IN THE SUPREME COURT OF THE STATE OF NEVADA

COYOTE SPRINGS INVESTMENT, LLC; LINCOLN COUNTY WATER DISTRICT; AND VIDLER WATER COMPANY, INC., Appellants, vs. ADAM SULLIVAN, P.E., NEVADA STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURALRESOURCES, Respondents.	Electronically Filed Sep 06 2022 03:32 p.m. Elizabeth A. Brown Clerk of Supreme Court **Case No. 85137** District Court Case No. A-21-833572-J

LINCOLN COUNTY WATER DISTRICT'S AND VIDLER WATER COMPANY, INC.'S
DOCKETING STATEMENT

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth **Department:** One **County:** Clark

Judge: Bita Yeager; **District Ct. Case No.:** A-21-833572-J

2. Attorneys filing this docketing statement:

Attorney: Wayne Klomp
Firm: Great Basin Law
Address: 1783 Trek Trail
Reno, Nevada 89521
Telephone: (775) 770-0386
Client: Lincoln County Water District

This is a joint statement completed on behalf of multiple appellants. The names and addresses of other counsel and the names of all Appellants are on an additional sheet attached hereto as **Attachment 1**.

3. Attorney(s) representing Respondent:

Attorney: Aaron D. Ford
Steve Shevorski
James N. Bolotin
Kiel B. Ireland
Laena St. Jules
Firm: Office of the Attorney General
Address: 100 North Carson Street
Carson City, Nevada 89501-4717
Telephone: (775) 684-1231
Clients: Adam Sullivan, P.E., Nevada State Engineer
Division of Water Resources
Department of Conservation and Natural Resources

4. Nature of disposition below (check all that apply):

☐ Judgment after bench trial	☐ Dismissal:
☐ Judgment after jury verdict	☐ Lack of jurisdiction
☐ Summary judgment Default judgment	☐ Failure to state a claim
☐ Default Judgment	☐ Failure to prosecute
☐ Grant/Denial of NRCP 60(b) relief	☐ Other (specify):_____
☐ Grant/Denial of injunction	☐ Divorce Decree:
☐ Grant/Denial of declaratory relief	☐ Original ☐ Modification
☒ Review of agency determination	☒ Other Disposition: Denial of fees

5. Does this appeal raise issues concerning any of the following?

☐ Child Custody

☐ Venue

☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

- *Lincoln County Water District; Vidler Water Company, Inc. v. Tim Wilson, P.E., Nevada State Engineer, Division of Water Resources, et al.*, Case No. 81792. Appeal regarding venue, case closed.
- *Sullivan v. Lincoln County Water District, et al.*, Case No. 84739, pending.
- *Southern Nevada Water Authority v. Lincoln County Water District et al.*, Case No. 84741, consolidated with Case No. 84739.
- *Center for Biological Diversity v. Lincoln County Water District et al.*, Case No. 84742, consolidated with Case No. 84739.
- *Muddy Valley Irrigation Co. v. Lincoln County Water District et al.*, Case No. 84809, consolidated with Case No. 84739.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

- *Lincoln County Water District & Vidler Water Company, Inc. v. State Engineer, Nevada*, Case No. CV0307007. Seventh Judicial District Court, Appeal of State Engineer Ruling 5712, case resolved.
- *Lincoln County Water District & Vidler Water Company, Inc. v. State Engineer, Nevada*, Case No. CV0518009. Seventh Judicial District Court, Appeal of State Engineer Ruling 5987, case resolved.
- *Lincoln County Water District & Vidler Water Company, Inc. v. Wilson*, Case No. CV0702520. Appeal of Order 1309, venue changed from Seventh Judicial District Court to Eighth Judicial District Court and given Case No. A-21-833572-J and consolidated into action A-20-816761-A.
- *Lincoln County Water District & Vidler Water Company, Inc. v. State of Nevada, Dept. of Conservation & Natural Resources et al.*, Case No. 2:20-cv-01891-RFB-EJY, case pending in United States District Court, District of Nevada.

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

The Nevada State Engineer ("NSE") issued Order 1309 in excess of his statutory authority and depriving Appellants of their due process rights. Order 1309 combined seven hydrographic basins in Nevada into a single super-basin for purposes of priority of water rights and for joint administration. Appellants filed a petition for judicial review which the District Court granted in favor of Appellants. The NSE appealed the District Court Order Vacating Order 1309. Subsequently, the District Court denied Appellants' motion for fees under NRS 533.450 and NRS 18.010(2).

9. **Issues on appeal.** State concisely the principle issue(s) in this appeal (attach separate sheets as necessary):

- Whether a court can award fees under NRS 18.010(2)(b) and/or NRS 533 against the Nevada State Engineer.

- Whether the District Court erred in concluding that the Nevada State Engineer maintained his defense of Order 1309 based on reasonable ground.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issues raised:

Appellants are unaware of any cases raising the same or similar issues.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, and state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

This Court has not determined whether a litigant can seek fees under NRS 533 and/or NRS 18.010(2)(b) against the Nevada State Engineer ("NSE") when the NSE maintains defenses without reasonable grounds. Appellants maintain that public policy considerations are present in this case as an award of attorneys' fees would deter significant and unreasonable actions of the NSE where the NSE blatantly exceeds his statutory authority as he did in this case. Based on his own statements

in the record, the NSE knew he did not have statutory authority to issue Order 1309. Public policy should allow a court to assess fees against the NSE in order to deter ultra-vires behavior.

Further, the determination of whether the NSE exceeded his statutory authority and the scope of his ultra-vires acts is significantly related to the appeals consolidated as Case No. 84739.

