loss of Moapa dace resulting from actions that
19 would impair habitat necessary for its survival. Some groundwater users are signatories
20 to an MOA that authorizes incidental take of the Moapa dace; however, the State
21 Engineer and many other groundwater users are not covered by the terms of the
22 MOA.²⁶³ Not only would liability under the ESA for a "take" extend to groundwater
23 users within the LWRFS, but would so extend to the State of Nevada through the
24 Division as the government agency responsible for permitting water use.

25 **WHEREAS**, the State Engineer concludes that it is against the public interest to allow
26 groundwater pumping from the LWRFS that will reduce spring flow in the Warm
27 Springs area to a level that would impair habitat necessary for the survival of the Moapa
28 dace and could result in take of the endangered species. Ord. 1309 at 45-46, Ex. 1.

30. In other words, Ordering Paragraph 3 is based upon the State Engineer’s
unauthorized and unsupported conclusion that groundwater users, the State Engineer, and the State
of Nevada would be liable for a take under the Endangered Species Act (“ESA”) if flow levels at
the Warm Springs West gage to flow fall below a minimum rate of 3.2 cfs. The ESA, of course,
is a federal law, administered by the U.S. Fish Wildlife Service (“USFWS”). *See* ESA 16 USC §
1537a. The State Engineer has not provided (and could not provide) the basis for his authority to

1 determine when and under what circumstances a “take” of the Moapa dace would occur.³ Notably,
2 during the hearing, the USFWS expressly *declined* to endorse the conclusions stated in the State
3 Engineer’s findings quoted above. Sept. 24, 2019, Hr’g Tr. Vol. II at 483:10-484:15. Ex 7.

4 31. Moreover, the State Engineer’s “factual” conclusion that “it is necessary to
5 maintain flow at minimum rate of 3.2 cfs in order to maintain habitat for the Moapa dace” is far
6 from “clear.” The USFWS has reached agreements with several parties for implementation of
7 mitigation measures triggered by much lower flow rates at the Warm Springs West gage, Order
8 1303 Hearing Documents, NSE Ex 244, MOA triggers, Ex. 8, and evidence was introduced at the
9 Hearing of factors such as temperature and presence of predators that may be more determinative
10 of dace success. It has certainly not been conclusively established that groundwater pumping
11 anywhere in the LWRFS will impact Warm Springs flows, particularly pumping in the far distal
12 locations of Petitioners’ wells.

13 32. Including these findings and order in Order 1309 is a completely *ultra vires* act;
14 nothing empowers the State Engineer to make a determination when a “take” has occurred under
15 the ESA.

16 33. In addition to the State Engineer’s lack of authority under the ESA, no notice was
17 provided to the public or to the Interim Order 1303 Hearing participants that the State Engineer
18 intended to determine the flow levels at the springs purportedly necessary to maintain the dace,
19 that this would be a purpose of the proceeding, or that the State Engineer intended to prioritize
20 protection of the dace over other competing uses of water resources with the LWRFS. Moreover,
21 as discussed above, all questions of policy or procedure were off-limits during the Hearing
22 according to the State Engineer’s and Hearing Examiner’s ground rules, and no opportunity has
23 been afforded the participants to comment on such findings.

24 _____

25 ³ 16 U.S.C.A. §1536, cited by the State Engineer as authority for “shared [ESA] responsibility”
26 with the federal government, confers no authority or responsibility to States whatsoever, except
27 in the context of consideration of *exemptions* from application of the ESA. The “shared
28 responsibility” cited by the State Engineer is expressly referred to in the code as required
cooperation between federal agencies to enforce the ESA.

1 34. As a result of the lack of notice, the State Engineer failed to gather factual evidence
2 or develop an adequate record to support his findings. Notably, the U.S. Fish and Wildlife Service
3 has not issued a biological opinion based on analysis of the effects on Moapa dace from
4 groundwater pumping by users within the Garnet Valley hydrographic basin or other portions of
5 the LWRFS beyond three specific users in Coyote Spring Valley and California Wash, and in the
6 Muddy River Spring Area. SNWA Ex 008, SNWA 2019 Assessment of Moapa Dace. Ex. 9. The
7 State Engineer, however, made no distinction regarding the location of groundwater pumping
8 within the new administrative unit as it relates to his findings of potential take or curtailment. Yet
9 his own findings require consideration of this factor:

 The State Engineer finds that data support the conclusion that pumping
from locations within the LWRFS that are distal from the Warm Springs area can
have a lesser impact on spring flow than pumping from locations more proximal
to the springs. The LWRFS system has structural complexity and heterogeneity,
and some areas have more immediate and more complete connections than others.
... [T]here remains some uncertainty as to the extent that distance and location
relative to other capturable sources of discharge either delay, attenuate, or reduce
capture from the springs. Ord. 1309 at 59.

15 35. In short, the State Engineer has no authority to determine when and whether a
16 “take” could occur under the ESA, failed to provide due process regarding this issue and regarding
17 factual findings affecting the dace, and arbitrarily applied those findings to all groundwater use
18 and users within the consolidated basin, regardless of location.

The Order substantially Prejudices Petitioners’ Rights

20 36. The defects in Order 1309 substantially prejudice Petitioners’ rights. As stated
21 above, the delineation of the LWRFS as a single hydrographic basin will result in the relative
22 priority of all water rights within the seven affected basins being reordered and the priorities
23 considered in relation to of all water rights holders in the consolidated basins (as proposed by
24 Interim Order 1303), rather than in relation only to the other users within the original separate
25 basins. This reordering immediately deprives Petitioners’ of the secure priority position they
26 enjoyed within the Garnet Valley Hydrographic Basin for between 32 and 39 years. This loss of
27 priority taken together with the State Engineer’s arbitrary determination of the maximum pumping
28

1 volume in the LWRFS will subject Georgia-Pacific's water rights and a majority of Republic's
2 water rights to curtailment, jeopardizing the viability of their business operations and the
3 significant benefits they provide to the State and local economies. Accordingly, that the State
4 Engineer acted without authority, failed to afford due process, abused his discretion, acted
5 contrary to law and arbitrarily and capriciously, substantially prejudices Petitioners' rights.

6 **RELIEF REQUESTED**

7 WHEREFORE, Petitioner requests that this Court review the Order, the underlying
8 administrative record and other evidence, and prays for the following relief:

- 9 A. That the Order be set aside in its entirety;
- 10 B. That, in the event any portion of the Order stands, Ordering Paragraph 2 and the
11 supporting findings be stricken;
- 12 C. That, in the event any portion of the Order stands, Ordering Paragraph 3 and the
13 supporting findings be stricken;
- 14 D. That the Court issue such other relief as it deems necessary and proper; and
- 15 E. That the Court enter judgment in favor of Petitioners and against the State
16 Engineer, the Division of Water Resources and the Department of Conservation and Natural
17 Resources.

18 DATED: July 15, 2020.

19 McDONALD CARANO LLP

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*Attorneys for Georgia-Pacific Gypsum LLC
and Republic Environmental Technologies, Inc.*

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CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that I am an employee of McDonald Carano LLP and that on July 15, 2020, a true and correct copy of PETITION FOR JUDICIAL REVIEW was electronically served with the Clerk of the Court by using CM/ECF and served on the following parties on the same date via the manner indicated below:

VIA HAND DELIVERY:

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Aaron Ford
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<p>Kent R. Robison Therese M. Shanks Robison, Sharp, Sullivan & Brust 71 Washington Street Reno, NV 89503</p> <p><i>Attorneys for Coyote Springs Investments</i></p>	<p>Bradley Herrema Brownstein Hyatt Farber Schreck 100 North City Parkway, Suite 1600 Las Vegas, NV 89106</p> <p><i>Attorneys for Coyote Springs Investments</i></p>
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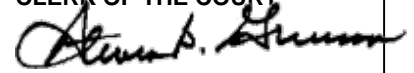
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---	--

/s/ Andrea Black
An Employee of McDonald Carano LLP

4819-3183-8915, v. 1
4819-3183-8915, v. 1



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CASE NO: A-20-818069-P
Department 18

13 *Attorneys for Georgia-Pacific Gypsum LLC*
14 *and Republic Environmental Technologies, Inc.*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 * * * *

18 GEORGIA-PACIFIC GYPSUM LLC,
19 AND REPUBLIC ENVIRONMENTAL
20 TECHNOLOGIES, INC.

CASE NO.:

DEPT. NO.:

Petitioners,

vs.

**APPENDIX OF EXHIBITS TO
GEORGIA-PACIFIC GYPSUM LLC
AND REPUBLIC ENVIRONMENTAL
TECHNOLOGIES, INC.'S PETITION
FOR JUDICIAL REVIEW OF ORDER
1309**

TIM WILSON, P.E. Nevada State Engineer,
DIVISION OF WATER RESOURCES, and the
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,

Respondent.

No.	Exhibit Description	Vol. No.	Bates No.
1	Order 1309	1	GPR0001-0069
2	Interim Order 1303	1	GPR0070-0087
3	Notice of Hearing and Amended Notice of Hearing	1	GPR0088-0131

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4	August 9, 2019 Pre-Hearing Transcript Excerpt	1	GPR0132-0135
5	September 23, 2019 Hearing Transcript Excerpt	1	GPR0136-0140
6	Georgia Pacific and Republic Closing Argument dated December 2, 2019	1	GPR0141-0151
7	September 24, 2019 Hearing Transcript Excerpt	1	GPR0152-0156
8	NSE Exhibit 244 – MOA Triggers	1	GPR0157-158
9	SNWA Assessment of Moapa Dace Report	1	GPR0159-0208

DATED: July 15, 2020.

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CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that I am an employee of McDonald Carano LLP and that on July 15, 2020, a true and correct copy of **APPENDIX OF EXHIBITS TO GEORGIA-PACIFIC GYPSUM LLC AND REPUBLIC ENVIRONMENTAL TECHNOLOGIES, INC.’S PETITION FOR JUDICIAL REVIEW OF ORDER 1309** was electronically served with the Clerk of the Court by using CM/ECF and served on the following parties on the same date via the manner indicated below:

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<p>Luke Miller Office of Regional Solicitor U.S. Dept. of the Interior 2800 Cottage Way, Suite E1712 Sacramento, CA 95825 <i>Attorneys for U.S. Fish and Wildlife</i></p>	<p>Larry Brundy P.O. Box 136 Moapa, NV 89025</p>
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/s/ Andrea Black
An Employee of McDonald Carano LLP

4849-8384-9667, v. 1

Exhibit 1

Exhibit 1

GPR0001

**Document (Order 1309) Located at JA Vol. 2 at
JA 326 through JA 393**

Exhibit 2

Exhibit 2

GPR0070

**Document (Order 1303) Located at JA Vol. 2 at JA 394
through JA 410**

**Document (Addendum to Order 1303) Located at JA Vol. 2 at
JA 411
through JA 412**

Exhibit 3

Exhibit 3

GPR0088

Document (Amended Notice of Hearing) Located at JA Vol. 2
at JA 486 through JA 503

**Document (Notice of Hearing) Located at JA Vol. 2 at
JA 464 through JA 484**

Exhibit 4

Exhibit 4

GPR0132

**Document (August 8, 2019 Transcripts) Located at JA Vol. 2 at
JA 703 through JA 736**

Exhibit 5

Exhibit 5

GPR0136

Document (September 23, 2019 Transcript) Located at JA Vol.

44 **at** JA 17357 **through** JA 17449

Exhibit 6

Exhibit 6

GPR0141

Document (Georgia Pacific Closing Argument) Located at JA Vol.

43 at JA 17198 through JA 17207

Exhibit 7

Exhibit 7

GPR0152

Document (September 24, 2019 Transcript) Located at JA Vol.

44 at JA 17450 through JA 17510

Exhibit 8

Exhibit 8

GPR0157

Memorandum of Agreement Triggers

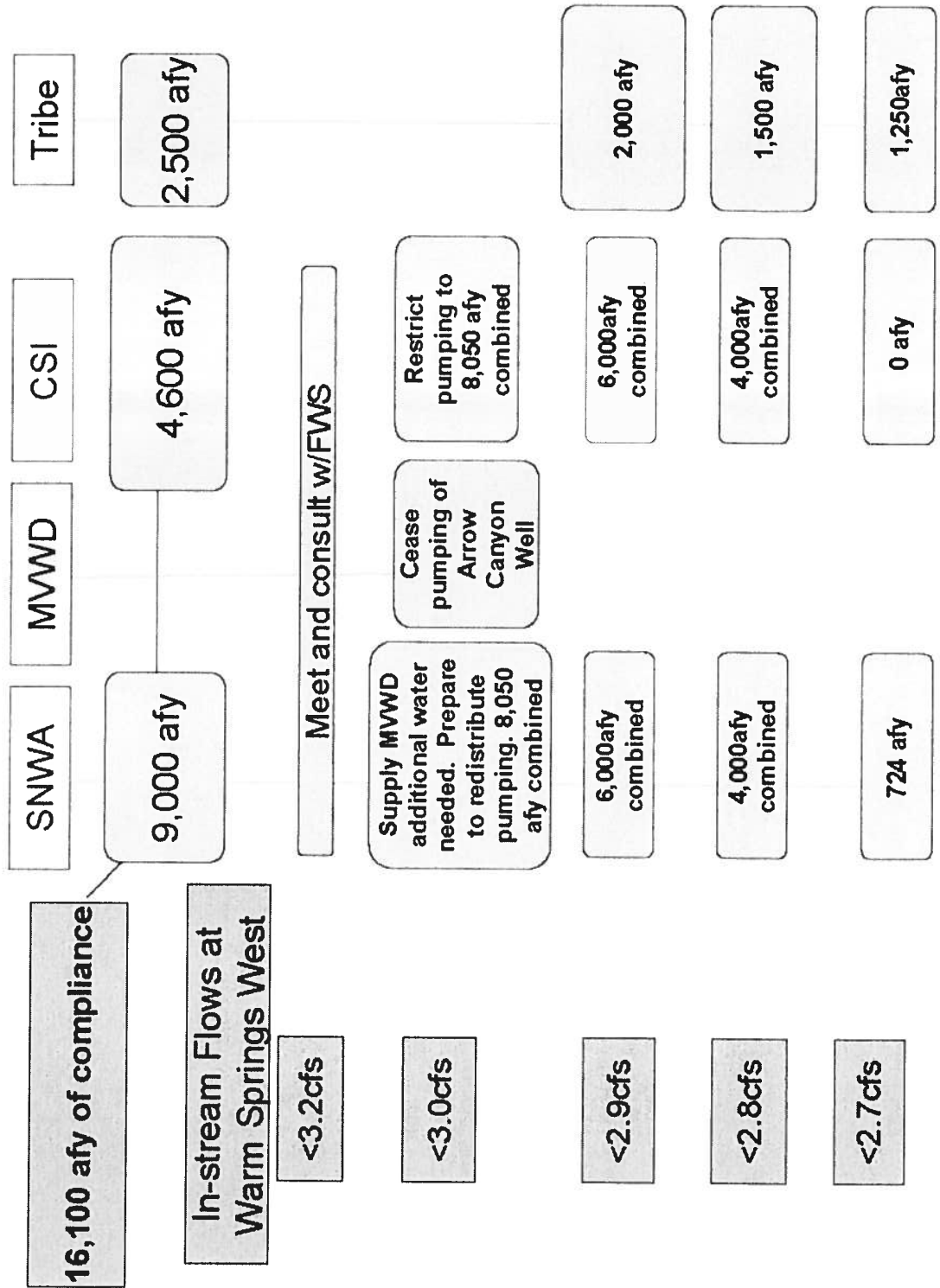


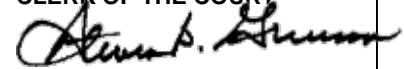
Exhibit 9

Exhibit 9

GPR0159

Document (SNWA August 2019 Response to Stakeholder Reports)

Located at JA Vol. 28 at JA 12048 through JA 12097



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CASE NO: A-20-818015-P
Department 8

6 *Attorney for Nevada Cogeneration Associates Nos. 1 and 2*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 NEVADA COGENERATION ASSOCIATES
NOS. 1 AND 2,

Case No.:

Petitioner,

Dept. No.:

10 vs.

11 Tim Wilson, P.E., Nevada State
12 Engineer, DIVISION OF WATER
13 RESOURCES, DEPARTMENT OF
14 CONSERVATION AND NATURAL
15 RESOURCES,

PETITION FOR JUDICIAL REVIEW

Respondent.

16
17 Petitioner, NEVADA COGENERATION ASSOCIATES NOS. 1 AND 2, (hereinafter
18 collectively “NCA” and separately “NCA 1” and “NCA 2”), by and through its attorney of
19 record, ALEX J. FLANGAS, ESQ., of the law firm of KAEMPFER CROWELL, hereby
20 petitions the Court pursuant to NRS 533.450(1) to reverse or remand a portion of “Order
21 #1309” issued by Respondent TIM WILSON, P.E., Nevada State Engineer, dated June 15,
22 2020, (hereinafter the “Order #1309”).¹ A copy of Order #1309 is attached hereto as **Exhibit 1**.

23
24 ¹ Order #1309 is fully entitled, “Order Delineating the Lower White River Flow System Hydrographic Basin with the Kane Springs Valley Basin (206), Coyote Spring Valley Basin (210), a Portion of the Black Mountains Area Basin (215), Garnet Valley Basin (216), Hidden Valley Basin (217), California Wash Basin (218), and Muddy River Springs Area (aka Upper Moapa Valley) Basin (219) Established as Sub-Basins, Establishing a Maximum

1 Among other things, Order #1309 identifies a new boundary for the recognition of an
2 area that the Nevada State Engineer has designated as the Lower White River Flow System
3 (“LWRFS”), which is essentially a carbonate-rock underlain area that the State Engineer
4 contends requires “joint management” essentially as one, single *super basin*. Following the
5 entry of Order #1309, the LWRFS is now comprised of seven previously identified, previously
6 separate, hydrographic basins that have been determined to share a “close hydrologic
7 connection” that now requires joint management of those basins rather than individual basin
8 management. The LWRFS, as it is now designated following the entry of Order #1309, purports
9 to set a new limit on the amount of groundwater pumping that will be allowed on an annual
10 basis from the larger area that is the LRWFS without regard to the cumulative totals of the
11 various individual basins because, in the State Engineer’s opinion following a lengthy hearing
12 process, each of these various basins is “interconnected” hydrologically.

13 This Petition for Judicial Review is taken in the nature of an appeal pursuant to NRS
14 533.450 and specifically challenges that portion of Order #1309 that intends to move the
15 southern boundary of the LWRFS even further south and east to a new, arbitrarily-identified
16 location in order to maintain the inclusion of NCA’s production water wells *within* the boundary
17 of the LWRFS. Order #1309, by its terms, intends to maintain the inclusion of NCA’s
18 certificated water rights and the pumping of groundwater made pursuant to those water rights as
19 being *inside* the LWRFS boundary, rather than excluding NCA from the LWRFS entirely as
20 was the position taken by NCA during the hearing and in the filing of NCA’s post-hearing
21 brief/argument (and which is most consistent with the evidence adduced at the hearing).

22 //

23 //

24 Allowable Pumping in the Lower White River Flor System Within Clark and Lincoln Counties, Nevada, and
Rescinding Interim Order 1303.” Order #1309 may also be referred to as the “Final Order.”

1 **I. JURISDICTIONAL STATEMENT**

2 Pursuant to NRS 533.450(1), “any person feeling aggrieved by any order or decision of
3 the State Engineer ... affecting the person’s interests, when the order or decision related to the
4 administration of determined rights or is made pursuant to NRS 533.270 to 533.455, inclusive,
5 or NRS 533.481, 534.193, 535.200, or 536.200, may have the same reviewed by a proceeding
6 for that purpose, insofar as may be in the nature of an appeal, which must be initiated in the
7 proper court of the county in which the matters affected or a portion thereof are situated....”
8 Pursuant to Subsection 2 of NRS 533.450, the proceedings in every case must be heard by the
9 court and must be informal and summary, “but full opportunity to be heard must be had before
10 judgment is pronounced.” Subsection 8 further explains that “[t]he practice in civil cases applies
11 to the informal and summary character of such proceedings, as provided in this section.”²

12 The real property to which the water at issue in this Petition is appurtenant lies within
13 Clark County, and both the points of diversion for the water rights of NCA and the places of use
14 of those water rights is located in a hydrographic basin in Clark County. Therefore, the Eighth
15 Judicial District Court of the State of Nevada in and for Clark County is the proper venue for
16 judicial review of this Petition involving Order #1309.