13. Assignment to the Court of Appeals or retention in the Supreme Court.

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Although NRAP 17(a)(7) provides that disputes "between branches of government or local governments" are retained by the Supreme Court, NRAP 17(b)(7) provides that "[a]ppeals from postjudgment orders in civil cases" are presumptively assigned to the Court of Appeals. Lincoln County Water District is a political subdivision of Nevada, and this is a dispute between branches of government. However, the decision to deny fees is a postjudgment order. *Compare* Chapter 474, Statutes of Nevada 2003 (creating LCWD as political subdivision), *with Campos-Garcia v. Johnson*, 130 Nev. 610, 612, 331 P.3d 890, 891 (2014) (decision on post-judgment motion for fees is appealable).

Appellants believe that the Supreme Court should retain this case because it presents a substantial issue of first impression regarding whether attorneys' fees can be awarded against the Nevada State Engineer under NRS 18.010(2)(b) and/or NRS 533. Additionally, the issues before the court in this case are significant matters of public policy concerning deterring the State from acting outside the statutory authority granted by the Legislature, especially given the severity of the impact decisions issued by the State Engineer have over property interests.

14. Trial: If this action proceeded to trial, how many days did the trial last?

Was it a bench or jury trial? **None.**

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? **No.**

16. Date of entry of written judgment or order appealed from:

July 22, 2022.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

Not applicable.

17. Date written notice of entry of judgment or order was served:

July 22, 2022.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

(b) Date of Entry of written order resolving tolling motion_____

(c) Date written notice of entry of order resolving tolling motion was served._____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed:

August 9, 2022

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal.

- Coyote Springs Investment, LLC filed its Notice of Appeal on August 4, 2022.

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other:

NRAP 4(a)

SUBSTATIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☐ Delivery ☐ Delivery

☐ Delivery ☐ Delivery

☐ Delivery ☐ Delivery

☒ Other (specify) NRAP 3A(b)(8)

Explain how each authority provides a basis for appeal from the judgment or order:

A post-judgment order denying attorneys' fees is appealable as a "special order entered after final judgment." NRAP 3A(b)(8); *Campos-Garcia v. Johnson*, 130 Nev. 610, 612, 331 P.3d 890, 891 (2014).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties to the Order 1309 Petitions for Judicial Review consolidated below.

- Apex Holding Company, LLC
- Bedroc Limited, LLC
- Center for Biological Diversity
- Church of Jesus Christ of Latter-day Saints
- City of North Las Vegas

- Coyote Springs Investment, LLC
- Dry Lake Water, LLC
- Georgia-Pacific Gypsum LLC
- Las Vegas Valley Water District
- Lincoln County Water District
- Moapa Valley Water District
- Muddy Valley Irrigation Company
- Nevada Cogeneration Associates Nos. 1 and 2
- Nevada Power Company dba NV Energy
- Republic Environmental Technologies, Inc.
- Sierra Pacific Power Company dba NV Energy
- Southern Nevada Water Authority
- Vidler Water Company, Inc.
- Western Elite Environmental, Inc.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

This appeal of the district court's order denying the motion for an award of attorneys' fees does not involve the other parties or intervenors to the consolidated action challenging the Nevada State Engineer's Order 1309. Only Lincoln County Water District, Vidler Water Company, Inc., and Coyote Springs Investment, LLC moved for fees against the Nevada State Engineer.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, crossclaims, or third-party claims and the date of formal disposition of each claim.

Of the parties listed in response to question 22, several of the parties are original petitioners challenging elements of Order 1309 issue by the Nevada State Engineer. Eight petitions for judicial review were consolidated into one case for administration. The remaining parties are intervenors in the consolidated action. The District Court disposed of all petitions for judicial review by Order dated April 19, 2022, and by an Addendum and Clarification to the Order dated May 13, 2022.

Appellants' request for an award of fees was denied by order dated July 22, 2022.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

Pursuant to the district court's Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review dated April 19, 2022, and the Addendum and Clarification dated May 13, 2022, all claims of all parties to the consolidated action were adjudicated or disposed of below. Appellants do not believe any claims or special motions remain pending in the district court.

(b) Specify the parties remaining below:

Appellants do not believe any parties remain below.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

A post-judgment order denying attorneys' fees is appealable as a "special order entered after final judgment." NRAP 3A(b)(8); *Campos-Garcia v. Johnson*, 130 Nev. 610, 612, 331 P.3d 890, 891 (2014).

27. Attach file stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third-party claims asserted in the action or consolidated action below, even if not an issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and compete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Lincoln County Water District	Wayne Klomp
Name of Appellant	Name of counsel of record
6 September 2022	*/s/ Wayne Klomp*
Date	Signature of counsel of record

State of Nevada, Lincoln County
State and county where signed

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(c), I hereby certify that on this date, I caused the foregoing document to be served on all parties to this action by:

✓ Court's electronic notification system

DATED this 6th day of September, 2022.

/s/ Wayne Klomp
Wayne Klomp

INDEX OF ATTACHMENTS

Attachment No.	Description of Attachment
1	List of Appellants and Attorneys in response to Question 2
2	Petition for Judicial Review filed by Lincoln/Vidler
3	Order Denying Motion for Fees
4	Notice of Entry of Order Denying Motion for Fees

ATTACHMENT 1

ATTACHMENT 1

Further response to Question 2 – Attorneys and parties in joint statement.

The following attorneys represent the parties indicated and concur in the filing of the Docketing Statement on behalf of their respective clients.

Attorney: Dylan V. Frehner
Firm: Lincoln County District Attorney
Address: 181 North Main Street, Suite 205
P.O. Box 60
Pioche, Nevada 89043
Telephone: (775) 962-8073
Client: Lincoln County Water District

Attorney: Karen A. Peterson
Firm: Allison MacKenzie, Ltd.
Address: 402 North Division Street
Carson City, Nevada 89703
Telephone: (775) 687-0202
Client: Vidler Water Company, Inc.

ATTACHMENT 2

ATTACHMENT 2

FILED

2020 JUL 13 PM 12:06

LISA C. LLOYD
LINCOLN COUNTY CLERK
DEPUTY

Case No. CV0702520

Dept. No. _____

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LINCOLN

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

Petitioners,

vs.