17 _____
18 ² Notably, petitions for judicial review pursuant to NRS 533.450 taken from orders or decisions
19 of the Nevada State Engineer are *not* governed by Chapter 233B, the Nevada Administrative
20 Procedures Act, as many other administrative agency appeals might be. NRS 233B.039(1)(j)
21 provides as follows: “The following agencies are entirely exempted from the requirements of
22 this chapter: ... (j) Except as otherwise provided in NRS 533.365, the Office of the State
23 Engineer.”

24 Consequently, it is likely that a Senior Attorney General assigned to represent the Nevada State
Engineer in this matter will confer with the undersigned and submit a proposed, stipulated
briefing schedule for this Court’s consideration, as that is typical in virtually every water rights
petition for judicial review taken in which the undersigned has participated over the last 30 years.

It is likely the parties will submit timing and briefing recommendations to this Court for
consideration and approval similar to those outlined in the Nevada Rules of Appellate Procedure
governing civil appeals. Briefing would necessarily follow after the submission of the transcript
of the record that is required to be made pursuant to NRS 533.450(4).

1 **II. FACTUAL BACKGROUND**

2 **1. Nevada Cogeneration’s water rights and interest in this proceeding.**

3 Nevada Cogeneration Associates Nos. 1 and 2 operate combined cycle gas-fired
4 cogeneration facilities located near the southern boundary of the LWRFS. The points of
5 diversion for the *permitted* and *certificated* water rights owned and utilized by NCA are located
6 entirely within a narrow part of the Black Mountains Area in hydrographic Basin 215, which
7 location was originally identified by the State Engineer as being very near the southern
8 boundary of the LWRFS as that boundary existed prior to the hearings that led to the issuance of
9 the Final Order.³

10 NCA 1 and NCA 2 began commercial operations in June 1992 and February 1993,
11 respectively. Collectively, the two plants account for 170 MW in baseload generation capacity.
12 NCA sells 100% of its electric output to NV Energy under the terms of a long-term Power
13 Purchase Agreement, and both facilities supply hot exhaust gas and chilled water (via a closed
14 loop system) to Georgia Pacific and Pacific Coast Building Products’ gypsum facilities under
15 the terms of an Energy Purchase Agreement. *Reference: Rebuttal Report Pertaining to Interim
16 Order 1303*, prepared on behalf of Nevada Cogeneration Associates, August 16, 2019,
17 “Overview” at p. 1.

18 The NCA facilities have played an integral role in economic output in the region for
19 more than 25 years. NCA’s water rights have been placed to continuous use since construction
20 of facilities in 1992 and 1993. The continued access of their certificated water rights is critical
21 for NCA’s sustained operations.

22 Notably, a permitted water right holder obtains a “certificate” only after that permitted
23 holder has proven to the State Engineer that it has complied with the terms of its permit and has

24 ³ NCA holds the following water rights: Permit 55269/Certificate 17123; Permit 58031/Certificate 17124; Permit 58032/Certificate 17125, all of which have a point of diversion within the Black Mountains Area, Basin 215. NCA 1 does hold one Permit, that being Permit 76862, for the storage of effluent in Garnet Valley Basin, which is Basin 216, but that Permit was not the focus of Order #1309 as that Order relates to the inclusion of the “production wells” of NCA within the newly-identified southern boundary of the LWRFS and was not concerned with the storage permit.

1 actually put water obtained pursuant to the permit to a “beneficial use” consistent with NRS
2 533.035. The permit holder must file *proof* of its beneficial use with the State Engineer
3 sufficient to “perfect” the appropriation of the water right, and must do so demonstrating that it
4 has proceeded in good faith and with reasonable diligence to perfect the appropriation; failure to
5 do so will result in the cancellation of the permit rather than the issuance of a certificate. *NRS*
6 *533.395(1)*. In this situation, NCA has long-since demonstrated its use of the permitted water
7 rights, sufficiently so that it was granted certificates establishing that it had already placed the
8 water appropriated under those permits to a beneficial use consistent with those permits.

8 **2. Order 1169 Pumping Tests.**

9 On March 8, 2002, a prior State Engineer, Hugh Ricci, believing there may be a
10 hydrologic connection between hydrographic basins located in the area that is now identified as
11 the LWRFS, issued Order 1169 holding pending groundwater applications in abeyance and
12 requiring an aquifer test of the carbonate-rock aquifer system to better determine whether the
13 pending applications and future appropriations could be safely developed from the carbonate-
14 rock aquifer. The express purpose of 1169 was to determine, to the extent possible, the
15 hydrologic connection between the basins such that groundwater pumping in one basin would
16 have a direct effect on the level of groundwater on adjacent basins; as explained in Order #1309
17 at p. 3, the State Engineer “did not believe that it was prudent to issue additional water rights to
18 be pumped from the carbonate-rock aquifer until a significant portion of the then existing water
19 rights were pumped [tested] for a substantial period of time to determine whether the pumping
20 of those water rights would have a detrimental impact on existing water rights or the
21 environment.”

22 Because of certain concerns of various parties involved with the flows of water that
23 might affect a particular spring and the potential effect on an endangered species of fish, several
24 years passed before the pump tests were actually conducted. On November 15, 2010, the Order
1169 aquifer test began, and, pursuant to the direction of the Nevada State Engineer, the
pumping continued from the MX-5 well for a period of slightly more than two years. That
pumping provided both the State Engineer and the affected water right holders with data for use

1 in assessing the effects of groundwater withdrawals from the LWRFS; the tests allowed the
2 affected water right holders in the hydrographic basins identified as potentially interconnected
3 to obtain and provide data to their respective experts from which those experts then could
4 prepare reports analyzing the effects and present those reports and comments to the State
5 Engineer for consideration on how best to manage the LWRFS moving forward.

6 **3. Interim Rulings and the Interim Order #1303.**

7 Following the conclusion of the pump tests, the State Engineer issued additional rulings
8 that continued to restrict the appropriation of new groundwater within the LWRFS, but allowed
9 existing water right holders such as NCA to continue to use their water rights consistent with
10 their existing permits and certificates. Beginning in 2018, the State Engineer conducted several
11 public workshops to review and discuss the results of the pump tests and to review the status of
12 groundwater use within the LWRFS. The State Engineer elicited comments from the
13 participants at those workshops regarding how to best develop the water resources involved in
14 the LWRFS, acknowledging the apparent close, hydrologic connection between the various
15 basins involved in the pump tests.

16 In the summer of 2018, the State Engineer drafted and made public a proposed order
17 directed to address several issues involved in the future management of the LWRFS, and
18 conducted public workshops between July and the end of the year, taking “comments” verbally
19 during those meetings and in writing following each such meeting from interested participants.
20 The last such meeting was conducted on December 14, 2018, when the State Engineer
21 conducted a hearing and received comments from participants regarding that proposed order.

22 Then, on January 11, 2019, the State Engineer at that time, Jason King, P.E., issued
23 Interim Order #1303⁴ (the “Interim Order”) which identified specific elements for which the
24

⁴ The full title of Order #1303, the “Interim Order,” is “Interim Order Designating the Administration of All Water Rights Within Coyote Spring Valley Hydrographic Basin (210), a Portion of Black Mountains Area Basin (215), Garnet Valley Basin (216), Hidden Valley Basin (217), California Wash Basin (218), and Muddy River Springs Area (aka Upper Moapa Valley) Basin (219) as a Joint Administrative Unit, Holding in Abeyance Applications to Change Existing Groundwater Rights, and Establishing a Temporary Moratorium on the Review of Final Subdivision Maps.”

1 State Engineer was seeking input from the affected water right holders and interested parties.
2 Order #1303 identified four, specific elements, and one catch-all element, about which it sought
3 expert “reports” from the various interested parties and participants:

- 4 a. The geographic boundary of the hydrologically connected groundwater and surface
5 water systems comprising the Lower White River Flow System;
- 6 b. The information obtained from the Order 1169 aquifer test and Muddy River
7 headwater spring flow as it relates to aquifer recovery since the completion of the
8 aquifer test;
- 9 c. The long-term annual quantity of groundwater that may be pumped from the Lower
10 White River Flow System, including the relationships between the location of
11 pumping on discharge to the Muddy River Springs, and the capture of Muddy River
12 flow;
- 13 d. The effects of movement of water rights between alluvial wells and carbonate wells
14 on deliveries of senior decreed rights to the Muddy River; and
- 15 e. Any other matter believed to be relevant to the State Engineer’s analysis.

16 The State Engineer further indicated that following the submission of such expert reports, a
17 hearing would be conducted wherein evidence would be taken by the State Engineer in
18 connection with the reports, cross-examination would likely be allowed by the interested
19 parties, and the State Engineer would then render a final determination on the four, specific
20 points identified. Importantly, it was repeatedly stressed that this was only “Stage 1” of the
21 LWRFS process – the hydrologic analysis – and that this was *not* the policy analysis that will
22 identify which water rights are allowed by the State Engineer to be actually put to use in each
23 individual basin; that proceeding, which will be a “Stage 2” proceeding, will follow the
24 completion of the determinations rendered in the Final Order (#1309).

In response to Order #1303, many of the participants submitted initial reports. NCA,
however, chose to wait and submit only a Rebuttal Report, which it did on the required deadline
for submission of Rebuttal Reports, August 16, 2019, a bit more than a month before the
hearings commenced in September of 2019. Parties were also required to file lists of witnesses
and exhibits, and were required to identify objections to those witnesses and exhibits of others,
which they did in August of 2019. The State Engineer conducted hearings concerning those

1 witness and evidentiary objections prior to commencement of the hearing, and the hearings
2 commenced in September of 2019, lasting approximately two weeks.

3 During the hearing, the State Engineer restricted questioning significantly for time
4 constraints, and further restricted questioning for anything that was beyond the scope of the
5 four, specifically identified issues outlined in the conclusion of the Interim Order, #1303.

6 **The Final Order, #1309.**

7 The hearings: Hearings commenced on September 23, 2019, and were conducted for
8 two weeks before Nevada State Engineer Tim Wilson, P.E., and members of his staff at the
9 Division of Water Resources to consider the comments, objections and recommendations
10 lodged by several affected and interested parties, including NCA, outlined in the initial and
11 rebuttal expert reports. The various reports and the testimony during the two weeks of hearings
12 focused on the four, specific elements outlined for determination in the Interim Order, #1303,
13 and in the Addendum issued by the State Engineer on May 13, 2019 (hereinafter the
14 “Addendum”)⁵ clarifying the Interim Order. Importantly, the hearing officer who was managing
15 the hearing, Deputy Administrator Micheline Fairbank, emphasized repeatedly before and
16 during the hearings that the scope of the September, 2019, hearings and the presentations made
17 by the various participants therein would be limited to the hydrologic examination of the four,
18 specific elements identified in the Interim Order and in the Addendum and would *not* be
19 extended to include policy determinations regarding which water right holders were entitled to
20 the use of groundwater or surface water in the individual basins.⁶

21 ⁵ The full title of the Addendum is “Addendum to Interim Order 1303 Designating the
22 Administration of All Water Rights Within Coyote Spring Valley Hydrographic Basin (210), a
23 Portion of Black Mountains Area Basin (215), Garnet Valley Basin (216), Hidden Valley Basin
24 Basin (217), California Wash Basin (218), and Muddy River Springs Area (aka Upper Moapa Valley)
Basin (219) as a Joint Administrative Unit, Holding in Abeyance Applications to Change
Existing Groundwater Rights, and Establishing a Temporary Moratorium on the Review of Final
Subdivision Maps.”

⁶ It was made clear to the participants that the policy determinations, including determinations of
which water right holders have priority to use groundwater within the LWRFS once any revised
boundary has been firmly established, will not be made until after this first phase of the
proceedings has been completed.

1 NCA was allowed only a few hours during the two-week hearing period to make its
2 presentation. NCA focused a significant portion of its presentation on evidence and analysis
3 actually found in the Rebuttal Report of the Southern Nevada Water Authority (“SNWA”)
4 which identified a specific hydrologic finding that strongly supported the factual conclusion that
5 the production wells owned and operated by NCA in the southern portion of the Black
6 Mountains Area, Basin 215, do *not* share a “close hydrologic connection” with the other wells
7 located inside the LWRFS. The analysis and conclusion independently conducted and reached
8 by SNWA found that the production wells belonging to NCA – which are the water wells from
9 which NCA pumps its certificated water rights -- should *not* be included within the boundary of
10 the LWRFS. *See Order #1309, Exhibit 1*, at pp. 50 and 51.

11 Prior to the September 2019 hearings, the State Engineer’s office issued rulings on
12 objections raised by interested parties regarding the exclusion of witnesses and evidence. One
13 such objection was raised as to the credentials of one of NCA’s expert witnesses who had
14 worked on NCA’s Rebuttal Report, former State Engineer Hugh Ricci, P.E., who had been
15 instrumental in beginning the entire LWRFS process by issuing Order 1169 in 2002 as the State
16 Engineer at that time. Order 1169 held pending water right applications in abeyance until further
17 information was obtained by stressing the aquifer; it also ordered the pump tests from which all
18 of the conclusions now reached regarding the inter-connectivity of the various hydrographic
19 basins included within the boundary of the LWRFS could be made. As a result of that objection,
20 and even though former State Engineer Ricci clearly exhibited the hydrologic understanding of
21 the LWRFS system sufficiently to exercise the requisite caution in regard to pending
22 applications and to order the pump tests that form the basis for determinations made by the
23 current State Engineer, Tim Wilson, P.E., to support Order #1309 (the Final Order), the hearing
24 officers from the State Engineer’s office who were authorized on behalf of Mr. Wilson with
ruling on Mr. Ricci’s qualifications as an expert declared – surprisingly, at least to NCA -- that
Mr. Ricci was “not qualified” to testify as an expert in hydrology during the presentation of
NCA’s case in chief.

1 Notably, however, though Mr. Ricci, P.E., was disqualified by the present State
2 Engineer to testify as a hydrologist and to provide any direct testimony for NCA’s case, Mr.
3 Ricci was allowed to provide some answers to questions presented on cross examination,
4 though not specifically on his opinions on hydrology as would relate to the four, specific areas
5 in question raised in the Interim Order and in the Addendum. Most importantly, Mr. Ricci was
6 not allowed to testify regarding his opinion regarding the establishment of the boundary of the
7 LWRFS in the Black Mountains Area as it pertains to NCA’s production wells, nor was he
8 allowed to present his opinions regarding his analysis of and his consideration, if any, of
9 SNWA’s evidence and conclusions regarding whether NCA’s production wells should be
10 considered as *included within* the LWRFS boundary or excluded therefrom.⁷ Also during the
11 hearing it was established that Hugh Ricci, P.E., was the State Engineer who made the
12 determinations for the purposes of the issuance of Order 1169 which basins were subject to and
13 which were not subject to Order 1169 (which governed, essentially, inclusion in the newly
14 identified LWRFS) *based on his understanding and his application of hydrologic principles*
15 *affecting those basins which would in turn affect the water rights in those basins*. Despite this
16 understanding, Mr. Ricci, P.E., was not allowed to opine as to the boundary condition affecting
17 NCA’s rights or their production wells.

16 On June 15, 2020, the current State Engineer, Tim Wilson, P.E., issued the Order #1309
17 -- the Final Order -- addressing the four, specific hydrologic elements identified as the focus of
18 the hearing in Order #1303 and the Addendum. In that Order at pages 50 and 51, the State
19 Engineer concluded that NCA’s production wells should be included in the boundary of the
20 LWRFS despite the fact that “the State Engineer finds logic in NCA’s position” to exclude
21 those wells from the boundary. Heading into the hearings, NCA had criticized the prior LWRFS
22 boundary identified as the southern boundary in the Black Mountains Area that the State
23 Engineer used in Interim Order #1303 which incorporated the NCA production wells, in part
24 because it was drawn as a straight line. NCA maintained a straight-line boundary was arbitrary

1 as no such hydrologic boundaries occur in nature; water does not follow a perfectly straight line
2 on a map, but instead would follow a naturally occurring geologic structure. During the
3 hearings, NCA provided testimony about a very nearby geologic structure and the different
4 hydrologic response in reported NCA monitoring wells (when compared to other wells in the
5 LWRFS) that explained why NCA’s production wells were located where they were, why
6 SNWA’s experts reached their conclusion regarding NCA’s production wells, and why it made
7 hydrologic sense that NCA’s wells would be *disconnected* from the remaining wells in the
8 LWRFS.

9 Nonetheless, at page 51 of Order #1309, even though the State Engineer stated
10 expressly that he “finds logic in NCA’s position” to exclude the NCA wells from the LWRFS,
11 the State Engineer for the first time identified a new boundary for the southern portion of the
12 LWRFS *right in the area where NCA’s production wells are located*. The State Engineer
13 explained that this new boundary, “better honors the State Engineer’s criteria by acknowledging
14 uncertainty in the data while reflecting a recognized physical boundary in the carbonate-rock
15 aquifer.” See **Ex. 1**, at p. 51. As such, the State Engineer recognized NCA’s criticism that the
16 prior “straight-line” boundary of the LWRFS that was utilized heading into the hearings was
17 likely arbitrary and unsupportable, but rather than accept NCA’s identified, natural structure
18 that was nearest to the production wells and conformed with the evidence actually presented at
19 the hearing, the State Engineer simply looked on a geologic map in an attempt to identify a new,
20 unverified physical boundary and – arbitrarily – *moved the straight-line boundary further south*
21 to more-assuredly include NCA’s production wells. The new boundary is, again, a straight line,
22 merely relocated further south and east, with no more support than the initial straight-line
23 boundary.

24 Moreover, the State Engineer made this move despite the fact that no testimony or
expert witness discussion had been made, and no questions had been raised, about this new,
arbitrary straight-line boundary during the two weeks of hearings conducted. No one even
attempted to establish – during the hearing - a technical reason why this newly identified
southern boundary for the LWRFS better explained the available data involving NCA’s

1 boundary was made evident to NCA for its consideration in the Interim Order (#1303) or the
2 Addendum that formed the basis for the retention of experts and the creation of expert reports
3 about which the two-weeks of hearings would be conducted, and despite the fact that there was
4 no discussion of this newly identified boundary during the hearings themselves.

5 As such, NCA was not given sufficient notice and an opportunity to be heard before the
6 State Engineer to satisfy general principles of due process and fairness in any manner sufficient
7 to prepare and present evidence, analysis or conclusions regarding this apparently newly
8 claimed “boundary” that the State Engineer has somehow magically divined in the interim
between the close of the hearings and the issuance of Order #1309.

9 Additionally, the State Engineer recognized the logic in NCA’s position, yet chose to
10 suggest that other testimony questioning SNWA’s analysis, which made no factual or scientific
11 reference to the arbitrary boundary (or any boundary for that matter), justified a contrary
12 conclusion despite an acknowledged lack of information and in the face of uncertainty. *See Ex.*
13 **1**, p. 51. In Order #1309, the State Engineer does not identify an alternate theory explaining the
14 factual and scientific findings described by both SNWA or NCA and does not point to any other
15 expert whose testimony explained the anomalies identified by NCA’s and SNWA’s experts
16 relative to NCA’s production wells. Instead, Order #1309 suggests that it is better to err on the
17 side of “a more inclusive approach that places the boundary to the south of the NCA production
18 wells to a geological location that coincides with the projection of the Muddy Mountain
Thrust,” without an explanation of why this is not an arbitrary determination.

19 The State Engineer’s decision to identify a boundary to include NCA in the LWRFS,
20 knowing that the inclusion could result in the potential restriction of NCA’s use of its full
21 allocation of water rights and despite also knowing that there is at least significant uncertainty
22 as to whether NCA should be included, is arbitrary – not unlike the establishment of the original
23 straight-line boundary that now appears to have been created for the same reason: to include
24 NCA’s production wells within the LWRFS, regardless whether the evidence, analysis or logic
compels a different conclusion.

1 And, by making NCA subject to the LWRFS, Order #1309 injuriously affects NCA in
2 that NCA’s certificated water rights could well be impacted by the limitation imposed by the
3 overall development figure of 8,000 afa for the entirety of the LWRFS. While it is currently
4 uncertain how the State Engineer will implement his decisions moving forward regarding who
5 will be allowed to pump and who will not among the various stakeholders, the real possibility
6 exists that NCA’s full use of its water rights could be limited. Thus, the “injury” to NCA is real
7 and could be substantial, and NCA is entitled under NRS 533.450(1) and (3) to have this matter
8 considered and heard by this Court now, prior to the implementation of any Stage 2 proceedings
9 involving the LWRFS.

9 **IV. CONCLUSION**

10 For the reasons explained above, and others that may be discovered and raised during
11 the pendency of this appeal, NCA respectfully requests that this Court reverse the decision of the
12 Nevada State Engineer to move the boundary to an area even further south in the Black
13 Mountains Area to arbitrarily include NCA’s production wells within the LWRFS when the
14 evidence and analysis suggests that such wells should have been excluded. Alternatively, NCA
15 requests that this Court remand this matter back to the Nevada State Engineer for further
16 proceedings to allow NCA to present evidence and analysis regarding this newly identified
17 boundary – “the boundary to the south of the NCA production wells to a geological location that
18 coincides with the Muddy Mountain Thrust” – because NCA has not yet been afforded due
19 process to make such presentation to the State Engineer for his consideration in this matter.

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1 **CERTIFICATE OF MAILING**

2 I certify that I am an employee of Kaempfer Crowell, and that on July 15, 2020, I
3 electronically filed the **PETITION FOR JUDICIAL REVIEW** with the Clerk of the Court by
4 using the Eighth Judicial District Court’s Electronic Filing system and a true and correct copy
5 was served on the following persons:

6 **VIA HAND DELIVERY BY MESSENGER SERVICE:**

7 Tim Wilson, P.E., State Engineer
8 Nevada Division of Water Resources
9 Dept. of Conservation and Natural resources
901 S. Stewart Street, Suite 2002
Carson City, NV 89702

10 **VIA U.S. POSTAL SERVICE CERTIFIED MAIL, RETURN RECEIPT**

11 **REQUESTED:**

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8	State of Nevada Department of Transportation 1263 S. Stewart Street Carson City, NV 89712	Clark County 500 S. Grand Central Parkway, 6 th Floor Las Vegas, NV 89155
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12		
13	Lincoln County Commissioners P.O. Box 90 Pioche, NV 89043	Clark County Coyote Springs Water Resources GID 1001 S. Valley View Blvd. Las Vegas, NV 89153
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15	Mark D. Stock Global Hydrologic Services, Inc. 561 Keystone Avenue, #200 Reno, NV 89503-4331	Kyle Roerink Great Basin Water Network P.O. Box 75 Baker, NV 89311
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18	Dry Lake Water, LLC 2470 St. Rose Parkway, Suite 107 Henderson, NV 89074	Lake At Las Vegas Joint Venture, Inc. 1600 Lake Las Vegas Parkway Henderson, NV 89011
19		
20	Casa De Warm Springs, LLC 1000 North Green Valley Parkway, #440-350 Henderson, NV 89074	Laker Plaza, Inc. 7181 Noon Road Everson, WA 98247-9650
21		
22	William O'Donnell 2780 S. Jones Blvd., Suite 210 Las Vegas, NV 89146	Pacific Coast Building Products, Inc. P.O. Box 364329 Las Vegas, NV 89036
23		
24	S & R, Inc. 808 Shetland Road Las Vegas, NV 89107	Technichrome 4709 Compass Bow Lane Las Vegas, NV 89130

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Kelly Kolhoss P.O. Box 232 Moapa, NV 89025	Larry Brundy P.O. Box 136 Moapa, NV 89025
Don J. & Marsha L. Davis P.O. Box 400 Moapa, NV 89025	Mary K. Cloud P.O. Box 31 Moapa, NV 89025

/s/ Sharon Stice
An employee of Kaempfer Crowell

EXHIBIT 1

EXHIBIT 1

**Document (Order 1309) Located at JA Vol. 2 at
JA326 through JA393**

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Attorneys for Coyote Springs Investment, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS VALLEY WATER DISTRICT,
and SOUTHERN NEVADA WATER
AUTHORITY

Petitioners,

v.

TIM WILSON, P.E., Nevada State
Engineer, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES

Respondent.

Case No.: A-20-816761-C

Dept. No.: 19

ORDER GRANTING CONSOLIDATION


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Sullivan & Brust
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Upon Stipulation made and entered into by, between and among all Petitioners who have filed Petitions for Judicial Review challenging the State Engineer's Order 1309 and good cause appearing,

IT IS HEREBY ORDERED that all pending cases specified in the Stipulation for Consolidation filed herein on July 29, 2020, be consolidated into this matter for joint administration with each Petitioner retaining its individual and distinct factual and legal characteristics.

Dated this 17th day of August, 2020.



DISTRICT COURT JUDGE 

Respectfully submitted by:

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/s/ Kent R. Robison

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DISTRICT COURT
CLARK COUNTY, NEVADA

21 LAS VEGAS VALLEY WATER DISTRICT,
22 and SOUTHERN NEVADA WATER
23 AUTHORITY

24 Petitioners,
25 v.

26 TIM WILSON, P.E., Nevada State Engineer,
27 DIVISION OF WATER RESOURCES,
28 DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES

Respondent.

/ IN THE MATTER OF THE PETITION OF
COYOTE SPRINGS INVESTMENT, LLC
_____ /

Case No.: A-20-816761-C (Lead Case)
Dept. No.: 19

**ORDER APPROVING JOINT
STIPULATION FOR JOINT
INTERVENTION**

CONSOLIDATED WITH:

Case No.: A-20-817765-P (Sub Case)
Dept. No.: 19

1 IN THE MATTER OF THE PETITION OF
2 APEX HOLDING COMPANY, LLC

Case No.: A-20-817840-P (Sub Case)
Dept. No.: 19

3 IN THE MATTER OF THE PETITION OF
4 CENTER FOR BIOLOGICAL DIVERSITY

Case No.: A-20-817876-P (Sub Case)
Dept. No.: 19

5
6 IN THE MATTER OF THE PETITION OF
7 MUDDY VALLEY IRRIGATION COMPANY

Case No.: A-20-817977-P (Sub Case)
Dept. No.: 19

8
9 IN THE MATTER OF THE PETITION OF
10 NEVADA COGENERATION ASSOCIATES
11 NOS. 1 AND 2

Case No.: A-20-818015-P (Sub Case)
Dept. No.: 19

12 IN THE MATTER OF THE PETITION OF
13 GEORGIA-PACIFIC GYPSUM, LLC AND
14 REPUBLIC ENVIRONMENTAL
TECHNOLOGIES, INC.

Case No.: A-20-818069-P (Sub Case)
Dept. No.: 19

15 **ORDER APPROVING JOINT STIPULATION FOR JOINT INTERVENTION**

16 The parties to the consolidated actions (Case Nos. A-20-816761-C (lead case),
17 A-20-817765-P, A-20-817840-P, A-20-817876-P, A-20-817977-P, A-20-818015-P, and
18 A-20-818069-P) have stipulated that each party can be an intervener in each of the
19 other parties' actions pursuant to NRCP 24(a) and NRCP 24(b).

20 Good cause appearing, IT IS SO ORDERED.

21 Dated this 14th day of Sept, 2020.

22
23
24 
DISTRICT COURT JUDGE

25 Respectfully submitted by:

26 ROBISON, SHARP, SULLIVAN & BRUST
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/s/ Kent R. Robison
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9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 LAS VEGAS VALLEY WATER
DISTRICT, and SOUTHERN NEVADA
12 WATER AUTHORITY,

13 Petitioners,

14 vs.

15 TIM WILSON, P.E., Nevada State
Engineer, DIVISION OF WATER
16 RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
17 RESOURCES,

18 Respondent.

19 And All Consolidated Cases.
20

Case No. A-20-816761-C

Dept. No. 19

Consolidated with:

A-20-817765-P

A-20-818015-P

A-20-817977-P

A-20-818069-P

A-20-817840-P

A-20-817876-P

21 **SUMMARY OF RECORD ON APPEAL**

22 Tim Wilson, P.E., State Engineer, in his capacity as the Nevada State Engineer,
23 Department of Conservation and Natural Resources, Division of Water Resources
24 (hereafter "State Engineer"), by and through counsel, Nevada Attorney General Aaron D.
25 Ford, Senior Deputy Attorney General James N. Bolotin, and Deputy Attorney General
26 Laena St-Jules hereby files this Summary of Record on Appeal.

27 The attached documents constitute the record on appeal in this matter of the Nevada
28 State Engineer, Bates-stamped pages SE ROA 1-54988.

Index to Administrative Record re: Order 1309

NO.	DATE	DESCRIPTION	Bates Range SE ROA	
Certificate of Record				
0.	07/27/20	Certificate of Record	1	1
Order 1309				
1.	06/15/20	Order 1309	2	69
Interim Order 1303				
2.	01/11/19	Interim Order 1303	70	88
Requested Exceptions to Interim Order 1303				
3.	2018	Large Lot Final Map of Coyote Springs Village A	89	109
4.	09/07/18	Tentative Subdivision Review No. 13216-T Permit None	110	113
5.	09/12/18	Correspondence from Las Vegas Valley Water District (LVVWD) to Division of Water Resources (DWR) re Water Availability for Residential Subdivision Map	114	114
6.	2019	Water Use/License Agreement	115	124
7.	04/30/19	Correspondence from DWR to Dry Lake Water re Groundwater in the Apex Area and State Engineer Interim Order 1303	125	126
8.	05/31/19	Technical Report 053119.0	127	207
9.	06/13/19	Correspondence from Coyote Springs Land to DWR re Submittal pursuant to Nevada State Engineer Interim Order 1303	208	209
10.	06/06/19	Memo to file from State Engineer re Permit 83553	210	210
Prehearing Filings				
All dated Documents in Chronological Order, Through and Including 09/27/19, Notice of Entry of Order Admitting Berley and Baldwin				
11.	04/26/19	Correspondence from US Dept of the Interior to State Engineer re Request for an Extension of Time to the Report and Rebuttal Submission Dates Pursuant to Order No. 1303	211	211

Index to Administrative Record re: Order 1309

NO.	DATE	DESCRIPTION	Bates Range SE ROA	
12.	05/02/19	Correspondence from DWR to Stakeholders re Request for extension of deadlines in State Engineer Interim Order 1303	212	215
13.	05/02/19	Correspondence from Coyote Springs to State Engineer re Interim Order 1301; U.S. Fish & Wildlife Service May 2, 2019 letter	216	216
14.	05/02/09	Email re request for comments on extension of deadlines in State Engineer Interim Order 1303	217	218
15.	05/09/19	Email re response from Apex Industrial Park	219	220
16.	05/06/19	Email re 1303 extension	221	221
17.	05/08/19	Correspondence from Taggart & Taggart to State Engineer re Request for Extension of Deadlines in State Engineer Interim Order 1303	222	223
18.	07/26/19	Correspondence from Alex Flangas to State Engineer re Notice of Nevada Cogeneration Associates Nos. 1 and 2 of intent to participate in pre-hearing and hearing on LWRFS	224	224
19.	08/18/19	Email re GBWN not appearing at LWRFS hearing	225	225
20.	08/20/19	NV Energy's Motion for Extension of Time to File Reply Comments Pursuant to NRCP (6)(b)(1)(B)(ii)	226	256
21.	08/21/19	Order Granting NV Energy's Motion for Extension of Time to File Reply Comments	257	261
22.	08/23/19	Notice of Hearing	262	282
23.	08/26/19	Correspondence from DWR re Amended Notice of Hearing regarding Order 1303	283	283
24.	08/26/19	Amended Notice of Hearing	284	301
25.	08/27/19	Notice of Appearance on Behalf of Coyote Springs Investment, LLC	302	305
26.	08/28/19	Coyote Springs Investment, LLC's Request for Reconsideration and Revision of State Engineer's Notice of Hearing	306	309

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
27.	08/28/19	Notice of Appearance of Lincoln County Water District and Vidler Water Company, Inc.	310	314
28.	08/29/19	Email re Procedural Questions relating to Order 1303	315	318
29.	08/30/19	Notice of Appearance on Behalf of Georgia Pacific Corporation	319	321
30.	08/30/19	Motion to Associate Counsel (Georgia Pacific Corporation)	322	345
31.	09/05/19	Notice of Appearance of Counsel for The United States Department of the Interior Fish and Wildlife Service and National Park Service	346	355
32.	09/05/19	Notice of Appearance on Behalf of Moapa Valley Water District	356	358
33.	09/05/19	Notice of Appearance on Behalf of NV Energy	359	362
34.	09/06/19	Notice of Appearance for Patrick Donnelly, an agent of the Center for Biological Diversity	363	364
35.	09/06/19	Notice of Appearance of Counsel for City of North Las Vegas	365	367
36.	09/06/19	Notice of Appearance on Behalf of Muddy Valley Irrigation Company	368	370
37.	09/06/19	Notice of Appearance of Counsel for Nevada Cogeneration Associates Nos. 1 and 2	371	375
38.	09/06/19	Notice of Appearance on Behalf of 3335 Hillside LLC	376	378
39.	09/06/19	Order Denying Request for Reconsideration and Revision of State Engineer's Notice of Hearing	379	383
40.	09/06/19	Notice of Appearance on Behalf of Republic Environmental Technologies, Inc.	384	386
41.	09/06/19	Notice of Appearance (Southern Nevada Water Authority and Las Vegas Valley Water District)	387	391

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
42.	09/06/19	Notice of Appearance of Counsel for Western Elite Environmental, Inc. and Bedroc Limited, LLC	392	395
43.	09/10/19	Notice of Appearance of Counsel for the Church of Jesus Christ of Latter-Day Saints	396	399
44.	09/13/19	Notice of Appearance of Therese M. Shanks, Esq. on behalf of Coyote Springs Investment, LLC	400	403
45.	09/13/19	Coyote Springs Investment, LLC's Objection to Certain Disclosed Scopes of Testimony	404	410
46.	09/13/19	Notice of Appearance on Behalf of Georgia Pacific Corporation	411	413
47.	09/13/19	Lincoln County Water District and Vidler Water Company, Inc.'s Objections to Proffered Experts and Exhibits	414	420
48.	09/13/19	Notice of Appearance (Moapa Band of Paiutes)	421	424
49.	09/23/19	Order Admitting to Practice (Beth Baldwin and Richard Berley)	425	426
50.	09/13/19	Notice of Non-Opposition to Georgia Pacific Corporation's August 30, 2019, Motion to Associate Counsel	427	431
51.	09/13/19	Southern Nevada Water Authority and Las Vegas Valley Water District's Objections to Various Parties' Proposed Evidence	432	440
52.	09/16/19	Georgia Pacific Corporation and Republic Environmental Technologies' Response to Southern Nevada Water Authority and Las Vegas Valley Water District's Objections to Various Parties Proposed Evidence	441	443
53.	09/19/19	Correspondence from Schroeder Law Offices to DWR re Western Elite Environmental, Inc. and Bedroc Limited, LLC In the Matter of the Administration and Management of the Lower White River Flow System Amendment by Deletion: Exhibit: Bedroc Ex. No. 21	444	444
54.	09/19/19	Motion to Associate Counsel (Moapa Band of Paiutes)	445	483

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
55.	09/19/19	Errata to the Exhibit 7 of Nevada Cogeneration Associates Nos. 1 & 2 (“NAC”)	484	486
56.	09/27/19	Notice of Entry of Order Admitting to Practice	487	493
Addendum to Interim Order 1303 Modifying Schedule				
57.	05/13/19	Addendum to Interim Order 1303	494	512
Prehearing Conference Notice of Prehearing Conference				
58.	07/25/19	Notice of Pre-Hearing Conference	513	518
Transcript – Pre-Hearing Conference				
59.	08/08/19	Transcript of Proceedings – Pre-Hearing Conference	519	552
Hearing Documents Hearing Schedule				
60.	09/23/19	Order 1303 Hearing Schedule Matrix	553	553
LWRFS Recording Links				
61.	09/23/19	LWRFS Recording Links	554	554
LWRFS Scheduling Order Exhibit A Amended 10-4 with Sign-In Sheets				
62.	N/A	Amended Exhibit A – Documents and Records of the Nevada State Engineer Which Administrative Notice is Taken for the Purposes of the Order 1303 Administrative Hearing	555	566
Witness Qualification Order on Objections and Witnesses				
63.	09/16/19	Order on Objections to Witnesses and Evidence	567	572
Sign-In Sheet				
64.	09/19/19	Sign-In Sheet	573	574

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
Witness Qualification Transcript				
65.	09/19/19	Transcript of Proceedings – Hearing on Objections to Witnesses and Evidence	575	634
Nevada State Engineer’s (“NSE”) Exhibits				
66.	01/11/19	NSE Ex 1 – Interim Order 1303	635	653
67.	12/21/12	NSE Ex 2 – Order 1169A	654	658
68.	03/08/02	NSE Ex 3 – Order 1169	659	669
69.	04/24/90	NSE Ex 4 – Order 1026	670	672
70.	04/24/90	NSE Ex 5 – Order 1025	673	675
71.	04/24/90	NSE Ex 6 – Order 1024	676	678
72.	04/24/90	NSE Ex 7 – Order 1023	679	681
73.	11/22/89	NSE Ex 8 – Order 1018	682	686
74.	08/21/85	NSE Ex 9 – Order 905	687	691
75.	11/23/82	NSE Ex 10 – Order 803	692	697
76.	07/14/71	NSE Ex 11 – Order 392	698	698
77.	02/02/07	NSE Ex 12 – Ruling 5712	699	721
78.	04/29/09	NSE Ex 13 – Ruling 5987	722	725
79.	01/29/14	NSE Ex 14 – Ruling 6254	726	754
80.	01/29/14	NSE Ex 15 – Ruling 6255	755	785
81.	01/29/14	NSE Ex 16 – Ruling 6256	786	815
82.	01/29/14	NSE Ex 17 – Ruling 6257	816	847
83.	01/29/14	NSE Ex 18 – Ruling 6258	848	884
84.	01/29/14	NSE Ex 19 – Ruling 6259	885	905
85.	01/29/14	NSE Ex 20 – Ruling 6260	906	928
86.	01/29/14	NSE Ex 21 – Ruling 6261	929	948

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
87.	N/A	NSE Ex 22 – Hydrographic Abstracts Lower Meadow Valley Wash (Basin 205)	949	991
88.	N/A	NSE Ex 23 – Hydrographic Abstracts Kane Springs Valley (Basin 206)	992	994
89.	N/A	NSE Ex 24 – Hydrographic Abstracts Coyote Springs Valley (Basin 210)	995	1007
90.	N/A	NSE Ex 25 – Hydrographic Abstracts Black Mountains Area (Basin 215)	1008	1020
91.	N/A	NSE Ex 26 – Hydrographic Abstracts Garnet Valley (Basin 216)	1021	1036
92.	N/A	NSE Ex 27 – Hydrographic Abstracts Hidden Valley (Basin 217)	1037	1039
93.	N/A	NSE Ex 28 – Hydrographic Abstract California Wash (Basin 218)	1040	1045
94.	N/A	NSE Ex 29 – Hydrographic Abstract Muddy River Springs Area (Basin 219)	1046	1061
95.	N/A	NSE Ex 30 – Hydrographic Area Summary Lower Meadow Valley Wash (Basin 205)	1062	1062
96.	N/A	NSE Ex 31 – Hydrographic Area Summary Kane Springs Valley (Basin 206)	1063	1063
97.	N/A	NSE Ex 32 – Hydrographic Area Summary Coyote Spring Valley (Basin 210)	1064	1064
98.	N/A	NSE Ex 33 – Hydrographic Area Summary Black Mountains Area (Basin 215)	1065	1065
99.	N/A	NSE Ex 34 – Hydrographic Area Summary Garnet Valley (Basin 216)	1066	1066
100.	N/A	NSE Ex 35 – Hydrographic Area Summary Hidden Valley (Basin 217)	1067	1067
101.	N/A	NSE Ex 36 – Hydrographic Area Summary California Wash (Basin 218)	1068	1068
102.	N/A	NSE Ex 37 – Hydrographic Area Summary Muddy River Springs Area (Basin 219)	1069	1069