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

Respondent.

_____/

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, Petitioners pray for judgment as follows:

1. That the Court vacate Order 1309;

2. That the Court exclude Kane Springs from the LWRFS;

3. That the Court restore currently held water right priorities and the perennial yield determined for Kane Springs;

4. That the Court award Petitioners their attorney's fees and costs; and

5. That the Court award such other and further relief as seems just and proper in the premises.

AFFIRMATION

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

DATED this 13th day of July, 2020.

KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, Nevada 89703
Telephone: (775) 687-0202
Email: kpeterson@allisonmackenzie.com

~ and ~

LINCOLN COUNTY DISTRICT ATTORNEY
181 North Main Street, Suite 205
P.O. Box 60
Pioche, Nevada 89043
Telephone: (775) 962-8073
Email: dfrehner@lincolncountynv.gov

BY: _____
DYLAN V. FREHNER, ESQ.
Nevada State Bar No. 9020

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

CERTIFICATE OF SERVICE

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

Via Hand-Delivery to:

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

Via Certified Mail, Return Receipt Requested to:

Robert O. Kurth, Jr. 3420 North Buffalo Drive Las Vegas, NV 89129 *Attorney for 3335 Hillside, LLC*	Paulina Williams Baker Botts, L.L.P. 98 San Jacinto Boulevard, Suite 1500 Austin, TX 78701 *Attorney for Georgia Pacific Corporation*
Laura A. Schroeder Therese A. Ure 10615 Double R Blvd., Ste. 100 Reno, NV 89521 *Attorneys for City of North Las Vegas and Bedroc Limited, LLC*	Sylvia Harrison Sarah Ferguson McDonald Carano LLP 100 West Liberty Street, 10th Floor Reno, NV 89501 *Attorney for Georgia Pacific Corporation and Republic Environmental Technologies, Inc.*
Bradley J. Herrema, Esq. Brownstein Hyatt Farber Schreck 100 N. City Parkway, Suite 1600 Las Vegas, NV 89106 *Attorney for Coyote Springs Investment, LLC*	Severin A. Carlson Kaempfer Crowell, Ltd. 50 W. Liberty Street, Suite 700 Reno, NV 89511 *Attorney for Church of Jesus Christ of the Latter-Day Saints*
Kent R. Robison, Esq. Therese M. Shanks, Esq. Robison, Sharp, Sullivan & Brust 71 Washington Street Reno, NV 89503 *Attorney for Coyote Springs Investment, LLC*	Paul G. Taggart, Esq. Timothy D. O'Connor, Esq. Taggart & Taggart, Ltd. 109 North Minnesota Street Carson City, NV 89703 *Attorneys for LVVWD and SNWA*
Steven C. Anderson, Esq. Las Vegas Valley Water District 1001 S. Valley View Blvd. Las Vegas, NV 89153 *Attorneys for LVVWD and SNWA*	Karen Glasgow Office of the Regional Solicitor San Francisco Field Office U.S. Department of the Interior 333 Bush Street, Suite 775 San Francisco, CA 94104 *Attorney for National Park Service*

Alex Flangas 50 West Liberty Street, Suite 700 Reno, NV 89501 *Attorney for Nevada Cogeneration Associates Nos. 1 and 2*	Larry Brundy P.O. Box 136 Moapa, NV 89025
Beth Baldwin Richard Berley Ziontz Chestnut Fourth And Blanchard Building 2101 Fourth Avenue, Suite 1230 Seattle, WA 98121-2331 *Attorneys for Moapa Band of Paiute Indians*	Casa De Warm Springs, LLC 1000 N. Green Valley Pkwy, #440-350 Henderson, NV 89074
Steve King, Esq. 227 River Road Dayton, NV 89403 *Attorney for Muddy Valley Irrigation Company*	Clark County 500 S. Grand Central Pkwy, 6th Fl. Las Vegas, NV 89155-1111
Greg Morrison 50 W. Liberty St., Suite 750 Reno, NV 89501 *Attorney for Moapa Valley Water District*	Clark County Coyote Springs Water Resources GID 1001 S. Valley View Blvd. Las Vegas, NV 89153
Justina Caviglia 6100 Neil Road Reno, NV 89511 *Attorney for Nevada Power Company d/b/a NV Energy*	Mary K. Cloud P.O. Box 31 Moapa, NV 89025
Luke Miller Office of the Regional Solicitor U.S. Department of the Interior 2800 Cottage Way, Suite E1712 Sacramento, CA 95825 *Attorney for U.S. Fish and Wildlife Service*	Don J. & Marsha L. Davis P.O. Box 400 Moapa, NV 89025
State of Nevada Department of Transportation 1263 S. Stewart Street Carson City, NV 89712	Dry Lake Water, LLC 2470 St. Rose Pkwy., Ste. 107 Henderson, NV 89074
State of Nevada, Dept. of Conservation And Natural Resources Division of State Parks 901 S. Stewart Street, Suite 5005 Carson City, NV 89701	Kelly Kolhoss P.O. Box 232 Moapa, NV 89025
Pacific Coast Building Products, Inc. P.O. Box 364329 Las Vegas, NV 89036	Lake At Las Vegas Joint Venture, Inc. 1600 Lake Las Vegas Parkway Henderson, NV 89011
S & R, Inc. 808 Shetland Road Las Vegas, NV 89107	Laker Plaza, Inc. 7181 Noon Rd. Everson, WA 98247-9650

Technichrome 4709 Compass Bow Lane Las Vegas, NV 89130	William O'Donnell 2780 S. Jones Blvd., Ste. 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 13th day of July, 2020.