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
103.	2005	NSE Ex 38 – Groundwater Pumpage Inventory Coyote Spring Valley, No. 210 2005	1070	1070
104.	2006	NSE Ex 39 – Groundwater Pumpage Inventory Coyote Springs Valley, No. 210 2006	1071	1072
105.	2007	NSE Ex 40 – Groundwater Pumpage Inventory Coyote Springs Valley, No. 210 2007	1073	1074
106.	2008	NSE Ex 41 – Groundwater Pumpage Inventory Coyote Springs Valley, No. 210 2008	1075	1076
107.	2009	NSE Ex 42 – Groundwater Pumpage Inventory Coyote Springs Valley, No. 210 2009	1077	1078
108.	2010	NSE Ex 43 – Groundwater Pumpage Inventory Coyote Springs Valley, No. 210 2010	1079	1081
109.	2011	NSE Ex 44 – Groundwater Pumpage Inventory Coyote Springs Valley, No. 210 2011	1082	1084
110.	2012	NSE Ex 45 – Groundwater Pumpage Inventory Coyote Springs Valley, No. 210 2012	1085	1087
111.	2013	NSE Ex 46 – Groundwater Pumpage Inventory Coyote Springs Valley, No. 210 2013	1088	1108
112.	2014	NSE Ex 47 – Groundwater Pumpage Inventory Coyote Springs Valley, No. 210 2014	1109	1128
113.	2015	NSE Ex 48 – Groundwater Pumpage Inventory Coyote Springs Valley, No. 210 2015	1129	1147
114.	2016	NSE Ex 49 – Groundwater Pumpage Inventory Coyote Springs Valley, No. 210 2016	1148	1165

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
115.	2017	NSE Ex 50 – Groundwater Pumpage Inventory Coyote Springs Valley, No. 210 2017	1166	1183
116.	2001	NSE Ex 51 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2001	1184	1185
117.	2002	NSE Ex 52 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2002	1186	1188
118.	2003	NSE Ex 53 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2003	1189	1191
119.	2004	NSE Ex 54 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2004	1192	1193
120.	2005	NSE Ex 55 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2005	1194	1195
121.	2006	NSE Ex 56 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2006	1196	1198
122.	2007	NSE Ex 57 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2007	1199	1201
123.	2008	NSE Ex 58 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2008	1202	1204
124.	2009	NSE Ex 59 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2009	1205	1207
125.	2010	NSE Ex 60 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2010	1208	1210
126.	2011	NSE Ex 61 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2011	1211	1213

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
127.	2012	NSE Ex 62 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2012	1214	1216
128.	2013	NSE Ex 63 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2013	1217	1232
129.	2014	NSE Ex 64 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2014	1233	1248
130.	2015	NSE Ex 65 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2015	1249	1264
131.	2016	NSE Ex 66 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2016	1265	1279
132.	2017	NSE Ex 67 – Groundwater Pumpage Inventory Black Mountains Area, No. 215 2017	1280	1294
133.	2001	NSE Ex 68 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2001	1295	1296
134.	2002	NSE Ex 69 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2002	1297	1299
135.	2003	NSE Ex 70 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2003	1300	1302
136.	2004	NSE Ex 71 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2004	1303	1304
137.	2005	NSE Ex 72 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2005	1305	1306
138.	2006	NSE Ex 73 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2006	1307	1309
139.	2007	NSE Ex 74 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2007	1310	1312
140.	2008	NSE Ex 75 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2008	1313	1315

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
141.	2009	NSE Ex 76 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2009	1316	1318
142.	2010	NSE Ex 77 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2010	1319	1322
143.	2011	NSE Ex 78 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2011	1323	1326
144.	2012	NSE Ex 79 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2012	1327	1330
145.	2013	NSE Ex 80 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2013	1331	1347
146.	2014	NSE Ex 81 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2014	1348	1364
147.	2015	NSE Ex 82 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2015	1365	1381
148.	2016	NSE Ex 83 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2016	1382	1396
149.	2017	NSE Ex 84 – Groundwater Pumpage Inventory Garnet Valley, No. 216 2017	1397	1412
150.	2016	NSE Ex 85 – Groundwater Pumpage Inventory California Wash, No. 218 2016	1413	1426
151.	2017	NSE Ex 86 – Groundwater Pumpage Inventory California Wash, No. 218 2017	1427	1440
152.	08/17/16	NSE Ex 87 – Groundwater Pumpage Inventory Muddy River Springs Area (Upper Moapa Valley) 2016	1441	1470
153.	09/22/17	NSE Ex 88 –Groundwater Pumpage Inventory Muddy River Springs Area (Upper Moapa Valley) 2017	1471	1499
154.	N/A	NSE Ex 89 – Water Level Data 205 S14 E66 15CAD1 Lower Meadow Valley Wash	1500	1502
155.	N/A	NSE Ex 90 – Water Level Data 205 S14 E66 22DCAD1 Lower Meadow Valley Wash	1503	1507
156.	N/A	NSE Ex 91 – Water Level Data 205 S14 E66 35CABA1 Lower Meadow Valley Wash	1508	1512

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157.	N/A	NSE Ex 92 – Water Level Data 205 S12 E66 12BBBD1 Lower Meadow Valley Wash	1513	1516
158.	N/A	NSE Ex 93 – Water Level Data 205 S12 E66 12BBBD2 Lower Meadow Valley Wash	1517	1520
159.	N/A	NSE Ex 94 – Water Level Data 205 S12 E66 12BBBD3 Lower Meadow Valley Wash	1521	1523
160.	N/A	NSE Ex 95 – Water Level Data 205 S14 E66 04DB1 Lower Meadow Valley Wash	1524	1525
161.	N/A	NSE Ex 96 – Water Level Data 205 S14 E66 22DC1 Lower Meadow Valley Wash	1526	1528
162.	N/A	NSE Ex 97 – Water Level Data 205 S14 E66 26CD1 Lower Meadow Valley Wash	1529	1531
163.	N/A	NSE Ex 98 – Water Level Data 205 S14 E66 26CDAB1 Lower Meadow Valley Wash	1532	1536
164.	N/A	NSE Ex 99 – Water Level Data 205 S14 E66 26CDBA1 Lower Meadow Valley Wash	1537	1541
165.	N/A	NSE Ex 100 – Water Level Data 205 S14 E66 26DDCD1 Lower Meadow Valley Wash	1542	1546
166.	N/A	NSE Ex 101 – Water Level Data 205 S14 E66 34ACDA1 Lower Meadow Valley Wash	1547	1551
167.	N/A	NSE Ex 102 – Water Level Data 205 S14 E66 35BDAB1 Lower Meadow Valley Wash	1552	1556
168.	N/A	NSE Ex 103 – Water Level Data 205 S14 E66 35CA1 Lower Meadow Valley Wash	1557	1562
169.	N/A	NSE Ex 104 – Water Level Data 205 S14 E66 CABA2 Lower Meadow Valley Wash	1563	1567
170.	N/A	NSE Ex 105 – Water Level Data 205 S14 E66 35CACCC1 Lower Meadow Valley Wash	1568	1572
171.	N/A	NSE Ex 106 – Water Level Data 205 S14 E66 35DACC1 Lower Meadow Valley Wash	1573	1577
172.	N/A	NSE Ex 107 – Water Level Data 205 S14 E66 35DD 1 Lower Meadow Valley Wash	1578	1580

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173.	N/A	NSE Ex 108 – Water Level Data 206 S11 E64 06CACCC1 Kane Springs	1581	1585
174.	N/A	NSE Ex 109 – Water Level Data 210 S10 E62 25ACAD1 Coyote Spring Valley	1586	1678
175.	N/A	NSE Ex 110 – Water Level Data 210 S10 E62 25CBCC1 Coyote Spring Valley	1679	1684
176.	N/A	NSE Ex 111 – Water Level Data 210 S11 E62 13BDDC1 Coyote Spring Valley	1685	1686
177.	N/A	NSE Ex 112 – Water Level Data 210 S11 E62 24BA2 Coyote Spring Valley	1687	1689
178.	N/A	NSE Ex 113 – Water Level Data 210 S11 E62 24BD1 Coyote Spring Valley	1670	1691
179.	N/A	NSE Ex 114 – Water Level Data 210 S11 E62 24DB1 Coyote Spring Valley	1692	1693
180.	N/A	NSE Ex 115 – Water Level Data 210 S11 E63 13CBAB1 Coyote Spring Valley	1694	1745
181.	N/A	NSE Ex 116 – Water Level Data 210 S11 E63 19ABAA1 Coyote Spring Valley	1746	1802
182.	N/A	NSE Ex 117 – Water Level Data 210 S11 E63 21ABCA1 Coyote Spring Valley	1803	1855
183.	N/A	NSE Ex 118 – Water Level Data 210 S12 E63 29ADCC1 Coyote Spring Valley	1856	1861
184.	N/A	NSE Ex 119 – Water Level Data 210 S12 E63 29DABC1 Coyote Spring Valley	1862	1937
185.	N/A	NSE Ex 120 – Water Level Data 210 S13 E63 05ABCC1 Coyote Spring Valley	1938	1950
186.	N/A	NSE Ex 121 – Water Level Data 210 S13 E63 10DCCA1 Coyote Spring Valley	1951	1991
187.	N/A	NSE Ex 122 – Water Level Data 210 S13 E63 11BACD1 Coyote Spring Valley	1992	1996
188.	N/A	NSE Ex 123 – Water Level Data 210 S13 E63 11BCCC1 Coyote Spring Valley	1997	2105

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189.	N/A	NSE Ex 124 – Water Level Data 210 S13 E63 22DCAC1 Coyote Spring Valley	2106	2125
190.	N/A	NSE Ex 125 – Water Level Data 210 S13 E63 23BAAB1 Coyote Spring Valley	2126	2173
191.	N/A	NSE Ex 126 – Water Level Data 210 S13 E63 23DDDC1 Coyote Springs Valley	2174	2185
192.	N/A	NSE Ex 127 – Water Level Data 210 S13 E63 25BDBB1 Coyote Spring Valley	2186	2293
193.	N/A	NSE Ex 128 – Water Level Data 210 S13 E63 26AAAA1 Coyote Spring Valley	2294	2372
194.	N/A	NSE Ex 129 – Water Level Data 210 S13 E63 26AABD1 Coyote Spring Valley	2373	2404
195.	N/A	NSE Ex 130 – Water Level Data 210 S13 E64 31DAAD1 Coyote Spring Valley	2405	2411
196.	N/A	NSE Ex 131 – Water Level Data 210 S14 E62 01ADB1 Coyote Spring Valley	2412	2487
197.	N/A	NSE Ex 132 – Water Level Data 210 S14 E63 28ACDC1 Coyote Spring Valley	2488	2492
198.	N/A	NSE Ex 133 – Water Level Data 210 S15 E63 03BBCC1 Coyote Spring Valley	2493	2573
199.	N/A	NSE Ex 134 – Water Level Data 215 S19 E63 13AADD1 Black Mountains Area	2574	2577
200.	N/A	NSE Ex 135 – Water Level Data 215 S19 E63 13ABCB1 Black Mountains Area	2578	2605
201.	N/A	NSE Ex 136 – Water Level Data 215 S19 E63 13DAAB1 Black Mountains Area	2606	2607
202.	N/A	NSE Ex 137 – Water Level Data 215 S19 E63 13DACA1 Black Mountains Area	2608	2609
203.	N/A	NSE Ex 138 – Water Level Data 215 S19 E63 13DCAA1 Black Mountains Area	2610	2616
204.	N/A	NSE Ex 139 – Water Level Data 215 S20 E65 08CDBA1 Black Mountains Area	2617	2619

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205.	N/A	NSE Ex 140 – Water Level Data 215 S20 E65 08DCAA1 Black Mountains Area	2620	2622
206.	N/A	NSE Ex 141 – Water Level Data 216 S16 E64 19DCDB1 Garnet Valley	2623	2683
207.	N/A	NSE Ex 142 – Water Level Data 216 S17 E63 32AABA1 Garnet Valley	2684	2780
208.	N/A	NSE Ex 143 – Water Level Data 216 S17 E63 32CCCB1 Garnet Valley	2781	2782
209.	N/A	NSE Ex 144 – Water Level Data 216 S17 E63 333CBCB1 Garnet Valley	2783	2784
210.	N/A	NSE Ex 145 – Water Level Data 216 S17 E64 09DDCD1 Garnet Valley	2785	2805
211.	N/A	NSE Ex 146 – Water Level Data 216 S17 E64 10CBCC1 Garnet Valley	2806	2819
212.	N/A	NSE Ex 147 – Water Level Data 216 S17 E64 21CBBD1 Garnet Valley	2820	2828
213.	N/A	NSE Ex 148 – Water Level Data 216 S17 E64 21CCAB1 Garnet Valley	2829	2832
214.	N/A	NSE Ex 149 – Water Level Data 216 S18 E63 04CBBA1 Garnet Valley	2833	2923
215.	N/A	NSE Ex 150 – Water Level Data 216 S18 E63 05AADB1 Garnet Valley	2924	2929
216.	N/A	NSE Ex 151 – Water Level Data 216 S18 E63 05DBCA1 Garnet Valley	2930	2934
217.	N/A	NSE Ex 152 – Water Level Data 216 S18 E63 05DBCD1 Garnet Valley	2935	2939
218.	N/A	NSE Ex 153 – Water Level Data 216 S18 E63 15AACC1 Garnet Valley	2940	2945
219.	N/A	NSE Ex 154 – Water Level Data 216 S18 E63 15AACD1 Garnet Valley	2946	2954
220.	N/A	NSE Ex 155 – Water Level Data 216 S18 E63 27ACAD1 Garnet Valley	2955	2978

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221.	N/A	NSE Ex 156 – Water Level Data 216 S18 E64 07DDCC1 Garnet Valley	2979	2980
222.	N/A	NSE Ex 157 – Water Level Data 216 S18 E64 18ACDB1 Garnet Valley	2981	2983
223.	N/A	NSE Ex 158 – Water Level Data 216 S18 E64 20BABA1 Garnet Valley	2984	2986
224.	N/A	NSE Ex 159 – Water Level Data 218 S15 E65 09DDDD1 Hidden Valley	2987	3052
225.	N/A	NSE Ex 160 – Water Level Data 217 S16 E63 09DDAB1 Hidden Valley	3053	3055
226.	N/A	NSE Ex 161 – Water Level Data 218 S15 E66 31DACA1 California Wash	3056	3115
227.	N/A	NSE Ex 162 – Water Level Data 218 S16 E64 02ABCD1 California Wash	3116	3116
228.	N/A	NSE Ex 163 – Water Level Data 218 S16 E64 15AAAA1 California Wash	3117	3166
229.	N/A	NSE Ex 164 – Water Level Data 218 S16 E64 15AADD1 California Wash	3167	3187
230.	N/A	NSE Ex 165 – Water Level Data 218 S16 E64 15ADAA1 California Wash	3188	3252
231.	N/A	NSE Ex 166 – Water Level Data 218 S16 E64 34CDBC1 California Wash	3253	3305
232.	N/A	NSE Ex 167 – Water Level Data 219 S13 E64 35DCAD1 Muddy River Springs Area	3306	3399
233.	N/A	NSE Ex 168 – Water Level Data 219 S13HE64 33DBBC1 Muddy River Springs Area	3400	3472
234.	N/A	NSE Ex 169 – Water Level Data 219 S14 E65 07ADDA1 Muddy River Springs Area	3473	3528
235.	N/A	NSE Ex 170 – Water Level Data 219 S14 E65 07ADDA2 Muddy River Springs Area	3529	3539
236.	N/A	NSE Ex 171 – Water Level Data 219 S14 E65 08AB1 Muddy River Springs Area	3540	3540

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237.	N/A	NSE Ex 172 – Water Level Data 219 S14 E65 08AB2 Muddy River Springs Area	3541	3570
238.	N/A	NSE Ex 173 – Water Level Data 219 S14 E65 08ABBD1 Muddy River Springs Area	3571	3574
239.	N/A	NSE Ex 174 – Water Level Data 219 S14 E65 08AC1 Muddy River Springs Area	3575	3576
240.	N/A	NSE Ex 175 – Water Level Data 219 S14 E65 08AC2 Muddy River Springs Area	3577	3629
241.	N/A	NSE Ex 176 – Water Level Data 219 S14 E65 08ADBB1 Muddy River Springs Area	3630	3632
242.	N/A	NSE Ex 177 – Water Level Data 219 S14 E65 08BD1 Muddy River Springs Area	3633	3678
243.	N/A	NSE Ex 178 – Water Level Data 219 S14 E65 08BDBD1 Muddy River Springs Area	3679	3735
244.	N/A	NSE Ex 179 – Water Level Data 219 S14 E65 08BDCC1 Muddy River Springs Area	3736	3740
245.	N/A	NSE Ex 180 – Water Level Data 219 S14 E65 08DB1 Muddy River Springs Area	3741	3749
246.	N/A	NSE Ex 181 – Water Level Data 219 S14 E65 08DB2 Muddy River Springs Area	3750	3750
247.	N/A	NSE Ex 182 – Water Level Data 219 S14 E65 08DD1 Muddy River Springs Area	3751	3759
248.	N/A	NSE Ex 183 – Water Level Data 219 S14 E65 09CA1 Muddy River Springs Area	3760	3813
249.	N/A	NSE Ex 184 – Water Level Data 219 S14 E65 09CBCC1 Muddy River Springs Area	3814	3818
250.	N/A	NSE Ex 185 – Water Level Data 219 S14 E65 09CC1 Muddy River Springs Area	3819	3826
251.	N/A	NSE Ex 186 – Water Level Data 219 S14 E65 09CCBC1 Muddy River Springs Area	3827	3831
252.	N/A	NSE Ex 187 – Water Level Data 219 S14 E65 09DC1 Muddy River Springs Area	3832	3836

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253.	N/A	NSE Ex 188 – Water Level Data 219 S14 E65 09DD1 Muddy River Springs Area	3837	3842
254.	N/A	NSE Ex 189 – Water Level Data 219 S14 E65 14CD1 Muddy River Springs Area	3843	3855
255.	N/A	NSE Ex 190 – Water Level Data 219 S14 E65 14CDBB1 Muddy River Springs Area	3856	3856
256.	N/A	NSE Ex 191 – Water Level Data 219 S14 E65 15AC1 Muddy River Springs Area	3857	3864
257.	N/A	NSE Ex 192 – Water Level Data 219 S14 E65 15BBCA1 Muddy River Springs Area	3865	3871
258.	N/A	NSE Ex 193 – Water Level Data 219 S14 E65 16AACD1 Muddy River Springs Area	3872	3875
259.	N/A	NSE Ex 194 – Water Level Data 219 S14 E65 21ACAA1 Muddy River Springs Area	3876	3941
260.	N/A	NSE Ex 195 – Water Level Data 219 S14 E65 22AA1 Muddy River Springs Area	3942	3942
261.	N/A	NSE Ex 196 – Water Level Data 219 S14 E65 22AABB1 Muddy River Springs Area	3943	3981
262.	N/A	NSE Ex 197 – Water Level Data 219 S14 E65 22AABB2 Muddy River Springs Area	3982	3989
263.	N/A	NSE Ex 198 – Water Level Data 219 S14 E65 23AB1 Muddy River Springs Area	3990	3995
264.	N/A	NSE Ex 199 – Water Level Data 219 S14 E65 23BB1 Muddy River Springs Area	3996	4005
265.	N/A	NSE Ex 200 – Water Level Data 219 S14 E65 23BB2 Muddy River Springs Area	4006	4010
266.	N/A	NSE Ex 201 – Water Level Data 219 S14 E65 23BB3 Muddy River Springs Area	4011	4017
267.	N/A	NSE Ex 202 – Water Level Data 219 S14 E65 23BBBB1 Muddy River Springs Area	4018	4024
268.	N/A	NSE Ex 203 – Water Level Data 219 S14 E65 23BC1 Muddy River Springs Area	4025	4027