NANCY FONTENOT

INDEX OF EXHIBITS

Exhibit No.	Description	Number of Pages
"1"	Order 1309	68

4848-8027-8210, v. 1

EXHIBIT “1”

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

Table of Contents

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

Muddy River Springs Area Hydrographic Basin (Muddy River Springs Area), Basin 219, since July 14, 1971.[1]

WHEREAS, in 1984, the United States Department of Interior, Geological Survey (USGS), Water Services Division, proposed a ten-year investigation into carbonate-rock aquifers that underlay approximately 50,000 square miles of eastern and southern Nevada.[2] In 1985, a program for the study and testing of the carbonate-rock aquifer system of eastern and southern Nevada was authorized by the Nevada Legislature. In 1989, a report was published by the USGS summarizing the first phase of the study.[3] Included in the summary was a determination that:

> Large-scale development (sustained withdrawals) of water from the carbonate-rock aquifers would result in water-level declines and cause the depletion of large quantities of stored water. Ultimately, these declines would cause reductions in the flow of warm-water springs that discharge from the regional aquifers. Storage in other nearby aquifers also might be depleted, and water levels in those other aquifers could decline. In contrast, isolated smaller ground-water developments, or developments that withdraw ground water for only a short time, may result in water-level declines and springflow reductions of manageable or acceptable magnitude.
>
> Confidence in predictions of the effects of development, however, is low; and it will remain low until observations of the initial hydrologic results of development are analyzed. A strategy of staging developments gradually and adequately monitoring the resulting hydrologic conditions would provide information that eventually could be used to improve confidence in the predictions.[4]

---

[1] *See* NSE Ex. 9, *Order 905*, Hearing on Interim Order 1303, official records of the Division of Water Resources. *See* NSE Ex. 8, *Order 1018*, Hearing on Interim Order 1303, official records of the Division of Water Resources. *See* NSE Ex. 5, *Order 1025*, Hearing on Interim Order 1303, official records of the Division of Water Resources. *See* NSE Ex. 6, *Order 1024*, Hearing on Interim Order 1303, official records of the Division of Water Resources. *See* NSE Ex. 4, *Order 1026*, Hearing on Interim Order 1303, official records of the Division of Water Resources. *See* NSE Ex. 7, *Order 1023*, Hearing on Interim Order 1303, official records of the Division of Water Resources; NSE Ex. 11, *Order 392*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

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

[3] Michael D. Dettinger, *Distribution of Carbonate-Rock Aquifers in Southern Nevada and the Potential for their Development, Summary of Findings, 1985-1988*, Summary Report No. 1, U.S. Geological Survey, Department of Interior and Desert Research Institute, University of Nevada System, 1989, p. Forward. *See also* NSE Ex. 3, *Order 1169*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

[4] *Id.*, p. 2.

WHEREAS, beginning in 1989 and through the early 2000s, numerous groundwater applications were filed in Coyote Spring Valley, Black Mountains Area, Garnet Valley, Hidden Valley, California Wash, and Muddy River Springs Area Hydrographic Basins seeking to appropriate more than 300,000 acre-feet annually (afa) of groundwater from the carbonate-rock aquifer underlying these basins.[5] The State Engineer held a hearing on July 12-20, 23-24, and August 31, 2001, for pending Applications 54055–54059, filed by Las Vegas Valley Water District (LVVWD) to appropriate 27,510 afa of water in Coyote Spring Valley.[6] The State Engineer conducted a hearing on Coyote Springs Investments LLC (CSI) Applications 63272–63276 on August 20-24, 27-28, 2001.[7]

WHEREAS, following the conclusions of these hearings, the State Engineer issued Order 1169 on March 8, 2002, requiring all pending applications in Coyote Spring Valley, Black Mountains Area, Garnet Valley, Hidden Valley, Muddy River Springs Area, and Lower Moapa Valley Hydrographic Basin (Basin 220), be held in abeyance pending an aquifer test of the carbonate-rock aquifer system to better determine whether the pending applications and future appropriations could be developed from the carbonate-rock aquifer.[8]

WHEREAS, in Order 1169, the State Engineer found that he did not believe that it was prudent to issue additional water rights to be pumped from the carbonate-rock aquifer until a significant portion of the then existing water rights were pumped for a substantial period of time to determine whether the pumping of those water rights would have a detrimental impact on existing water rights or the environment.[9]

WHEREAS, Order 1169 required that at least 50%, or 8,050 afa, of the water rights then currently permitted in Coyote Spring Valley be pumped for at least two consecutive years.[10] On April 18, 2002, the State Engineer added the California Wash to the Order 1169 aquifer test basins.[11]

---

[5] *See* NSE Exs. 14–20, *Ruling 6254–Ruling 6260*, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[6] *See* NSE Ex. 14.
[7] *Id.*
[8] *See* NSE Ex. 3.
[9] *Id.*
[10] *Id.*
[11] *See* State Engineer's Ruling 5115, dated April 18, 2002, official records of the Division of Water Resources.

WHEREAS, subsequent to the issuance of Order 1169, the United States Fish and Wildlife Service (USFWS) expressed concern that current groundwater pumping coupled with additional groundwater withdrawals in Coyote Spring Valley and California Wash may cause reduction of spring flow to the Warm Springs area, tributary thermal springs in the upper Muddy River, which serves as critical habitat to the Moapa dace (*Moapa corciacea*), an endemic fish species federally listed as endangered in 1967.[12] Due to these concerns, on April 20, 2006, the Southern Nevada Water Authority (SNWA), USFWS, CSI, the Moapa Band of Paiute Indians (MBOP) and the Moapa Valley Water District (MVWD) entered into a Memorandum of Agreement (MOA).[13]

WHEREAS, the MOA stated that all the parties shared "a common interest in the conservation and recovery of the Moapa dace and its habitat." The MOA established certain protections to the Moapa dace, including protocols relating to pumping from the regional carbonate-rock aquifer that may adversely impact spring flow to the dace habitat in the Warm Springs area. Specifically, the MOA identified conservation measures, which included protections for minimum instream flows in the Warm Springs area with trigger levels set at 3.2 cubic feet per second (cfs) at the Warm Springs West gage requiring initial action by the MOA parties, and the most stringent action required at a flow rate of 2.7 cfs.[14]

WHEREAS, the MBOP raised concerns that pumping 8,050 afa from the Coyote Spring Valley as part of the aquifer test would adversely impact the water resources at the Warm Springs area, and consequently the Moapa dace, and that the impacts would persist such that protective measures established in the MOA would be inadequate to protect the dace.[15] As a result, the Order 1169 study participants, which included the LVVWD, SNWA, CSI, Nevada Power Company,[16] MVWD, Dry Lake Water Company, LLC, Republic Environmental Technologies, Inc. (Republic),

---

[12] USFWS, *Fish and Aquatic Conservation - Moapa dace*, https://bit.ly/moapadace (last accessed June 3, 2020). *See also* SNWA Ex. 8, p. 1-1.