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269.	N/A	NSE Ex 204 – Water Level Data 219 S14 E66 35DD1 Muddy River Springs Area	4028	4029
270.	N/A	NSE Ex 205 – Nevada Climate Divisional 3, 4 and PRISM Precipitation Data 1985–2012	4030	4049
271.	N/A	NSE Ex 206 – USGS 09415900 Muddy Springs LDS Moapa NV (all data)	4050	4235
272.	N/A	NSE Ex 207 – USGS 09415908 Pederson E. Springs Moapa 2002–2012	4236	4353
273.	N/A	NSE Ex 208 – USGS 09415910 Pederson Springs Moapa 1985–2013	4354	4569
274.	N/A	NSE Ex 209 – USGS 09415920 Warm Springs West 1985–2012	4570	4807
275.	N/A	NSE Ex 210 – USGS 09415927 Warm Springs Confluence at Iverson Flume 2001–10	4808	4911
276.	N/A	NSE Ex 211 – USGS 09416000 Muddy River Moapa 1914–2013	1912	5476
277.	N/A	NSE Ex 212 – USGS Partial Muddy River Springs 11, 12, 13, 19, 15, 16	5477	5588
278.	N/A	NSE Ex 213 – All Order 1169 Water Level Data	5589	7787
279.	N/A	NES Ex 214 – Baldwin Jones Monthly Data 2000–2019	7788	7798
280.	N/A	NSE Ex 215 – Moapa Valley Water District Data Baldwin Jones Daily/Monthly 2010–2012	7799	7854
281.	N/A	NSE Ex 216 – Order 1169 EH4 Data NDWR Dec. 2012	7855	7937
282.	N/A	NSE Ex 217 – Order 1169 Daily Pumpage 2010–2013	7938	8057
283.	N/A	NSE Ex 218 – Order 1169 Monthly Pumpage Data 2000–2012	8058	8104
284.	N/A	NSE Ex 219 – Order 1169 Monthly Pumpage Data 2000–2019	8105	8176
285.	N/A	NSE Ex 220 – Intentionally Omitted	8177	8177

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286.	N/A	NSE Ex 221 – Southern Nevada Water Authority Shallow Monitor Wells Muddy River Springs Area Periodic Measurements 2009–2012	8178	8207
287.	N/A	NSE Ex 222 – Stricken	8208	8208
288.	N/A	NSE Ex 223 – Order 1169 Nevada State Engineer Monitoring Well Site ID and Locations	8209	8214
289.	N/A	NSE Ex 224 – Lower White River Flow System Water Rights by Priority	8215	8227
290.	09/21/16	NSE Ex 225 – 2016 Hydrologic Review Team Annual Determination Report with Appendices	8228	8394
291.	2017	NSE Ex 226 – 2017 Hydrologic Review Team Annual Determination Report with Appendices	8395	8510
292.	N/A	NSE Ex 227 – Lower White River Flow System Water Rights by Priority	8511	8513
293.	08/07/18	NSE Ex 228 – 2018 Hydrologic Review Team Annual Determination Report and Appended Moapa Valley Water District and Moapa Band of Paiutes Reports	8514	8673
294.	2017	NSE Ex 229 – 2016 Southern Nevada Water Authority Muddy River Intentionally Created Surplus Certification Report	8674	8927
295.	11/14/18	NSE Ex 230 – 2017 Southern Nevada Water Authority Muddy River Intentionally Created Surplus Certification Report	8928	9198
296.	2017	NSE Ex 231 – State of Nevada, Nevada Water Resources Water Planning Report No. 3, Water for Nevada, October 1971	9199	9295

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297.	1964	NSE Ex 232 – State of Nevada, Department of Conservation and Natural Resources, Ground-Water Resources – Reconnaissance Series Report 25: Ground-Water Appraisal of Coyote Spring and Kane Spring Valleys and Muddy River Springs Area, Lincoln and Clark Counties, Nevada, by Thomas E. Eakin February 1964	9296	9347
298.	1968	NSE Ex 233 – State of Nevada, Department of Conservation and Natural Resources, Ground-Water Resources – Reconnaissance Series Report 50: Water-Resources Appraisal of the Lower Moapa-Lake Mead Area, Clark County, Nevada, by F. Eugene Rush, December 1968	9348	9422
299.	1978	NSE Ex 234 – State of Nevada, Department of Conservation and Natural Resources, Division of Water Resources, Nevada Water Resources-Informational, Nevada Streamflow Characteristics, October 1978	9423	9896
300.	1966	NSE Ex 235 – State of Nevada, Department of Conservation and Natural Resources, Water Resources Bulletin No. 33, A Regional Interbasin Ground-Water System in the White River Area, Southeastern Nevada, by Thomas E. Eakin 1966	9897	9920
301.	04/20/06	NSE Ex 236 – 2006 Memorandum of Agreement between the Southern Nevada Water Authority, United States Fish and Wildlife Service, Coyote Springs Investment LLC, Moapa Band of Paiute Indians and Moapa Valley Water District	9921	9946
302.	07/12/01	NSE Ex 237 – 2001 Stipulation for Dismissal of Protests between Las Vegas Valley Water District, Southern Nevada Water Authority and Federal Bureaus	9947	9966
303.	04/20/06	NSE Ex 238 – Southern Nevada Water Authority Agenda Item Re: Memorandum of Agreement, Water Supply Agreement and Back-Up Water Rights Agreement	9967	9970
304.	04/18/06	NSE Ex 239 – Las Vegas Valley Water District Board of Directors Agenda Item Re: Water Supply Agreement and Back-Up Water Rights Agreement	9971	9971

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305.	04/13/06	NSE Ex 240 – Letter from Nevada Department of Conservation and Natural Resources Re: Supporting Water Settlement Agreement	9972	9972
306.	04/20/06	NSE Ex 241 – Back-Up Water Rights Agreement Between Southern Nevada Water Authority, Moapa Valley Water District, Moapa Valley Irrigation Company and Moapa Band of Paiute Indians	9973	9984
307.	04/20/06	NSE Ex 242 – Surface Water Lease Between Moapa Valley Irrigation Company and Moapa Band of Paiute Indians	9985	10076
308.	04/20/06	NSE Ex 243 – Water Rights Deed and Indenture Between Las Vegas Valley Water District and Moapa Band of Paiute Indians	10077	10088
309.	N/A	NSE Ex 244 – 2006 Memorandum of Agreement Trigger Levels agreed to by the Southern Nevada Water Authority, Moapa Valley Water District, Coyote Springs Investments LLC and Moapa Band of Paiute Indians	10089	10089
310.	N/A	NSE Ex 245 – Southern Nevada Water Authority Order 1169 Report	10090	10370
311.	06/25/13	NSE Ex 246 – Great Basin Water Network Order 1169 Report	10371	10398
312.	06/14/13	NSE Ex 247 – Coyote Springs Investments, LLC Order 1169 Report	10399	10401
313.	06/27/13	NSE Ex 248 – Center for Biological Diversity Order 1169 Report	10402	10429
314.	2012	NSE Ex 249 – Moapa Valley Water District Order 1169 Report	10430	10478
315.	06/21/13	NSE Ex 250 – Moapa Valley Water District Basin 220 Well Site Analysis	10479	10485
316.	06/24/13	NSE Ex 251 – Moapa Valley Water District Evaluation of MX-5 Pumping Test on Springs and Wells in the Muddy Springs Area	10486	10488

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317.	06/28/13	NSE Ex 252 – Moapa Band of Paiute Indians Order 1169 Report	10489	10566
318.	2001	NSE Ex 253 – Hydrogeologic and Groundwater Modeling Analysis for the Moapa Paiute Energy Center by Mifflin and Associates	10567	10790
319.	1989	NSE Ex 254 – PowerPoint Presentation Re: Lewis Field Production Effects on Groundwater Temperatures	10791	10880
320.	06/27/13	NSE Ex 255 – Cover Letter Federal Bureaus Order 1169 Report	10881	10882
321.	06/28/13	NSE Ex 256 – Federal Bureaus Order 1169 Report	10883	10974
322.	06/28/13	NSE Ex 257 – Federal Bureaus Order 1169 Report Appendix A	10975	10994
323.	2006	NSE Ex 258 – Federal Bureaus Order 1169 Report Selected References: Water-Surface Elevations, Discharge, and Water-Quality Data for Selected Sites in the Warm Springs Area near Moapa, Nevada, Beck et. al., 2006	10995	11234
324.	2001	NSE Ex 259 – Federal Bureaus Order 1169 Report Selected References: Hydraulic-Property Estimates for Use with a Transient Ground-Water Flow Model for the Death Valley Regional Ground-Water Flow System, Nevada and California, Belcher et. al., 2001	11235	11267
325.	2009	NSE Ex 260 – Federal Bureaus Order 1169 Report Selected References: Ground Water Development – The Time to Full Capture Problem, Bredehoeft and Durbin 2009	11268	11276
326.	2007	NSE Ex 261 – Federal Bureaus Order 1169 Report Selected References: It Is the Discharge, Bredehoeft, 2007	11277	11277
327.	2002	NSE Ex 262 – Federal Bureaus Order 1169 Report Selected References: Basic Principles and Ecological Consequences of Altered Flow Regimes for Aquatic Biodiversity, Bunn & Arthington, 2002	11278	11293

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328.	2012	NSE Ex 263 Federal Bureaus Order 1169 Report Selected References: Extinction Rates in North American Freshwater Fishes, 1900–2010, Burkhead, 2012	11294	11305
329.	2010	NSE Ex 264 – Federal Bureaus Order 1169 Report Selected References: The Disconnect Between Restoration Goals and Practices: A Case Study of Watershed Restoration in the Russian River Basin, California, Christian-Smith and Merenlender, 2010	11306	11314
330.	2008	NSE Ex 265 – Federal Bureaus Order 1169 Report Selected References: Quantifying Ground-Water and Surface-Water Discharge from Evapotranspiration Processes in 12 Hydrographic Areas of the Colorado Regional Ground-Water Flow System, Nevada, Utah, and Arizona, Demeo et. al., 2008	11315	11348
331.	1966	NSE Ex 266 – Federal Bureaus Order 1169 Report Selected References: A Regional Interbasin Groundwater System in the White River Area, Southeastern Nevada, Eakin, 1966	11349	11359
332.	2013	NSE Ex 267 – Federal Bureaus Order 1169 Report Selected References: Detecting Drawdowns Masked by environmental Stresses with Water-Level Models, Garcia et. al., 2013	11360	11370
333.	2012	NSE Ex 268 – Federal Bureaus Order 1169 Report Selected References: Advanced Methods for Modeling Water-Levels and Estimating Drawdowns with Series SEE, and Excel Add-In, Halford et. al., 2012	11371	11412
334.	2013	NSE Ex 269 – Federal Bureaus Order 1169 Report Selected References: An Ecohydraulic Model to Identify and Monitor Moapa Dace Habitat, Hatten et. al., 2013	11413	11424
335.	2005	NSE Ex 270 – Federal Bureaus Order 1169 Report Selected References: The Myths of Restoration Ecology, Hilderbrand et. al., 2005	11425	11435

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336.	06/04/13	NSE Ex 271 – Federal Bureaus Order 1169 Report Selected References: Technical Memo Re: Analysis of Evapotranspiration for the Muddy River Springs Area, Huntington et. al., 2013	11436	11486
337.	2006	NSE Ex 272 – Federal Bureaus Order 1169 Report Selected References: The AEM and Regional Carbonate Aquifer Modeling, Johnson and Mifflin, 2006	11487	11497
338.	2008	NSE Ex 273 – Federal Bureaus Order 1169 Report Selected References: Evaluating Climate Variability and Pumping Effects in Statistical Analyses, Mayer and Congdon, 2008	11498	11513
339.	1983	NSE Ex 274 – Federal Bureaus Order 1169 Report Selected References: Vanishing Fishes of North America, Ono et. al., 1983	11514	11519
340.	1992	NSE Ex 275 – Federal Bureaus Order 1169 Report Selected References: Life History, Abundance, and Distribution of Moapa Dace, Scopettone et. al., 1992	11520	11531
341.	2007	NSE Ex 276 – Federal Bureaus Order 1169 Report Selected References: Geology of White Pine and Lincoln Counties and Adjacent Areas, Nevada and Utah: The Geologic Framework of Regional Groundwater Flow Systems, Southern Nevada Water Authority, 2007	11532	11688
342.	2007	NSE Ex 277 – Federal Bureaus Order 1169 Report Selected References: Water-Resources Assessment and Hydrogeologic Report for Gave, Dry Lake, and Delamar Valleys, Southern Nevada Water Authority, 2007	11689	12040
343.	2009	NSE Ex 278 – Federal Bureaus Order 1169 Report Selected References: Hydrologic Data Analysis Report for Test Well 184W105 in Spring Valley Hydrographic Area 184, Southern Nevada Water Authority, 2009	12041	12121
344.	2011	NSE Ex 279 – Federal Bureaus Order 1169 Report Selected References: Warm Springs Natural Area Stewardship Plan, Southern Nevada Water Authority, 2011	12122	12202

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345.	09/28/12	NSE Ex 280 – Federal Bureaus Order 1169 Report Selected References: Development of a Numerical Groundwater Flow Model of Selected Basins within the Colorado Regional Groundwater Flow System, Southeastern Nevada, Tetra Tech 2012	12203	12380
346.	09/28/12	NSE Ex 281 – Federal Bureaus Order 1169 Report Selected References: Predictions of the Effects of Groundwater Pumping in the Colorado Regional Groundwater Flow System Southeastern Nevada, Tetra Tech, 2012	12381	12503
347.	06/10/13	NSE Ex 282 – Federal Bureaus Order 1169 Report Selected References: Comparison of Simulated and Observed Effects of Pumping from MX-5 Using Data Collected to the End of the Order 1169 Test, and Prediction of the Rates of Recovery from the Test, TetraTech,2013	12504	12534
348.	1996	NSE Ex 283 – Federal Bureaus Order 1169 Report Selected References: Geochemistry and Isotope Hydrology of Representative Aquifers in the Great Basin Region of Nevada, Utah, and Adjacent States, Thomas et. al.,1996	12535	12642
349.	03/11/67	NSE Ex 284 – Federal Bureaus Order 1169 Report Selected References: Federal Register, Vol. 32, No. 48, p. 4001, Department of the Interior Fish and Wildlife Service Endangered Species Listing (Moapa Dace), 1967	12643	12643
350.	2013	NSE Ex 285 – Federal Bureaus Order 1169 Report Selected References: United States Fish and Wildlife Service, 2013 Moapa Dace survey data (1994–2013)	12644	12647
351.	N/A	NSE Ex 286 – Federal Bureaus Order 1169 Report Selected References: Analysis and Management of Animal Populations, Modeling, Estimation, and Decision Making, Williams et. al., 2002	12648	12656
352.	2005	NSE Ex 287 – Federal Bureaus Order 1169 Report Selected References: Prospects for Recovering Endemic Fishes Pursuant to the U.S. Endangered Species Act, Williams et. al., 2005	12657	12662

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353.	2009	NSE Ex 288 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement Summary, August 2009	12663	12706
354.	2009	NSE Ex 289 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 1, August 2009	12707	13065
355.	2009	NSE Ex 290 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 2, Appendix A Index	13066	13070
356.	2009	NSE Ex 291 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 2, Appendix B References	13071	13097
357.	2009	NSE Ex 292 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 2, Appendix C List of Preparers	13098	13102

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358.	2009	NSE Ex 293 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 2, Appendix D Distribution List	13103	13120
359.	2009	NSE Ex 294 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 2, Appendix E Laws and Regs	13121	13124
360.	2009	NSE Ex 295 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 2, Appendix F GOS	13125	13187
361.	2009	NSE Ex 296 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 2, Appendix G CDs	13188	13339
362.	2009	NSE Ex 297 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 2, Appendix H Biological Resources	13340	13415

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363.	2009	NSE Ex 298 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 2, Appendix I Wilderness Review	13416	13469
364.	2009	NSE Ex 299 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 2, Appendix J Bighorn Sheep	13470	13475
365.	2009	NSE Ex 300 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 2, Appendix K Implementation	13476	13490
366.	2009	NSE Ex 301 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 2, Appendix L Moapa LPP-CMP	13491	13525
367.	2009	NSE Ex 302 – Federal Bureaus Order 1169 United States Fish and Wildlife Service Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley, and Pahrnagat National Wildlife Refuges, Final Comprehensive Conservation Plan and Environmental Impact Statement, Volume 2, Appendix M Response to Comments	13526	13728
368.	N/A	NSE Ex 303 – Federal Bureaus Order 1169 Detailed Production Data with Checks	13729	13838
369.	N/A	NSE Ex 304 – Federal Bureaus Order 1169 Groundwater level & production data	13839	30175

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370.	N/A	NSE Ex 305 – Federal Bureaus Order 1169 Baldwin Jones Monthly Data 2002–2019	30176	30267
371.	N/A	NSE Ex 306 – Federal Bureaus Order 1169 NV Climate Divisional 3, 4 and PRISM pcp data 1985–2012	30268	30336
372.	N/A	NSE Ex 307 – Federal Bureaus Order 1169 EH4 Data NDWR Dec 2012	30337	30615
373.	N/A	NSE Ex 308 – Federal Bureaus Order 1169 Monthly Pumpage Data 2000–2012	30616	30681
374.	N/A	NSE Ex 309 – Federal Bureaus Order 1169 Southern Nevada water Authority shallow monitor wells MRSA periodic measurements 2009–2012	30682	30762
375.	N/A	NSE Ex 310 – Federal Bureaus Order 1169 Muddy Springs LDS Moapa NV (all data)	30763	31007
376.	N/A	NSE Ex 311 – Federal Bureaus Order 1169 Pederson E. Springs near Moapa 2002–2012	31008	31171
377.	N/A	NSE Ex 312 – Federal Bureaus Order 1169 Pederson Springs near Moapa 1985–2013	31172	31487
378.	N/A	NSE Ex 313 – Federal Bureaus Order 1169 Warm Springs West all data 1985–2012	31488	32190
379.	N/A	NSE Ex 314 – Federal Bureaus Order 1169 Warm Springs Confluence at Iverson Flume 2001–2010	32191	32371
380.	N/A	NSE Ex 315 – Federal Bureaus Order 1169 Muddy River near Moapa all data 1914–2013	32372	32958
381.	02/11/13	NSE Ex 316 – Federal Bureaus Order 1169 Muddy River Springs Partial	32959	33569
382.	02/27/14	NSE Ex 317 – Tetra Tech Cover Letter	33570	33571
383.	12/13/13	NSE Ex 318 – Responses Tetra Tech Model final	33572	33668
384.	03/05/14	NSE Ex 319 – Lincoln County/Vidler Water Company Response to National Park Service	33669	33670

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385.	04/01/10	NSE Ex 320 – Settlement Agreement between the Nevada State Engineer, Lincoln County and Vidler Water Company	33671	33686
386.	03/05/08	NSE Ex 321 – Clearing the Waters: Unraveling Hydrologic Trends in the Muddy River Springs Area, Tim Mayer, U.S. Fish and Wildlife Service, March, 2008, NWRA Annual Meeting	33687	33726
387.	N/A	NSE Ex 322 – Geologic Map of Lincoln County	33727	33727
388.	N/A	NSE Ex 323 – Geologic Map of Clark County	33728	33728
389.	04/26/19	NSE Ex 324 – United States Fish and Wildlife Service Request for Extension of Time to submit Order 1303 Reports	33729	33730
390.	05/02/19	NSE Ex 325 – NDWR Letter Seeking Responses to Request for Extension of Time to submit Order 1303 Reports	33731	33735
391.	05/02/19	NSE Ex 326 – Coyote Springs Investment, LLC Response to Request for Extension of Time to submit Order 1303 Reports	33736	33736
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393.	05/06/19	NSE Ex 328 – Centers for Biological Diversity Response to Request for Extension of Time to submit Order 1303 Reports	33739	33739
394.	05/08/19	NSE Ex 329 – Las Vegas Valley Water District and Southern Nevada Water Authority Response to Request for Extension of Time to submit Order 1303 Reports	33740	33741
395.	05/09/19	NSE Ex 330 – Dry Lake Water Response to Request for Extension of Time to submit Order 1303 Reports	33742	33743
396.	03/05/18	NSE Ex 331 – Memorandum by Stetson Engineer Inc. to Coyote Springs Investment, LLC Re: Review of Nevada State Engineer’s Ruling 6255 and Order 1169 Pumping Test in the Coyote Spring Valley	33744	33752

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397.	12/31/07	NSE Ex 332 – Evaluation of boundary fluxes for the ground-water flow model being prepared as part of the NDPLMA-5 project by James R. Harrill	33753	33769
398.	05/16/56	NSE Ex 333 – Muddy River Decree	33770	33816
399.	08/21/19	NSE Ex 334 – Vidler Water Company Quarterly Update of Ongoing Data Collection in Kane Springs Valley Hydrographic Basin (206)	33817	33834
400.	10/11/11	NSE Ex 335 – Solver WRFS Ruling 6165 6167	33835	33862
401.	09/23/19	NSE Ex 336 – LWRFS Sign-in sheet	33863	33868
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408.	10/02/19	NSE Ex 343 – LWFSR Sign-in sheet	33905	33910
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410.	10/04/19	NSE Ex 345 – LWFRS Sign-in sheet	33917	33922

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411.	09/06/19	Western Elite Environmental, Inc. and Bedrock Limited, Inc. and Bedroc Limited, LLC's Witness List, Summary of Testimony, and Exhibit List	33923	33930
412.	N/A	BEDROC Ex 1 – Jay Dixon Curriculum Vitae	33931	33938

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413.	2019	BEDROC Ex 2 – Interim Order 1303 – Rebuttal Report – Prepared by Bedroc and Dixon Hydrologic, PLLC	33939	33944
414.	10/11/85	BEDROC Ex 3 – NDWR Vested Proof V04545	33945	33947
415.	01/29/14	BEDROC Ex 4 – Application 71031	33948	33951
416.	12/22/14	BEDROC Ex 5 – NDWR Permit 83044	33952	33956
417.	10/04/16	BEDROC Ex 6 – NDWR Permit 85249	33957	33962
418.	10/04/16	BEDROC Ex 7 – NDWR Permit 85250	33963	33968
419.	06/23/15	BEDROC Ex 8 – NDWR Application 85251	33969	33973
420.	06/23/15	BEDROC Ex 9 – NDWR Application 85252	33974	33978
421.	06/23/15	BEDROC Ex 10 – NDWR Application 85253	33979	33983
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424.	11/22/17	BEDROC Ex 13 – NDWR Application 87497	33992	33994
425.	11/22/17	BEDROC Ex 14 – NDWR Application 87498	33995	33997
426.	11/22/17	BEDROC Ex 15 – NDWR Application 87499	33998	34000
427.	11/22/17	BEDROC Ex 16 – NDWR Application 87500	34001	34003
428.	N/A	BEDROC Ex 17 – Select pages from NDWR water right files for V04545, Permit 71031 and Permit 83044	34004	34068
429.	09/13/17	BEDROC Ex 18 – Bedroc Shallow Groundwater Contour and Monitoring Well Location Map	34069	34069
430.	12/10/99	BEDROC Ex 19 – Bedroc Borehole Lithologic and Well Log Summaries	34070	34170
431.	N/A	BEDROC Ex 20 – Bedroc Historical Site Aerial Photos	34171	34177

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432.	2012	BEDROC Ex 21 – Wilson, J.W., 2019, Drilling, construction, water chemistry, water levels, and regional potentiometric surface of the upper carbonate-rock aquifer in Clark County, Nevada, 2009–2015: U.S. Geological Survey Scientific Investigations Map 3434, scale 1:500,000, https://doi.org/10.311/sim3434	34178	34194
433.	2017	BEDROC Ex 22 – Rowley, P.D., G.L. Dixon, E.A. ManKinen, K.T. Pari, D.K. McPhee, E.H. KcKee, A.G. Burns, J.M. Watrus, E.B. Ekren, W.G. Patrick, and J.M. Band, 2017. Geology and geophysics of White Pine and Lincoln counties, Nevada, and adjacent parts of Nevada and Utah – the geologic framework of regional groundwater flow systems. Nevada Bureau of Mines and Geology Report 56. Scale 1:250,000, 4 plates	34195	34345
434.	07/03/19	BEDROC Ex 23 – Assessment of Lower White River Flow System Water Resource Conditions and Aquifer Response. SNWA, June 2019	34346	34488
435.	09/17/19	BEDROC Ex 23a – Transmittal Letter for Ex 23	34489	34489
436.	07/03/19	BEDROC Ex 24 – Center for Biological Diversity. Groundwater Management and the Muddy River Springs, Report in Response to Nevada State Engineer Order 1303. Tom Meyers	34490	34516
437.	08/16/19	BEDROC Ex 25 – Rebuttal Report – Tom Myers	34517	34546
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438.	2019	Witness List, Summary of Witness Testimony, and Exhibit List – Center for Biological Diversity (CBD)	34547	34550
439.	N/A	CBD Ex 1 – Curriculum Vitae for Tom Myers, Ph.D.	34551	34561
440.	N/A	CBD Ex 2 – PowerPoint from Dr. Tom Myers for presentation at the evidentiary hearing	34562	34606

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442.	N/A	CNLV Ex 1 – Dwight L. Smith – Curriculum Vitae and Qualification List	34615	34627
443.	07/02/19	CNLV Ex 2 – Concept Review of Artificial Recharge in Garnet Valley for the APEX Industrial Complex, City of North Las Vegas, Clark County, Nevada – Prepared by Interflow Hydrology, Inc. – July 2019	34628	34650
444.	07/02/19	CNLV Ex 3 – Garnet Valley Groundwater Pumping Review for APEX Industrial Complex, City of North Las Vegas, Clark County, Nevada – Prepared by Interflow Hydrology, Inc.	34651	34703
445.	08/02/19	CNLV Ex 4 – Addendum No. 1 – Garnet Valley Groundwater Pumping Review for APEX Industrial Complex, City of North Las Vegas, Clark County, Nevada	34704	34704
446.	07/02/19	CNLV Ex 5 – City of North Las Vegas Utilities Department: Interim Order 1303 Report Submittal from the City of North Las Vegas	34705	34710
447.	2019	CNLV Ex 6 – Rebuttal Document submitted on behalf of the City of North Las Vegas, to Interim Order 1303 REPORT Submittals of July 3, 2019 – Prepared by Interflow Hydrology	34711	34714
448.	N/A	CNLV Ex 7a – Page, W.R., Dixon, G.L., Rowley, P.D., and Brickey, D.W., 2005, Geological Map of Parts of the Colorado, White River, and Death Valley Groundwater Flow Systems, Nevada, Utah, and Arizona; Nevada Bureau of Mines and Geology, Map 150, 1:250,000 and accompanying Text and References	34715	34715

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449.	N/A	CNLV Ex 7b – Page, W.R., Dixon, G.L., Rowley, P.D., and Brickey, D.W., Test and references to accompany Nevada Bureau of Mines and Geologic Map of Parts of the Colorado, White River, and Death Valley Groundwater Flow Systems	34716	34738
450.	2004	CNLV Ex 8 – Smith, D.L., Johnson, J., Donovan, D., Kistinger, G., and Burns, A., 2004, Climate and Barometric Pressure Influences on Pederson Spring Discharge and the Carbonate Aquifer near the Muddy Springs, Southern Nevada; Journal of the Nevada ATER Sources Association, Fall 2004, p. 76–103	34739	34768
451.	2011	CNLV Ex 9a – Page, W. R., Scheirer, D.S., Langenheim, V.E., Berger, M.A., 2011, Revised Geologic Cross Sections of Parts of the Colorado, White River, and Death Valley Regional Groundwater Flow Systems, Nevada, Utah and Arizona; USGS Open File Report 2006–1040 and accompanying Plate	34769	34793
452.	2011	CNLV Ex 9b – USGS Open-File Report 2006-1040 Plate	34794	34794
453.	12/28/12	CNLV Ex 10 – Poggemeyer Design Group, 2012, Water and Wastewater Master Plan, Apex Industrial Park, City of North Las Vegas, Nevada, prepared for Kapex, LLC	34795	34927
454.	N/A	CNLV Ex 11 – Wilson, Jon W., Drilling, Construction, Water Chemistry, Water Levels, and Regional Potentiometric Surface of the Upper Carbonate-Rock Aquifer in Clark County, Nevada, 2009–2015	34928	34928
455.	06/27/13	CNLV Ex 12 – Southern Nevada Water Authority, 2013, Submittal of Nevada State Engineer Orders 1169 and 1169A Study Report	34929	35209
456.	01/14/16	CNLV Ex 13 – Southern Nevada Water Authority, 2016, Garnet Valley Groundwater Production Simulated Effects of Pumping the Southern Nevada Water Authority’s Temporary Applications; memorandum submitted to NDWR on January 14, 2016	35210	35215

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458.	08/07/18	CNLV Ex 15 – 2006 Memorandum of Agreement Hydrologic Review Team: 2018 Annual Determination Report – April 2018, Appended August 7, 2018	35298	35457
459.	06/13/13	CNLV Ex 16 – Southern Nevada Water Authority Transmittal of SNWA Comments on the Numerical Groundwater Flow Model	35458	35459
460.	06/00/13	CNLV Ex 17 – Southern Nevada Water Authority, 2013, Technical review of Numerical Groundwater Flow Model of Selected Basins with the Colorado Regional Groundwater Flow System, Southeastern Nevada, Version 1.0-A Model Prepared by Tetra Tech for the National Park Service, US Fish and Wildlife Service and Bureau of Land Management; submitted to Mr. Bill Van Liew, June 13, 2013, copied to Rick Felling, NDWR,; SNWA Doc No. WRD-ED-0020	35460	35489
461.	07/16/15	CNLV Ex 18 – Agenda Item – Water Service Agreement between Southern Nevada Water Authority and City of North Las Vegas	35490	35499
462.	12/02/14	CNLV Ex 19 – NDWR Permit 77745, Certificate 19642	35500	35506
463.	08/22/14	CNLV Ex 20 – NDWR Permit 83490	35507	35512
464.	04/15/19	CNLV Ex 21 – NDWR Application 88821	35513	35521
465.	04/15/19	CNLV Ex 22 – NDWR Application 88822	35522	35529
466.	04/15/19	CNLV Ex 23 – NDWR Application 88823	35530	35538
467.	04/15/19	CNLV Ex 24 – NDWR Application 88824	35539	35547
468.	04/15/19	CNLV Ex 25 – NDWR Application 88825	35548	35555
469.	2017	CNLV Ex 26 – LWRFS water rights by priority with 2017 pumpage	35556	35558
470.	N/A	CNLV Ex 27 – Garnet Valley Pre-2000 Water Rights in Use Summary	35559	35559

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473.	08/16/19	CSI Ex 2 – CSI Rebuttal Report	35713	35806
474.	10/04/18	CSI Ex 3 – CSI Concept Paper	35807	35820
475.	06/13/19	CSI Ex 4 – CSI Submittal of May 31, 2019 Technical Report and Large Lot Coyote Springs – Village A Map	35821	35925
476.	N/A	CSI Ex 5 – NCDC 2019 Nevada Division 3 south-central climate data	35926	35926
477.	N/A	CSI Ex 6 – NCDC 2019 Nevada Division 4 extreme-south climate data	35927	35927
478.	N/A	CSI Ex 7a – CSI-1 water level vs CSI-1 pumping and CSV pumping	35928	35928
479.	N/A	CSI Ex 7b – CSI-1 water level vs CSI-1 pumping and MRSA pumping	35929	35929
480.	N/A	CSI Ex 8a – CSI-2 water level vs CSI-2 pumping and CSV pumping	35930	35930
481.	N/A	CSI Ex 8b – CSI-2 water level vs CSI-2 pumping and MRSA pumping	35931	35931
482.	N/A	CSI Ex 9a – CSI-3 water level vs CSI-3 pumping and CSV pumping	35932	35932
483.	N/A	CSI Ex 9b – CSI-3 water level vs CSI-3 pumping and MRSA pumping	35933	35933
484.	N/A	CSI Ex 10a – CSI-4 water level vs CSI-4 pumping and CSV pumping	35934	35934
485.	N/A	CSI Ex 10b – CSI-4 water level vs CSI-4 pumping and MRSA pumping	35935	35935
486.	N/A	CSI Ex 11a – MX-5 water level vs MX-5 pumping and CSV pumping	35936	35936
487.	N/A	CSI Ex 11b – MX-5 water level vs MX-5 pumping and MRSA pumping	35937	35937

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489.	N/A	CSI Ex 13 – Map Showing Pumping and Monitoring wells in Basins 210 and portions of 219 with Fault locations identified from April 2019 CSAMT Survey	35948	35948
490.	2017	CSI Ex 14 – Rowley, P.D., Dixon, G.L., Mankinen, E.A., Pari, K.T., McPhee D.K., et al., 2017. Geology and Geophysics of White Pine and Lincoln Counties, Nevada, and Adjacent Parts of Nevada and Utah: The Geologic Framework of Regional Groundwater Flow Systems. Nevada Bureau of Mines and Geology Report 56	35949	36099
491.	04/20/06	CSI Ex 15 – Memorandum of Agreement and Amendments thereto	36100	36134
492.	05/19/16	CSI Ex 16 – CSI recorded Affidavits to Relinquish Water Rights for Moapa Dace	36135	36146
493.	N/A	CSI Map 1 CSV and Surrounding Basins	36147	36147
494.	N/A	CSI Map 2 Lower White River Flow System and Surrounding Basins	36148	36148
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495.	09/06/19	Joint Disclosure Statement of Georgia Pacific Corporation and Republic Environmental Technologies, Inc.	36149	36154
496.	07/02/19	GP-REP Ex 1 – Response to Nevada State Engineer Interim Order 1303	36155	36163
497.	08/16/19	GP-REP Ex 2 – Rebuttal to Reports submitted for State Engineer Order 1303	36164	36171
498.	N/A	GP-REP Ex 3 – Curriculum Vitae Jonathan Bell	36172	36175
499.	10/09/19	Georgia Pacific Corporation and Republic Environmental Technologies, Inc. Errata to Response and Rebuttal	36176	36183

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500.	09/06/19	List of Witnesses and Exhibits of Lincoln County Water District and Vidler Water Company, Inc.	36184	36192
501.	07/03/19	LC-V Ex 1 – LWRFS Report	36193	36345
502.	08/16/19	LC-V Ex 2 – Rebuttal Submittal	36346	36496
503.	N/A	LC-V Ex 3 – CV Greg L. Bushner, P.G.	36497	36502
504.	N/A	LC-V Ex 4 – CV Peter A. Mock, Ph.D., R.G./P.G.	36503	36528
505.	N/A	LC-V Ex 5 – CV Thomas W. Butler PG, CH, CEG	36529	36534
506.	N/A	LC-V Ex 6 – CV Todd G. Umstot	36535	36544
507.	N/A	LC-V Ex 7 – CV Norman R. Carlson	36545	36547
508.	09/00/19	LC-V Ex 8 – PowerPoint – Greg L. Bushner	36548	36563
509.	09/00/19	LC-V Ex 9 – PowerPoint – Peter A. Mock	36564	36571
510.	09/00/19	LC-V Ex 10 – PowerPoint – Thomas Butler	36572	36583
511.	09/30/19	LC-V Ex 11 – PowerPoint – Todd Umstot	36584	36611
512.	09/00/19	LC-V Ex 12 – PowerPoint – Norman R. Carlson	36612	36634
513.	02/02/07	LC-V Ex 13 – State Engineer Ruling 5712	36635	36657
514.	06/21/00	LC-V Ex 14 – Ricci memo re Pumping in the Carbonates	36658	36661
515.	05/07/02	LC-V Ex 15 – Stipulation for Dismissal of Protests	36662	36688
516.	08/01/06	LC-V Ex 16 – Amended Stipulation for Withdrawal of Protests	36689	36700
517.	2006	LC-V Ex 17 – Hydrologic Assessment of Kane Springs Valley Hydrographic Area (206): Hydrologic Framework, Hydrologic Conceptual Model, and Impact Analysis	36701	36758

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518.	03/17/03	LC-V Ex 18 – Cooperative Agreement Among Lincoln County, the Southern Nevada Water Authority and the Las Vegas Valley Water District	36759	36781
519.	2006	LC-V Ex 19 – Groundwater Article of Johnson and Mifflin	36782	36792
520.	09/05/18	LC-V Ex 20 – Email string re USFWS/Vidler Agreement	36793	36820
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521.	09/06/19	Evidentiary and Witness Disclosure of the Moapa Band of Paiute Indians for Order 1303 Hearing	36821	36830
522.	N/A	MBOP Ex 1 – CV Cady L. Johnson	36831	36835
523.	07/03/19	MBOP Ex 2 – Initial Report of MBOP in Response to Order 1303	36836	36919
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525.	2011	MBOP Ex 4 – SMU Geothermal Laboratory Heat Flow Map	36947	36947
526.	2007	MBOP Ex 5 – Groundwater Article of Bredehoeft	36948	36948
527.	2006	MBOP Ex 6 – CH2MHill Hydrologic Assessment of Kane Springs	36949	36991
528.	1999	MBOP Ex 7 – Chamberlain, A.K., 1999. Structure and Devonian Stratigraphy of the Timpahute Range, Nevada	36992	37362
529.	1999	MBOP Ex 8 – Fricke, H.C. and J.R. O'Neil, 1999. Article	37363	37378
530.	02/03/10	MBOP Ex 9 – Hershey, R.L., S.A. Mizell, and S. Earman, 2010. Chemical and physical characteristics of springs discharging from regional flow systems of the carbonate-rock province of the Great Basin, western United States: Hydrogeology Journal 18(4):1007–1026.	37379	37398

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531.	03/23/11	MBOP Ex 10 – Johnson, C. 2011. Empirical Mode Decomposition – Applications to the Muddy River Hydrograph – Preliminary Evaluation and Results: unpublished report districted to HRT	37399	37419
532.	04/04/19	MBOP Ex 11 – Johnson, C. 2019. Isotopic characteristics of regional-spring capture zones in eastern Nevada: unpublished report for LWRFS study	37420	37431
533.	10/01/13	MBOP Ex 12 – Johnson, C. and M. Mifflin, 2013a. Technical note: Order 1169 post-audit analysis of pumping response: unpublished HRT report	37432	37441
534.	09/12/13	MBOP Ex 13 – Johnson, C. and M. Mifflin, 2013b. Hydrologic Review Team Presentation: unpublished HRT report	37442	37456
535.	01/06/14	MBOP Ex 14 – Johnson, C. and M. Mifflin, 2014. Derivation of responses to Order 1169 pumping by the method of differences: Mifflin & Associates, Inc. unpublished HRT report	37457	37473
536.	05/03/18	MBOP Ex 15 – Johnson, C. and M. Mifflin, 2018. A Climate “Sweet Spot” may Refute Groundwater Model Forecasts”: Devils hole Workshop, Beatty, NV	37474	37489
537.	2009	MBOP Ex 16 – Donghoh Kim and Hee-Seok Oh (2009) EMD: A Package for Empirical Mode Decomposition and Hilbert Spectrum	37490	37496
538.	1994	MBOP Ex 17 – Kruseman, G.P. and N.A. de Ridder, 1994. Analysis and Evaluation of Pumping Test Data (2nd ed.): International Institute for Land Reclamation and Improvement	37497	37548
539.	2012	MBOP Ex 18 – Masbruch, M.D., V.M. Heilweil, and L.E. Brooks, 2012. Using Hydrogeologic Data to Evaluation Geothermal Potential in the Eastern Great Basin: GRC Transactions	37549	37554
540.	2005	MBOP Ex 19a – McQuarrie, N. and B.P. Wernicke, 2005. An animated tectonic reconstruction of southwestern North America since 36 Ma	37555	37580

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541.	2014	MBOP Ex 19b – McQuarrie, N. and B.P. Wernicke, 2005. An animated tectonic reconstruction of southwestern North America since 36 Ma	37581	37581
542.	2014	MBOP Ex 20 – Reynolds, A.R., and A.J. Jefferson, 2014. Sensitivity of precipitation isotope meteoric water lines and seasonal signals to sampling frequency and location: CUAHSI poster	37582	37582
543.	2014	MBOP Ex 21 – Salzer, M.W., A.G. Bunn, N.E. Graham, and M.K. Hughes, 2014. Five millennia of paleotemperature from tree-rings in the Great Basin, USA: Clim Dyn	37583	37592
544.	04/20/87	MBOP Ex 22 – Schroth, B.K., 1987. Water Chemistry Reconnaissance and Geochemical Modeling in the Meadow Valley Wash Area, Southern Nevada: M.S. Thesis, University of Nevada, Reno	37593	37696
545.	2018	MBOP Ex 23 – SNWA and LVVWD, 2018. Assessment of Water Resource Conditions in the LWRFS: SNWA, LV, NV	37697	37812
546.	2017	MBOP Ex 24 – Swanson, E. and Wernicke, B.P., 2017. Geologic map of the east-central Meadow Valley Mountains, and implications for reconstruction of the Mormon Peak detachment, Nevada: Geosphere	37813	37832
547.	08/16/95	MBOP Ex 25 – Wahl, K.L. and Wahl, T.L., 1995. Determining the Flow of Comal Springs at New Braunfels, Texas, Texas Water '95, American Society of Civil Engineers	37833	37847
548.	2001	MBOP Ex 26 – Johnson, C., M.D. Mifflin, R.J. Johnson, and H. Haitjema, 2001. Hydrogeologic and groundwater modeling analyses for the Moapa Paiute Energy Center: in PBS&J, 2001, Moapa Paiute Draft Environmental Impact Statement, Appendix D, prepared for U.S. Bureau of Indian Affairs and Bureau of Land Management	37848	38071