[13] *See* 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*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

[14] *Id.*

[15] *See* May 26, 2010, letter from Darren Daboda, Chairperson, Moapa Band of Paiutes, to Jason King, Nevada State Engineer, official records of the Division of Water Resources.

[16] Nevada Power Company, following the merger with Sierra Pacific Power Company and Sierra Pacific Resources subsequently began doing business as NV Energy. *See, e.g.*, NV Energy, *Company History*, https://bit.ly/NVEhistory (last accessed April 20, 2020).

Chemical Lime Company, Nevada Cogeneration Associates, and the MBOP, or their successors, agreed that even if the minimum 8,050 afa was not pumped, sufficient information would be obtained to inform future decisions relating to the study basins.[17]

WHEREAS, on November 15, 2010, the Order 1169 aquifer test began, whereby the study participants began reporting to the Nevada Division of Water Resources (Division) on a quarterly basis the amounts of water pumped from wells in the carbonate-rock and alluvial aquifers during the pendency of the aquifer test.

WHEREAS, on December 21, 2012, the State Engineer issued Order 1169A declaring the completion of the Order 1169 aquifer test to be December 31, 2012, after a period of 25½ months. The State Engineer provided the study participants the opportunity to file reports with the Division until June 28, 2013, to present information gained from the aquifer test in order to estimate water to support applications in the Order 1169 study basins.[18]

WHEREAS, during the Order 1169 aquifer test, an average of 5,290 acre-feet per year (afy) was pumped from carbonate-rock aquifer wells in Coyote Spring Valley, and a cumulative reported total of 14,535 afy of water was pumped throughout the Order 1169 study basins. Of this total, approximately 3,840 afy was pumped from the Muddy River Springs Area alluvial aquifer with the balance pumped from the carbonate-rock aquifer.[19]

WHEREAS, during the aquifer test, pumpage was measured and reported from 30 other wells in the Coyote Spring Valley, Muddy River Springs Area, Garnet Valley, California Wash, Black Mountains Area, and Lower Meadow Valley Wash Hydrographic Basin (Lower Meadow Valley Wash). Stream diversions from the Muddy River were reported, and measurements of the natural discharge of the Muddy River and from the Warm Springs area springs were collected daily. Water-level data were collected from a total of 79 monitoring and pumping wells within the Order 1169 study basins. All of the data collected during the aquifer test were made available to each of the study participants and the public.[20]

---

[17] *See* July 1, 2010, letter from Jason King, Nevada State Engineer, to Order 1169 Study Participants, official records of the Division of Water Resources.
[18] *See* NSE Ex. 2, *Order 1169A*, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[19] *See, e.g.*, NSE Ex. 1, Appendix B.
[20] *See* Division, *Water Use and Availability – Order 1169,* https://bit.ly/Order1169

WHEREAS, during the Order 1169 aquifer test, the resulting water-level decline encompassed 1,100 square miles and extended from southern Kane Springs Valley, northern Coyote Spring Valley through the Muddy River Springs Area, Hidden Valley, Garnet Valley, California Wash, and the northwestern portion of the Black Mountains Area.[21] The water-level decline was estimated to be 1 to 1.6 feet throughout this area with minor drawdowns of 0.5 foot or less in the northern portion of Coyote Spring Valley north of the Kane Springs Wash fault zone.[22]

WHEREAS, results of the two-year aquifer test demonstrated that pumping 5,290 afa from the carbonate-rock aquifer in Coyote Spring Valley, in addition to the other carbonate-rock aquifer pumping in Garnet Valley, Muddy River Springs Area, California Wash and the northwest portion of the Black Mountains Area, caused sharp declines in groundwater levels and flows in the Pederson and Pederson East springs, two springs considered to be sentinel springs for the overall condition of the Muddy River due to being higher in altitude than other Muddy River source springs, and therefore are proportionally more affected by a decline in groundwater level in the carbonate-rock aquifer.[23] The Pederson spring flow decreased from 0.22 cfs to 0.08 cfs and the Pederson East spring flow decreased from 0.12 cfs to 0.08 cfs. Additional headwater springs at lower altitude, the Baldwin and Jones springs, declined approximately 4% in spring flow during the test.[24] All of the headwater springs contribute to the decreed and fully-appropriated Muddy River and are the predominant source of water that supplies the habitat of the endangered Moapa dace.

WHEREAS, Order 1169A provided the study participants an opportunity to submit reports addressing three specific questions presented by the State Engineer: (1) what information was obtained from the study/pumping test; (2) what were the impacts of pumping under the pumping test; and, (3) what is the availability of additional water resources to support the pending applications. SNWA, USFWS, National Park Service (NPS) and Bureau of Land Management

---

[21] USFWS Ex. 5, *Report in Response to Order 1303*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 21, 67. *See, e.g.*, NSE Ex. 14. *See also* NSE Ex. 256, *Federal Bureaus Order 1169A Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources. There was no groundwater pumping in Hidden Valley, but effects were still observed in the Hidden Valley monitor well.

[22] *See, e.g.*, NSE Ex. 14. *See also* NSE Ex. 256.

[23] *See* NSE Ex. No. 236.

[24] NSE Ex. 256, pp. 43–46, 50–51. *See also*, USGS, *Water Data for Nevada*, https://bit.ly/nvwater.

(BLM), MBOP, MVWD, CSI, Great Basin Water Network (GBWN) and Center for Biological Diversity (CBD) submitted either reports or letters.

WHEREAS, in its report, SNWA addressed water levels throughout the Order 1169 basins. SNWA acknowledged that hydrologic connectivity supported the potential need for redistribution of existing pumping, and indirectly acknowledged the limitation on availability of water to satisfy the pending applications.[25] SNWA further acknowledged declines to spring flow in the Pederson and Pederson East springs as a result of the aquifer test, but characterized the decline in spring flow at the Warm Springs West location as minimal. SNWA further correlated the declining trends as associated with climate but opined that Muddy River flow did not decline as a result of the aquifer test and carbonate-rock aquifer pumping; rather, impact to Muddy River flows were due to alluvial aquifer pumping.[26]

WHEREAS, CSI, through a letter, agreed with SNWA's report and asserted that additional water resources could be developed within the Coyote Spring Valley north of the Kane Springs Fault, which supported granting new appropriations of water.[27]

WHEREAS, the United States Department of Interior Bureaus (USFWS, NPS and BLM) concluded that the aquifer test provided sufficient data to determine the effects of the aquifer drawdown as well as identify drawdown throughout the region and was sufficient to project future pumping effects on spring flow. Based upon their analysis, the Department of Interior Bureaus concluded that water-level declines due to the aquifer test encompassed 1,100 square miles throughout the Order 1169 study basins. Additionally, the Department of Interior Bureaus' analysis found a direct correlation between the aquifer test pumping and flow declines at Pederson, Plummer and Apcar units and Baldwin Spring, all springs critical to the Moapa dace habitat, and asserted that pumping at the Order 1169 rate at well MX-5 in Coyote Spring Valley could result in both of the high-altitude Pederson and Pederson East springs going dry in 3 years or less.[28]

---

[25] *See* NSE Ex. 245, *Southern Nevada Water Authority Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 23–25.
[26] *Id.*
[27] NSE Ex. 247, *Coyote Springs Investments, LLC Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[28] *See, e.g.*, NSE Ex. 14, pp.15–18. *See also* NSE Ex. 256.

WHEREAS, the Department of Interior Bureaus further found that the groundwater withdrawals that occurred in Coyote Spring Valley during the Order 1169 aquifer test represented approximately one-third of the then existing water rights within Coyote Spring Valley, concluding that even one-third of the existing water rights could not be developed without adversely impacting spring flow to the headwaters of the Muddy River and habitat for the Moapa dace.[29] Ultimately, the Department of Interior Bureaus concluded that there was insufficient water available for the pending applications, and that the area that was subject to the Order 1169 aquifer test behaved as one connected aquifer and pumping in one basin would have similar effects on the whole aquifer.[30]

WHEREAS, MBOP's report disagreed with the magnitude of drawdown resulting from the Order 1169 aquifer test, but ultimately concluded carbonate-rock aquifer pumping in Coyote Spring Valley and the Muddy River Springs Area would have a one-to-one impact on Muddy River flows.[31] MBOP opined to the existence of a southern flow field, which included California Wash, Hidden Valley, Garnet Valley, and the northwest portion of the Black Mountains Area, that could be developed without depleting spring flows. MBOP also argued that changes in the groundwater levels were directly tied to water level declines in Lake Mead.[32]

WHEREAS, MVWD's report was limited to water levels and flows within the Muddy River Springs Area. In its report, MVWD acknowledged the groundwater level declines resulting from the aquifer test, including decreased spring flow at the Pederson springs, Warm Springs West gage and Baldwin Spring, but not at Jones Spring or Muddy Spring.[33] Ultimately, MVWD concluded that additional water was available in the Lower Moapa Valley, as that aquifer did not appear hydrologically connected to the regional carbonate-rock aquifer.

WHEREAS, GBWN presented a report that recognized the decline in the groundwater levels in Coyote Spring Valley and discharge to the Muddy River Springs Area resulting from the

---

[29] *Id.*
[30] *Id.*
[31] *See* NSE Ex. 252, *Moapa Band of Paiute Indians Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 25.
[32] *Id.*
[33] NSE Ex. 250, *Moapa Valley Water District Basin 220 Well Site Analysis*, Hearing on Interim Order 1303, official records of the Division of Water Resources; NSE Ex. 251, *Moapa Valley Water District Evaluation of MX-5 Pumping Test on Springs and Wells in the Muddy Springs Area*, dated June 24, 2013, Hearing on Interim Order 1303, official records of the Division of Water Resources.

aquifer test.[34] However, GBWN believed that the aquifer test failed to provide sufficient data to determine water availability throughout the other study basins. GBWN did assert that pumping of existing rights within all of the study basins would unacceptably decrease spring discharge.[35]

WHEREAS, CBD, relying on GBWN's technical report, opined that pumping existing water rights within the Order 1169 study basins would result in unacceptable decline in spring flow, ultimately threatening the Moapa dace and the habitat necessary for the species survival.[36]

WHEREAS, based upon the findings of the Order 1169 aquifer test, in denying the pending applications the State Engineer found: (1) that the information obtained from the Order 1169 aquifer test was sufficient to document the effects of pumping from the carbonate-rock aquifer on groundwater levels and spring flow and that the information could assist in forming opinions regarding future impacts of groundwater pumping and availability of groundwater in the study basins; (2) that the impacts of aquifer test pumping in Coyote Spring Valley was widespread throughout the Order 1169 aquifer test study basins and that the additional pumping in Coyote Spring Valley was a significant contributor to the decline in the springs that serve as the headwaters of the Muddy River and habitat for the Moapa dace; and, (3) that additional pumping from the then pending applications would result in significant regional water-level decline, and decreases in spring and Muddy River flows.[37]