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549.	2010	MBOP Ex 27 – Mackley, R.D., F.A. Spane, T.C. Pulsipher, and C.H. Allwardt, 2010. Guide to using Multiple Regression in Excel (MRCX v.1.1) for Removal of River Stage Effects from Well Water Levels: Pacific Northwest National Laboratory	38072	38126
550.	1982	MBOP Ex 28a – Sass, J.H. and A.H. Lachenbruch, 1982. Preliminary interpretation of thermal data from the Nevada Test Site: U.S. Geological Survey Open-File Report USGS-OFR-82-973	38127	38156
551.	1988	MBOP Ex 28b – Sass, J.H., A.H. Lachenbruch, W.W. Dusley, Jr., S.S. Priest and R.J. Munroe, 1987. Temperature, thermal conductivity, and heat flow near Yucca Mountain, Nevada: Some tectonic and hydrologic implications: U.S. Geological Survey Open File Report	38157	38280
552.	2015	MBOP Ex 29 – Anderson, M.P., W.W. Woessner, and R.J. Hunt, 2015. Applied Groundwater Modeling – Simulation of Flow and Advective Transport: Elsevier	38281	38289
553.	2006	MBOP Ex 30 – Johnson, C. and M.D. Mifflin, 2006. The AEM and Regional Carbonate Aquifer Modeling: Groundwater	38290	38300
554.	03/17/12	MBOP Ex 31 – Johnson, C. and M. Mifflin, 2012a. Analysis Progress Report – Order 1169 Impacts Assessment: unpublished report distributed to HRT	38301	38315
555.	08/27/12	MBOP Ex 32 – Johnson, C. and M.D. Mifflin, 2012b. Parameter Estimation for Order 1169: unpublished report distributed to HRT	38316	38340
556.	05/27/10	MBOP Ex 33 – Mifflin and Associates, Inc., 2010. Order 1169 Impacts (with September 8, 2010 Addendum): unpublished report	38341	38371
557.	1989	MBOP Ex 34 – Bennett, G.D., 1989. Introduction to Ground-Water Hydraulics – A programmed Text for self-Instruction: U.S. Geological Survey, Techniques of Water-Resources Investigations	38372	38555
558.	1979	MBOP Ex 35 – Freeze, R.A. and Cherry, J.A. 1979. Groundwater: Prentice-Hall	38556	38556

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559.	2011	MBOP Ex 36 – Heilweil, V.M., and Brooks, L.E., eds., 2011. Conceptual model of the Great Basin carbonate and alluvial aquifer system: U.S. Geological Survey Scientific Investigation Report	38557	38764
560.	2009	MBOP Ex 37 – SNWA, 2009. Delamar, Dry Lake, and Cave Valleys Stipulation Agreement Hydrologic Monitoring Plan Status and Historical Data Report: SNWA Water Resources Division	38765	38926
561.	2001	MBOP Ex 38 – Thomas, J.M., S.C. Calhoun and W.B. Apambire, 2001. A deuterium mass-balance interpretation of groundwater sources and flows in southeastern Nevada Desert Research Institute	38927	38978
562.	05/00/11	MBOP Ex 39 – Thomas, J.M. and T.M. Mihevc, 2011. Evaluation of Groundwater Origins, Flow Paths, and Ages in East-Central and Southeastern Nevada: University of Nevada, Desert Research Institute, Division of Hydrologic Sciences	38979	39045
563.	01/30/06	MBOP Ex 40 – U.S. Fish and Wildlife Service, 2006. Intra-Service Programmatic Biological Opinion for the Proposed Muddy River MOA	39046	39163
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586.	2010	NCA Ex 8 – Converse Consultants, 2010. Groundwater Level Monitoring Program, 2009 Annual Report	39964	40046
587.	06/00/01	NCA Ex 9 – LVVWD Errata to Water Resources and Ground Water Modeling in the White River and Meadow Valley Flow Systems	40047	40271
588.	2011	NCA Ex 10 – Page, W.R., Scheirer, D.S., Langenheim, V.E., and Berger, M.A., 2011. Revised Geological Cross Sections of Parts of the Colorado, White River, and Death Valley Regional Groundwater Flow Systems, Nevada, Utah, and Arizona	40272	40297
589.	1997	NCA Ex 11 – Burbey, T.J., 1997. Hydrogeology and potential for ground-water development, Carbonate-Rock Aquifers, southern Nevada and southeastern California	40298	40367
590.	2017	NCA Ex 12 – Rowley, P.D., G.L. Dixon, E.A. Mankinen, K.T. Pari, D.K. McPhee, E.H. KcKee, A.G. Burns, J.M. Watrus, E.B. Ekren, W.G. Patrick, and J.M. Bandt, 2017. Geology and Geophysics of White Pine and Lincoln Counties, Nevada, and Adjacent Parts of Nevada and Utah – The Geologic Framework of Regional Groundwater Flow Systems	40368	40518

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591.	07/03/19	NCA Ex 13 – Lower White River Flow System Interim Order 1303 Report Focused on the Northern boundary of the Proposed Administrative Unit	40519	40568
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626.	1964	SNWA Ex 10 – Eakin and Moore. Uniformity of Discharge of Muddy River Springs, Southeastern Nevada, and Relation to Interbasin Movement of Ground Water	42215	42220
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706.	N/A	SNWA Ex 27-E-1 – LDS Lease Certificates	45410	45449
707.	N/A	SNWA Ex 27- E-2 – LDS Lease Certificates Appendix E	45450	45489

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711.	N/A	SNWA Ex 27-E-6 – Inserts	45494	45499
712.	10/01/68	SNWA Ex 27-E-7 – LDS Certificates	45500	45508
713.	03/04/94	SNWA Ex 27-E-8 – NVE Lease Permits	45509	45512
714.	03/04/94	SNWA Ex 27-E-9 – NVE Lease	45513	45516
715.	05/12/11	SNWA Ex 27-E-10 – NVE Water Lease Report	45517	45517
716.	01/10/06	SNWA Ex 27-E-11 – Paiute Lease Certificates	45518	45534
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719.	05/12/11	SNWA Ex 27-E-14 – NV Energy Water Lease Report	45539	45539
720.	03/14/12	SNWA Ex 27-E-15 – NV Energy Water Lease Report	45540	45540
721.	03/14/12	SNWA Ex 27-E-16 – NV Energy Water Lease Report	45541	45541
722.	05/12/08	SNWA Ex 27-F-1 – MVIC Request for Offers to Lease	45542	45545
723.	05/12/08	SNWA Ex 27-F-2 – MVIC Request for Offers to Sell Shares	45546	45549
724.	N/A	SNWA Ex 27-G-1 – Hydrographic Abstract	45550	45550
725.	07/19/74	SNWA Ex 27-G-2 – MVIC Water Rights Certificates	45551	45572
726.	03/05/12	SNWA Ex 27-H – MVIC Letter of Concurrence	45573	45573
727.	2011	SNWA Ex-I-1 – 2011 Water Schedule Summer	45574	45577
728.	2011	SNWA Ex 27-I-2 – 2011 Water Schedule Winter	45578	45581

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729.	02/24/14	SNWA Ex 28 – Muddy River Tributary Conservation Intentionally Created Surplus Certification Report Calendar Year 2012	45582	45674
730.	12/13/07	SNWA Ex 28-A – Intentionally Created Surplus	45675	45680
731.	06/30/11	SNWA Ex 28-B – Plans of Creation with Cover Letter	45681	45706
732.	07/15/08	SNWA Ex 28-C – Order 1194	45707	45710
733.	03/12/ 1920	SNWA Ex 28-D – Muddy River Decree	45711	45758
734.	N/A	SNWA Ex 28-E – Appendix E Letter	45759	45800
735.	05/12/08	SNWA Ex 28-F-1 – MVIC Request for Offers to Lease	45801	45804
736.	05/12/08	SNWA Ex 28-F-2 – MVIC Request for Offers to Sell Shares	45805	45808
737.	N/A	SNWA Ex 28-G-1 – Hydrographic Abstract	45809	45809
738.	07/19/74	SNWA Ex 28-G-2 – MVIC Water Rights Certificates	45810	45831
739.	02/25/13	SNWA Ex 28-H – MVIC Letter of Concurrence	45832	45832
740.	2011	SNWA Ex 28-I-1 – 2011 Water Schedule Winter	45833	45836
741.	2012	SNWA Ex 28-I-2 – 2012 Water Schedule Summer	45837	45840
742.	2012	SNWA Ex 28-I-3 – 2012 Water Schedule Winter	45841	45844
743.	2015	SNWA Ex 29 – Muddy River Tributary Conservation/Intentionally Created Surplus Certification Report Calendar Year 2013	45845	45934
744.	N/A	SNWA Ex 29-A – Intentionally Created Surplus	45935	45940
745.	06/13/12	SNWA Ex 29-B – Plans of Creation with Submittal and Approval Letters	45941	45970

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747.	03/12/ 1920	SNWA Ex 29-D – Muddy River Decree	45975	46022
748.	N/A	SNWA Ex 29-E – Appendix E Letter	46023	46066
749.	05/12/08	SNWA Ex 29-F-1 – MVIC Request for Offers to Lease	46067	46070
750.	05/12/08	SNWA Ex 29-F-2 – MVIC Request for Offers to Sell Shares	46071	46074
751.	N/A	SNWA Ex 29-G-1 – Hydrographic Abstract	46075	46075
752.	07/19/74	SNWA Ex 29-G-2 – MVIC Water Rights Certificates	46076	46097
753.	09/16/14	SNWA Ex 29-H – MVIC Letter of Concurrence	46098	46098
754.	2013	SNWA Ex 29-I – 2013 Water Schedule Winter	46099	46106
755.	2015	SNWA Ex 30 – Muddy River Tributary Conservation Intentionally Created Surplus Certification Report Calendar Year 2014	46107	46190
756.	12/13/07	SNWA Ex 30-A – SNWA ICS Project	46191	46196
757.	06/28/13	SNWA Ex 30-B-1 – SNWA Submittal Letter USBR Plans of Creation	46197	46198
758.	09/21/13	SNWA Ex 30-B-2 – USBOR Approval Letter	46199	46200
759.	07/15/08	SNWA Ex 30-C – Order 1194	46201	46204
760.	04/23/ 1919	SNWA Ex 30-D – Muddy River Decree	46205	46252
761.	N/A	SNWA Ex 30-E – LDS Lease Certificates	46253	46294
762.	05/12/08	SNWA Ex 30-F-1 – MVIC Request for Offers to Lease	46295	46298
763.	05/12/08	SNWA Ex 30-F-2 – MVIC Request for Offers to Sell Shares	46299	46302
764.	N/A	SNWA Ex 30-G-1 – Hydrographic Abstract	46303	46303

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766.	05/14/14	SNWA Ex 30-G-3 – NVE Water Lease Report	46326	46327
767.	03/04/15	SNWA Ex 30-H – MVIC Letter of Concurrence	46328	46328
768.	2013	SNWA Ex 30-I-1 – 2013 Water Schedule Winter	46329	46332
769.	2014	SNWA Ex 30-I-2 – 2014 Water Schedule Summer	46333	46336
770.	2015	SNWA Ex 30-I-3 – 2015 Water Schedule Summer	46337	46344
771.	06/23/16	SNWA Ex 31 – Muddy River Tributary Conservation Intentionally Created Surplus Certification Report Calendar Year 2015	46345	46430
772.	12/13/07	SNWA Ex 31-A – SNWA ICS Project	46431	46436
773.	06/30/14	SNWA Ex 31-B-1 – SNWA Submittal Letter	46437	46463
774.	09/25/14	SNWA Ex 31-B-2 – US BOR Approval Letter	46464	46465
775.	09/10/15	SNWA Ex 31-B-3 – US BOR Approval Letter	46466	46468
776.	07/15/08	SNWA Ex 31-C – Order 1194	46469	46472
777.	03/12/ 1920	SNWA Ex 31-D – Muddy River Decree	46473	46520
778.	N/A	SNWA Ex 31-E – LDS Lease Certificates	46521	46562
779.	05/12/08	SNWA Ex 31-F-1 – MVIC Request for Offers to Lease	46563	46566
780.	05/12/08	SNWA Ex 31-F-2 – MVIC Request for Offers to Sell Shares	46567	46570
781.	N/A	SNWA Ex 31-G-1 – Hydrographic Abstract	46571	46571
782.	07/19/74	SNWA Ex 31-G-2 – MVIC Water Rights Certificates	46572	46593
783.	05/14/14	SNWA Ex 31-G-3 – NVE Water Lease Report	46594	46595
784.	01/06/16	SNWA Ex 31-H – MVIC Letter of Concurrence	46596	46596

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785.	2015	SNWA Ex 31-I-1 – 2018 Water Schedule Summer	46597	46604
786.	2015	SNWA Ex 31-I-2 – 2018 Water Schedule Winter	46605	46608
787.	2007	SNWA Ex 32 – Thomas, James W. and Todd M. Miheve Letter Report	46609	46799
788.	2011	SNWA Ex 33 – Evaluation of Groundwater Origins, Flow Paths, and Ages in East-Central and Southeastern Nevada	46800	46868
789.	1998	SNWA Ex 34 – The relative contributions of summer and cool-season precipitation to groundwater recharge, Spring Mountains, Nevada, USA	46869	46885
790.	N/A	SNWA Ex 35 – NOAA Climate Division	46886	46921
791.	04/20/06	SNWA Ex 36 – Water Supply Agreement	46922	46944
792.	05/19/16	SNWA Ex 37 – Affidavit to Relinquish Water Rights	46945	47070
793.	04/20/06	SNWA Ex 38 – Jones Spring Agreement	47071	47096
794.	08/20/09	SNWA Ex 39 – Moapa Transmission System Design, Construction, Operation and Maintenance Agreement	47097	47133
795.	2013	SNWA Ex 40 – Hadden, James R., et al. An Ecohydraulic Model to Identify and Monitor Moapa Dace Habitat	47134	47145
796.	01/30/06	SNWA Ex 41 – USFWS Memo Inter-Service Programmatic Biological Opinion for the Proposed Muddy River MOA	47146	47213
797.	05/16/96	SNWA Ex 42 – USFWS Recovery Plan for the Rare Aquatic Species of The Muddy River Ecosystem	47214	47273
798.	2014	SNWA Ex 43 – Spawning Ecology and Captive Husbandry of Endangered Moapa Dace	47274	47343

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799.	2015	SNWA Ex 44 – A Stochastic Population Model to Evaluate Moapa Dace (<i>Moapa coriacea</i>) Population Growth Under Alternative Management Scenarios – Open File Report 2015–2016	47344	47397
800.	09/04/16	SNWA Ex 45 – The Status of Moapa Coriacea and Gila Seminuda and Status Information on Other Fishes of the Muddy River	47398	47406
801.	07/28/05	SNWA Ex 46 – Blue tilapia (<i>Oreochromis aureus</i>) predation on fishes in the Muddy River system	47407	47412
802.	07/16/15	SNWA Ex 47 – First Amendment to Moapa Transmission System Design, Construction, Operation and Maintenance Agreement	47413	47424
803.	10/25/14	SNWA Ex 48 – DRI – Preliminary Analysis of Effects of Reduced Discharge on Thermal Habitat of Pedersen Warm Springs Channel	47425	47446
804.	05/01/19	SNWA Ex 49 – SNWA Holds Event at Warm Springs Area – Newspaper Article	47447	47448
805.	N/A	SNWA Ex 50 – Moapa Dace images	47449	47451
806.	11/25/03	SNWA Ex 51 – Preliminary Analysis of the Effects of Declining Flows on Channel Characteristics and Hydraulic Habitat within the Pedersen and Plummer Spring Channels of the Muddy River	47452	47464
807.	N/A	SNWA Ex 52 – Ruggirello, Jack E., et al., Propagation of Endangered Moapa Dace	47465	47475
808.	06/00/94	SNWA Ex 53 – Growth and Survivorship of Moapa Dace	47476	47479
809.	01/00/19	SNWA Ex 54 – Southwestern Willow Flycatcher and Yellow-billed Cuckoo Surveys at the Warm Springs Natural Area	47480	47515
810.	2018	SNWA Ex 55 – Warm Springs Natural Area 2018 Highlights	47516	47517
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813.	10/07/97	SNWA Ex 58 – Amended Application for Permit No. 46777	47837	47840
814.	04/22/04	SNWA Ex 59 – Amended Application for Permission to Change Point of Diversion	47841	47852
815.	10/17/06	SNWA Ex 60 – LVVWD Meeting Transcript	47853	47875
816.	12/05/06	SNWA Ex 61 – Coyote Springs Water and Wastewater Multi-Party Agreement	47876	47909
817.	02/06/07	SNWA Ex 62 – Coyote Springs Service Rules	47910	48006
818.	07/07/15	SNWA Ex 63 – Amended and Restated Coyote Springs Water and Wastewater Multi-Party Agreement	48007	48034
819.	04/19/17	SNWA Ex 64 – Coyote Springs Infrastructure Status	48035	48037
820.	08/29/17	SNWA Ex 65 – Long Term Coyote Springs Valley Water Supply	48038	48039
821.	05/16/18	SNWA Ex 66 – Coyote Spring Valley Water Supply	48040	48042
822.	06/06/18	SNWA Ex 67 – State Engineer May 16, 2018, Correspondence on Long Term Coyote Spring Valley Water Supply	48043	48044
823.	06/14/18	SNWA Ex 68 – Public Workshop Regarding Existing Water Right Use and Groundwater Pumping in the Lower White River Flow System	48045	48048
824.	07/24/18	SNWA Ex 69 – Presentation – Water Use in the Lower White River Flow System	48049	48107
825.	08/20/18	SNWA Ex 70 – Water Availability for Residential Subdivision Map	48108	48109
826.	09/07/18	SNWA Ex 71 – Tentative Subdivision Review No. 13216-T Permit Note	48110	48113
827.	06/19/97	SNWA Ex 72 – Ruling 4542	48114	48130