WHEREAS, the basins that were included in the Order 1169 aquifer test were acknowledged to have a unique hydrologic connection and share the same supply of water.[38] The State Engineer further went on to find that the total annual supply to the basins could not be more than 50,000 acre-feet, that the perennial yield is much less than that because the Muddy River and the springs in the Warm Springs area utilize the same supply, and that the quantity and location of

---

[34] NSE Ex. 246, *Great Basin Water Network Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[35] *Id.*
[36] NSE Ex. 248, *Center for Biological Diversity Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[37] NSE Exs. 14–21. The study basins include Coyote Spring Valley, Garnet Valley, Hidden Valley, Muddy River Springs Area, California Wash, and that portion of the Black Mountains Area lying within the LWRFS was defined as those portions of Sections 29, 30, 31, 32, and 33, T.18S., R.64E., M.D.B.&M.; Section 13 and those portions of Sections 1, 11, 12, and 14, T.19S., R.63E., M.D.B.&M.; Sections 5, 7, 8, 16, 17, and 18 and those portions of Sections 4, 6, 9, 10, and 15, T.19S., R.64E., M.D.B.&M.
[38] *See, e.g.*, NSE Ex. 14, p. 24.

any groundwater that could be developed without conflicting with senior rights on the Muddy River and the springs was uncertain.[39]

II. INTERIM ORDER 1303

WHEREAS, on January 11, 2019, the State Engineer issued Interim Order 1303 designating the Lower White River Flow System (LWRFS), a multi-basin area known to share a close hydrologic connection, as a joint administrative unit for purposes of administration of water rights. The Interim Order defined the LWRFS to consist of the Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, and the portion of the Black Mountains Area Hydrographic Basins as described in the Interim Order.[40] Pursuant to Interim Order 1303, all water rights within the LWRFS were to be administered based upon their respective dates of priority in relation to other rights within the regional groundwater unit.

WHEREAS Interim Order 1303 recognized the need for further analysis of the LWRFS because the pre-development discharge of 34,000 acre-feet of the Muddy River system plus the more than 38,000 acre-feet of existing groundwater appropriations within the LWRFS greatly exceed the total water budget, which was determined to be less than 50,000 acre-feet.[41] Stakeholders with interests in water right development within the LWRFS were invited to file a report with the Office of the State Engineer addressing four specific matters, generally summarized as: 1) The geographic boundary of the LWRFS, 2) aquifer recovery subsequent to the Order 1169 aquifer test, 3) the long-term annual quantity and location of groundwater that may be pumped from the LWRFS, and 4) the effect of movement of water rights between alluvial and carbonate wells within the LWRFS. Stakeholders were also invited to address any other matter believed to be relevant to the State Engineer's analysis.

WHEREAS, on May 13, 2019, the State Engineer amended Interim Order 1303 modifying the deadlines for the submission of reports and rebuttal reports by interested stakeholders. Reports

---

[39] *Id.*
[40] *See* NSE Ex. 1, *Order 1303 and Addendum to Interim Order 1303*, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[41] *Id.*, p. 7.

submitted by interested stakeholders were intended to aid in the fact-finding goals of the Division.[42]

WHEREAS, a public hearing was held in Carson City, Nevada between, September 23, 2019, and October 4, 2019. The purposes of this hearing were to afford stakeholder participants who submitted reports pursuant to the solicitation in Interim Order 1303 an opportunity to provide testimony on the scientific data analysis regarding the five topics within the Interim Order and to test the conclusions offered by other stakeholder participants.

WHEREAS, during the Interim Order 1303 hearing, testimony was provided by expert witnesses for the participants CSI, USFWS, NPS, MBOP, SNWA and LVVWD[43], MVWD, Lincoln County Water District and Vidler Water Company (LC-V), City of North Las Vegas (CNLV), CBD, Georgia Pacific Corporation (Georgia Pacific) and Republic, Nevada Cogeneration Associates Nos. 1 and 2 (collectively "NCA"), Muddy Valley Irrigation Company (MVIC), Western Elite Environmental, Inc. and Bedroc Limited, LLC (collectively "Bedroc"), and NV Energy.

WHEREAS, following the conclusion of the Interim Order 1303 hearing, stakeholder participants were permitted to submit written closing statements no later than December 3, 2019. The specific area evaluated, data analyzed, and methodology used varied by participant. Generally, participants relied on spring and streamflow discharge, groundwater level measurements, geologic and geophysical information, pumping data, climate data, and interpretations of aquifer hydraulics. Methodologies applied ranged from conceptual observations to statistical analysis to numerical and analytical models; the level of complexity and uncertainty differing for each.

WHEREAS, each of the participants' conclusions with respect to the topics set forth in Interim Order 1303 are summarized as follows:

---

[42] *Id.*, pp. 16–17.

[43] SNWA is a regional water authority with seven water and wastewater agencies, one of which is LVVWD. References to SNWA include its member agency, LVVWD, which too retains water rights and interests within the LWRFS.

Center for Biological Diversity

The primary concern of the CBD was to ensure adequate habitat for the survival and recovery of the Moapa dace. CBD felt "that the Endangered Species Act is the primary limiting factor on the overall quantity of allowable pumping within the [LWRFS] and thus [...] geared [the] analysis toward that goal of protecting the dace." The Moapa dace primarily resides in the springs and pools of the Muddy River; protecting those areas of habitat are of the utmost importance to CBD's goal and have the collateral benefit of protecting the Muddy River decreed rights. Furthermore, CBD "believe[d] that withdrawals from the carbonate aquifer that cause a reduction in habitat quantity for the dace are a take under the Endangered Species Act and thus prohibited."[44]

CBD urges that Kane Springs Valley Hydrographic Basin (Kane Springs Valley) be included and managed as part of the LWRFS; otherwise CBD did not dispute the boundary as presented in Interim Order 1303. The inclusion of Kane Springs Valley was based on a shallow hydraulic gradient between Coyote Spring Valley and Kane Springs Valley; propagation of water level decline into Kane Springs Valley during the Order 1169 aquifer test; and a finding that the carbonate-rock aquifer extends into Kane Springs Valley. In CBD's opinion, adequate management of the LWRFS does not require that the administrative boundary include the White River Flow System north of Coyote Spring Valley.[45]