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828.	07/03/19	SNWA Ex 73 – Request to Investigate Alleged Violation	48131	48132
829.	N/A	SNWA Ex 74 – Hydrographic Area Survey	48133	48133
830.	10/03/17	SNWA Ex 75 – Transcript of Proceeding Vol 7	48134	48218
831.	10/04/17	SNWA Ex 76 – Transcript of Proceeding Vol 8	48219	48260
832.	2011	SNWA Ex 77 – Hydrology and Water Resources of Spring, Cave, Dry Lake, and Delamar Valleys, Nevada and Vicinity	48261	48573
833.	10/27/95	SNWA Ex 78 – Ruling 4243	48574	48593
834.	03/18/99	SNWA Ex 79 – Revised Trigger Levels for Moapa Valley National Wildlife Refuge Springs	48594	48595
835.	2002	SNWA Ex 80 – Muddy Springs Area Monitoring Plan	48596	48619
836.	N/A	SNWA Ex 81 – Order 1169 Aquifer Test Post-Recovery Trendline	48620	48620
837.	N/A	SNWA Ex 82 – Monthly Test Period	48621	48622
838.	06/21/83	SNWA Ex 83 – Nevada Power Company Protest	48623	48623
839.	06/29/83	SNWA Ex 84 – Nevada Power Company Protest	48624	48624
United States Department of the Interior Fish and Wildlife Service's (USFWS) Exhibits				
840.	09/23/19	List of Witnesses, Summaries of Witnesses' Testimony and List of Exhibits for the United States Department of the Interior Fish and Wildlife Service	48625	48635
841.	N/A	USFWS Ex 1 – CV Sue Braumiller	48636	48651
842.	N/A	USFWS Ex 2 – CV Tim D. Mayer, Ph.D.	48652	48657
843.	N/A	USFWS Ex 3 – CV Michael R. Schwemm	48658	48671
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845.	07/03/19	USFWS Ex 5 – Issues Related to Conjunctive Management of the Lower White River Flow System	48674	48755
846.	08/24/01	USFWS Ex – Volume V Transcript of Proceedings – Rick Waddell Expert Witness Qualification	48756	48769
847.	08/16/19	UWFWS Ex 6 – US Dept of Interior Rebuttal to Report	48770	48770
848.	03/23/04	USFWS Ex – Volume II Transcript of Proceedings – Rick Waddell Expert Witness Qualification	48771	48775
849.	08/16/19	USFWS Ex 7 – Rebuttal to Water-Level Decline in LWRFS: Managing for Sustainable Groundwater Development	48776	48791
850.	N/A	USFWS Ex 8 – Warm Springs Regression Output	48792	48799
851.	N/A	USFWS Ex 9 – Jones Springs Regression Output	48800	48807
852.	N/A	USFWS Ex 10 – Iverson Flume Regression Output	48808	48813
853.	N/A	USFWS Ex – Summary of Direct Testimony of Richard K. Waddell, Jr., Ph.D., PG	48814	48819
854.	N/A	USFWS Ex 11 – NV Climate Division 4	48820	48824
855.	N/A	USFWS Ex 12 – NV Climate Division 3	48825	48829
856.	N/A	USFWS Ex – CV Richard Waddell, Jr., P.G., Ph.D.	48830	48839
857.	N/A	USFWS Ex 13 – Water Level Data Chart	48840	48840
858.	N/A	USFWS Ex 14 – Water Level Data Chart	48841	48843
859.	N/A	USFWS Ex 15 – Dry Lake 1980–2019	48844	48850
860.	N/A	USFWS Ex 16 – Water Level Data Chart	48851	48852
861.	N/A	USFWS Ex 17 – Water Level Data Chart	48853	48855
862.	N/A	USFWS Ex 18 – Water Level Data Chart	48855	48855

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863.	N/A	USFWS Ex 19 – Water Level Data Chart	48856	48858
864.	N/A	USFWS Ex 20 – Water Level Data Chart	48859	48860
865.	N/A	USFWS Ex 21 – Water Level Data Chart	48861	48864
866.	N/A	USFWS Ex 22 – Water Level Data Chart	48865	48868
867.	N/A	USFWS Ex 23 – Water Level Data Chart	48869	48871
868.	N/A	USFWS Ex 24 – Water Level Data Chart	48872	48873
869.	N/A	USFWS Ex 25 – Water Level Data Chart	48874	48875
870.	N/A	USFWS Ex 26 – Water Level Data Chart	48876	48879
871.	N/A	USFWS Ex 27 – Water Level Data Chart	48880	48883
872.	N/A	USFWS Ex 28 – Water Level Data Chart	48884	48887
873.	N/A	USFWS Ex 29 – Water Level Data Chart	48888	48889
874.	N/A	USFWS Ex 30 – Water Level Data Chart	48890	48893
875.	N/A	USFWS Ex 31 – Water Level Data Chart	48894	48894
876.	N/A	USFWS Ex 32 – Water Level Data Chart	48895	48895
877.	N/A	USFWS Ex 33 – North Fork Virginia River Baseflow	48896	48900
878.	N/A	USFWS Ex 34 – Panaca Springs and CSVM-4	48901	48903
879.	08/21/19	USFWS Ex 35 – Email re Panaca Springs	48904	48904
880.	09/00/02	USFWS Ex 36 – Statistical Methods in Water Resources	48905	48915
881.	2006	USFWS Ex 37 – Water-Surface Elevations, Discharge, and Water-Quality Data for Selected sites in the Warm Springs Area near Moapa, Nevada	48916	49155
882.	2007	USFWS Ex 38 – Geologic Map of Nevada	49156	49205
883.	N/A	USFWS Ex 39 – Deacon, James E. and Bradley, W. Glen, Ecological Distribution of Fishes of Moapa (Muddy) River in Clark County, Nevada	49206	49217

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884.	02/07/01	USFWS Ex 40 – Synoptic Discharge, Water-Property, and pH Measurements for Muddy River Springs Area and Muddy River, Nevada	49218	49236
885.	02/00/64	USFWS Ex 41 – Ground-Water Resources – Reconnaissance Series Report 25	49237	49288
886.	2011	USFWS Ex 42 – Conceptual Model of the Great Basin Carbonate and Alluvial Aquifer System	49289	49494
887.	05/20/48	USFWS Ex 43 – Two New, Relict Genera of Cyprinid Fishes from Nevada	49495	49532
888.	1990	USFWS Ex 44 – A Deuterium-Calibrated Groundwater Flow Model of a Regional Carbonate-Alluvial System	49533	49564
889.	1994	USFWS Ex 45 – Fishes and Fisheries of Nevada	49565	49569
890.	06/25/66	USFWS Ex 46 – Ground Water in Upper Muddy River Basin	49570	49597
891.	2006	USFWS Ex 47 – Geologic Cross Sections of Parts of the Colorado, White River, and Death Valley Regional Ground-Water Flow Systems, Nevada, Utah and Arizona	49598	49620
892.	N/A	USFWS Ex 48 – Geologic Map of Parts of the Colorado, White River, and Death Valley Groundwater Flow Systems	49621	49643
893.	N/A	USFWS Ex 49 – Map 150	49644	49644
894.	N/A	USFWS Ex 50 – A Stochastic Population Model to Evaluate Moapa Dace (<i>Moapa coriacea</i>) Population Growth Under Alternative Management Scenarios	49645	49698
895.	1993	USFWS Ex 51 – Interactions between Native and Nonnative Fishes of the Upper Muddy River	49699	49708
896.	N/A	USFWS Ex 52 – Growth and Survivorship of Moapa Dace in an Isolated Stream Reach on Moapa National Wildlife Refuge	49709	49713

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897.	1987	USFWS Ex 53 – Life History and Status of the Endangered Moapa Dace (<i>Moapa carriaca</i>)	49714	49807
898.	N/A	USFWS Ex 54 – The Status of Moapa Coriacea and Gila Seminuda and Status Information on Other Fishes of the Muddy River	49808	49816
899.	2005	USFWS Ex 55 – Blue tilapia (<i>Oreochromis aureus</i>) predation on fishes in the Muddy River system, Clark County	49817	49822
900.	02/14/83	USFWS Ex 56 – Recovery Plan for the Rare Aquatic Species of the Muddy River Ecosystem	49823	49882
901.	08/01/06	USFWS Ex 57 – Amended Stipulation for Withdrawal of Protests	49883	49894
902.	12/18/92	USFWS Ex 58 – Life history, abundance, and distribution of Moapa dace	49895	49905
903.	10/29/08	USFWS Ex 59 – US Dept of Interior memorandum request for formal and informal consultation on the Kane Springs Valley Groundwater Development Project in Lincoln County	49906	49973
904.	11/00/07	USFWS Ex 60 – Geology of White Pine and Lincoln Counties and Adjacent Areas, Nevada and Utah: The Geologic Framework of Regional Groundwater Flow Systems	49974	50131
905.	N/A	USFWS Ex 61 – Geologic Map of Nevada	50132	50132
906.	1935	USFWS Ex 62 – Reports and Papers, Hydrology	50133	50138
907.	1970	USFWS Ex 63 – Geology and Mineral Deposits of Lincoln County (Cover page only)	50139	50139
908.	2013	USFWS Ex 64 – Detecting Drawdowns Masked by Environmental Stresses with Water-Level Models	50140	50150
909.	2012	USFWS Ex 65 – Advanced Methods for Modeling Water-Levels and Estimating Drawdowns with Series SEE, an Excel Add-In	50151	50192

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910.	N/A	USFWS Ex 66 – Regional Analysis of Ground-Water Recharge	50193	50224
911.	1995	USFWS Ex 67 – Distribution of Carbonate-Rock Aquifers and the Potential for Their Development, Southern Nevada and Adjacent Parts of California, Arizona and Utah	50225	50331
912.	1995	USFWS Ex 68 – Map Showing Geology and Geographic Features of Southern Nevada and Adjacent Parts of Arizona, California and Utah	50332	50332
913.	1995	USFWS Ex 69 – Map Water-Resources Investigations Report 91-4146	50333	50333
914.	11/00/09	USFWS Ex 70 – Conceptual Model of Groundwater Flow for the Central Carbonate-Rock Province: Clark, Lincoln, and White Pine Counties Groundwater Development Project	50334	50749
915.	2009	USFWS Ex 71 – Transient Numerical Model of Groundwater Flow for the Central Carbonate-Rock Province: Clark, Lincoln, and White Pine Counties Groundwater Development Project	50750	51143
916.	N/A	USFWS Ex 72 – Regression output Pederson Spring	51144	51151
917.	N/A	USFWS Ex 73 – Regression output Pederson East Spring	51152	51159
918.	2004	USFWS Ex 74 – Fundamental Concepts of Recharge in the Desert Southwest: A Regional Modeling Perspective	51160	51184
919.	N/A	USFWS Ex 75 – Online National Climate Data	51185	51186
920.	N/A	USFWS Ex 76 – NV Division 3 Central Climate Data	51187	51203
921.	N/A	USFWS Ex 77 – NV Division 3 Central Climate Data	51204	51209
922.	N/A	USFWS Ex 78 – NV Division 4 Extreme South Climate Data	51210	51215

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923.	N/A	USFWS Ex 79 – NV Division 4 South Central Climate Data	51216	51232
924.	09/03/19	USFWS Ex 80 – Well Driller’s Log – General Report	51233	51234
925.	09/03/19	USFWS Ex 81 – Well Driller’s Log – General	51235	51236
926.	09/03/19	USFWS Ex 82 – Well Driller’s Log – General Report	51237	51238
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928.	09/03/19	USFWS Ex 84 – Well Driller’s Log – General Report	51241	51242
929.	09/03/19	USFWS Ex 85 – Well Driller’s Log – General Report	51243	51244
930.	09/03/19	USFWS Ex 86 – Well Driller’s Log – General Report	51245	51246
931.	09/03/19	USFWS Ex 87 – Well Driller’s Log – General Report	51247	51248
932.	N/A	USFWS Ex 88 – Well Log Search	51249	51250
933.	N/A	USFWS Ex 89 – Screen shots examples of data locations and retrieved	51251	51255
934.	N/A	USFWS Ex 90 – Screen shot NDWR	51256	51256
935.	N/A	USFWS Ex 91 – Screen shot examples of data locations	51257	51264
936.	N/A	USFWS Ex 92 – Screen shot portal to NSE online inter water rights map	51265	51265
937.	2007	USFWS Ex 93 – Geology of White Pine and Lincoln Counties and Adjacent Areas, Nevada and Utah: The Geologic Framework of Regional Groundwater Flow Systems	51266	51423
938.	N/A	USFWS Ex 94 – Braumiller – PowerPoint Slides with at Least Some Information Different or Beyond that Provided in the July 3 Report	51424	51428

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
United States National Park Service's (USNPS) Exhibits				
939.	N/A	USNPS Ex 1 – CV Richard Waddell, Jr., P.G., Ph.D.	51429	51438
940.	07/03/19	USNPS Ex 2 – Prediction of the Effects of Changing the Spatial Distribution of Pumping in the Lower White River Flow System	51439	51531
941.	08/16/19	USNPS Ex 3 – National Park Service's Response to July 2019 Interim Order 1303 Reports	51532	51622
942.	2014	USNPS Ex 4 – Konikow and Leake, Depletion and Capture: Revisiting “The Source of Water Derived from Wells”	51623	51634
943.	03/15/06	USNPS Ex 5 – Final Well Completion Report Kane Springs Valley	51635	51893
944.	N/A	USNPS Ex 6 – Principal Facts for Gravity Stations in the Vicinity of Coyote Spring Valley, Nevada, With Initial Gravity Modeling Results	51894	51915
945.	12/12/08	USNPS Ex 7 – Water Level Elevations in the Vicinity of the Black Mountains	51916	51916
946.	2011	USNPS Ex 8 – Revised Geologic Cross Sections of Parts of the Colorado, White River, and Death Valley Regional Groundwater Flow Systems, Nevada, Utah, and Arizona	51917	51941
947.	2011	USNPS Ex 9 – Revised Geologic Cross Sections of Parts of the Colorado, White River, and Death Valley Regional Groundwater Flow Systems, Nevada, Utah, and Arizona	51942	51942
948.	2019	USNPS Ex 10 – Drilling, Construction, Water Chemistry, Water Levels, and Regional Potentiometric Surface of the Upper Carbonate-Rock Aquifer in Clark County, Nevada 2019–2015	51943	51943
949.	N/A	USNPS Ex 11 – Pages from Environmental Isotopes in Hydrogeology	51944	51947

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
950.	1998	USNPS Ex 12 – Investigation of the Origin of Springs in the Lake Mead National Recreation Area	51948	52039
951.	N/A	USNPS Witness List	52040	52040
952.	N/A	USNPS Evidentiary Disclosures	52041	52045
Presentations from 1309 Hearing				
953.	N/A	Modeling Files are available on the NVSE website at: http://water.nv.gov/news.aspx?news=LWRFS	52046	52046
954.	10/04/19	Bedroc presentation	52047	52074
955.	N/A	Center for Biological Diversity presentation	52075	52118
956.	N/A	Center for Biological Diversity presentation	52119	52162
957.	N/A	Testimony of Dwight L. Smith on behalf of City of North Las Vegas	52163	52195
958.	09/23/19	Coyote Springs Investment, LLC Presentation	52196	52260
959.	09/23/19	Coyote Springs Investment, LLC Rebuttal Presentation	52261	52287
960.	N/A	Testimony of Richard K. Waddell on behalf of U.S. National Park Service	52288	52367
961.	N/A	Testimony USFWS	52368	52445
962.	09/23/19	Testimony of Tim Mayer for USFWS	52446	52449
963.	09/23/19	Testimony of Tim Mayer for Moapa Band of Paiutes	52450	52463
964.	N/A	USFWS presentation by Schwemm	52464	52472
965.	N/A	Lincoln County Vidler Water Presentation by Thomas Butler	52473	52484
966.	N/A	Lincoln County Vidler Water Rebuttal Testimony by Norm Carlson	52485	52507
967.	N/A	Lincoln County Vidler Water Demonstratives	52508	52524
968.	N/A	Lincoln County Vidler Water Mock Rebuttal	52525	52532

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
969.	N/A	Lincoln County Vidler Water Todd Umstot Presentation	52533	52560
970.	09/25/19	Moapa Band of Paiutes Testimony of Dr. Cady Johnson	52561	52571
971.	2019	MVWD Testimony of Joseph Davis	52572	52579
972.	09/29/19	MVWD Testimony of Jay Lazarus	52580	52598
973.	10/03/19	Nevada Cogeneration Associates No. 1 and 2 Presentation	52599	52642
974.	10/04/19	NV Energy Testimony of Richard A. Felling	52643	52679
975.	N/A	SNWA Biologists Presentation	52680	52692
976.	N/A	SNWA Presentation	52693	52740
977.	N/A	SNWA Errata	52741	52744
978.	N/A	SNWA Map	52745	52745
Written Public Comment				
979.	11/04/19	Lincoln County	52746	52748
Georgia Pacific Errata to Response and Rebuttal				
980.	10/08/19	Georgia Pacific Corporation and Republic Environmental Technologies, Inc. Errata to Response and Rebuttal	52749	52756
Closing Statements				
981.	12/03/19	Closing Brief of The Church of Jesus Christ of Latter-Day Saints	52757	52764
982.	12/03/19	City of North Las Vegas' Closing Statement	52765	52778
983.	12/03/19	Coyote Springs Investment LLC's Closing Statement Regarding Nevada State Engineer Interim Order 1303 Public Hearing That Occurred Between September 23, 2019 and October 4, 2019 ("Hearing")	52779	52800
984.	12/02/19	Closing Argument of Georgia Pacific Corporation and Republic Environmental Technologies, Inc.	52801	52810

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
985.	12/03/19	Written Closing Statement of Lincoln County Water District and Vidler Water Company, Inc.	52811	52834
986.	12/03/19	Closing Statement by the Moapa Band of Paiute Indians for Order 1303 Hearing	52835	52857
987.	12/03/09	Post-Hearing Brief on Moapa Valley Water District	52858	52872
988.	12/02/09	Muddy Valley Irrigation Company Post Hearing Closing Statement	52873	52882
989.	12/02/19	U.S. National Park Service Closing Statements in Response to Interim Order 1303	52883	52888
990.	12/03/19	Post-Hearing Brief of Nevada Cogeneration Associates Nos. 1 and 2 pertaining to Amended Notice of Hearing Interim Order #1303 following the hearing conducted September 23, 2019, through October 4, 2019, before the Nevada State Engineer	52889	52911
991.	12/03/19	Nevada Energy's Closing Statements	52912	52917
992.	12/03/19	Closing Brief of Southern Nevada Water Authority and Las Vegas Valley Water District	52918	52943
993.	12/03/19	Western Elite Environmental, Inc.'s and Bedroc Limited, LLC's Closing Statement	52944	52959
Hearing Transcripts				
994.	09/23/19	Hearing Transcript Vol. I	52960	53052
995.	09/24/19	Hearing Transcript Vol. II(a)	53053	53113
996.	09/24/19	Hearing Transcript Vol. II(b)	53114	53160
997.	09/25/19	Hearing Transcript Vol. III(a)	53161	53211
998.	09/25/19	Hearing Transcript Vol. III(b)	53212	53251
999.	09/26/19	Hearing Transcript Vol. IV(a)	53252	53312
1000.	09/26/19	Hearing Transcript Vol. IV(b)	53313	53330

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
1001.	09/27/19	Hearing Transcript Vol. V(a)	53331	53383
1002.	09/27/19	Hearing Transcript Vol. V(b)	53384	53429
1003.	09/30/19	Hearing Transcript Vol. VI(a)	53430	53490
1004.	09/30/19	Hearing Transcript Vol. VI(b)	53491	53552
1005.	10/01/19	Hearing Transcript Vol. VII	53553	53610
1006.	10/02/19	Hearing Transcript Vol. VIII	53611	53656
1007.	10/03/19	Hearing Transcript Vol. IX	53657	53708
1008.	10/04/19	Hearing Transcript Vol. X	53709	53758
1009.	02/18/20	Schroeder Law Offices Hearing Transcript Corrections	53759	53769
Miscellaneous Relevant Findings				
1010.	03/15/06	Final Well Completion Report Kane Springs Valley, Lincoln County, Nevada	53770	54028
1011.	2006	Kane Springs Valley Well Construction and Testing Data Compilation	54029	54233
1012.	2006	Kane Springs Valley Well Construction and Testing	54234	54247
1013.	06/27/19	GBWN Report on Order 1303	54248	54250
1014.	2010	Evapotranspiration and Net Irrigation Water Requirements for Nevada	54251	54538
1015.	07/01/10	SE Letter to Study Participants	54539	54549
1016.	08/15/19	Letter from LDS	54550	54550
1017.	05/26/10	Letter Moapa Band of Paiutes	54551	54569
1018.	04/18/02	SE Ruling 5115	54570	54609
1019.	N/A	Response to Interim Order #1303 submitted by Technichrome	54910	54910
1020.	N/A	Additional comments from Technichrome	54911	54913

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NO.	DATE	DESCRIPTION	Bates Range SE ROA	
1021.	08/03/19 84	USGS Memorandum re Carbonate Terrane Study	54914	54944
1022.	1989	USGS Carbonates Summary Report No. 1	54945	54986
1023.	N/A	USGS Drought Report 93-642	54987	54988

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7 **AFFIRMATION**

8 The undersigned does hereby affirm that the forgoing Summary of Record on Appeal
9 does not contain the social security number of any person.

10 DATED this 5th day of November, 2020.

11 AARON D. FORD
12 Attorney General

13 By: /s/ James N. Bolotin
14 JAMES N. BOLOTIN
15 Senior Deputy Attorney General
16 LAENA ST-JULES
17 Deputy Attorney General
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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the State of Nevada, Office of the Attorney General,
3 and that on this 5th day of November, 2020, I served a true and correct copy of the foregoing
4 SUMMARY OF RECORD ON APPEAL, by electronic service to the participants in this
5 case who are registered with the Eighth Judicial District Court's Odyssey eFileNV File &
6 Serve system to this matter.

7 /s/ Dorene A. Wright
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