CBD identified a long-term, declining trend commencing in the 1990s in carbonate-rock aquifer water levels within the Muddy River Springs Area, which was accelerated by the Order 1169 aquifer test. Although CBD observed a partial, immediate recovery in the carbonate-rock aquifer water levels and spring flows, CBD finds that full recovery to pre-Order 1169 aquifer test conditions were never realized. Concurring with multiple other participants, CBD identified higher water levels in response to wet years despite the continued decline in the overall trend in the hydrographs. However, with regards to long-term drought, in their review of the Climate Division Data for southern Nevada, CBD saw no indication of a 20-year drought and disagreed with the conclusions and analysis presented by MBOP. Decreased spring flows in conjunction with

---

[44] *See* CBD Ex. 3, *CBD Order 1303 Report by Dr. Tom Myers; 27 pp.*, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 1; Transcript 1504–1505.
[45] *See* CBD Ex. 3, pp. 1, 2, 12, 17, 19; *See* CBD Ex. 4, *CBD Order 1303 Rebuttal in Response to Stakeholder Reports by Dr. Tom Myers; 30 pp.*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 17–21; Tr. 1516; 1520–1521; 1526–1527; 1538–1539; CSI Ex. 2, p. 38; LC-V Ex. 2, pp. 11–14.

increased carbonate-rock aquifer pumping, led the CBD to infer the dependency of spring flows on carbonate-rock aquifer water supply.[46]

Again, with emphasis on protecting spring flows, and thus the Moapa dace habitat, CBD did not support any pumping of the carbonate-rock aquifer. CBD's desired outcome would be to avoid decreases in spring flow in the Warm Springs area attributed to continued carbonate-rock aquifer pumping. CBD postulated that surface water rights on the Muddy River will be protected by limiting carbonate-rock aquifer pumping.

Alternatively, CBD speculated that some alluvial aquifer pumping, within the Muddy River Springs Area and Coyote Spring Valley, could be sustained without significantly impacting the Warm Springs area. A preliminary estimate of 4,000 afa of sustainable alluvial aquifer pumping was proposed, based on the existing pumping within the Muddy River Springs Area and considering pumping in the 1990s near 5,000 afa when alluvial aquifer water levels were stable.[47]

Church of Jesus Christ of Latter-day Saints

The Church of Jesus Christ of Latter-day Saints (the Church) chose not to directly participate in the hearing but joined the evidentiary submissions of CNLV.[48] In response to the directives set forth in Interim Order 1303 and considering the testimony provided, the Church requests the continued administration and management of the LWRFS as identified in Interim Order 1303, and to allow for change applications throughout the LWRFS basins that move pumping of groundwater further away from the Muddy River Springs Area and from the alluvial aquifer to the carbonate-rock aquifer. The Church further requests that the testimony and recommendation of Dwight Smith, PE, PG on behalf of CNLV be considered and adopted.[49]

---

[46] *See* CBD Ex. 3, pp. 1, 24; *See* CBD Ex. 4, p. 8–10, 21–25; Tr. 1508–1525; LC-V Ex. 2, p. 12, GP-REP Ex. 2, p. 3; CBD's expert suggest that the Palmer Drought Severity Index is more robust to evaluate for drought rather than using precipitation.
[47] *See* CBD Ex. 3, pp. 20–26; *See* CBD Ex. 4, p. 28–29; Tr. 1525-1528.
[48] *See* Letter from the Church, received August 15, 2019, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[49] *See Closing Brief of the Church of Jesus Christ of Latter-Day Saints* (Church closing), Hearing on Interim Order 1303, official records of the Division of Water Resources.

City of North Las Vegas

In CNLV's report submissions and closing statement it addressed four questions set forth in Interim Order 1303.[50] CNLV generally urges for more analysis and study of the LWRFS before administrative decisions are made due to lack of agreement on fundamental interpretations of the water availability and basin connectivity. It was agreed to by CNLV that most of Garnet Valley and a small portion of the Black Mountains area were within the larger carbonate-rock aquifer underlying the LWRFS basins, but that there is uncertainty in the boundaries of Garnet Valley with California Wash and Las Vegas Valley Hydrographic Basin (Las Vegas Valley).[51] With respect to the recovery of the groundwater aquifer following the Order 1169 aquifer test, CNLV concluded that the record and evidence demonstrates a long-term declining trend in the groundwater level since the late 1990s and that pumping responses can propagate relatively quickly through the carbonate-rock aquifer and drawdown is directly related to the pumping.[52]

While CNLV did consider the long-term quantity of groundwater that may be developed without adversely impacting discharge to the Warm Springs area, its opinions were limited to the sustainability of pumping within Garnet Valley.[53] CNLV concluded that the safe yield concept should be applied to the management of pumping within the LWRFS and that pumping between 1,500 afa to 2,000 afa does not appear to be causing regional drawdown within the LWRFS carbonate-rock aquifer and that pumping this quantity of water may be sustainable within the APEX Industrial Park area of Garnet Valley.[54] Finally, CNLV asserted that movement of alluvial water rights from the Muddy River Springs Area along the Muddy River would reduce the capture

---

[50] *See* CNLV Ex. 5, *City of North Las Vegas Utilities Department: Interim Order 1303 Report Submittal from the City of North Las Vegas – July 2, 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources. *See* 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 – August 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources. *See* Tr. 1416–66, and *City of North Las Vegas' Closing Statement* (CNLV Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources.

[51] *See* CNLV Ex. 5, pp. 2–3. *See also* 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.- July 2019*, pp. 7–8, 38.

[52] *Id.*, p. 3, Technical Memo, pp. 14–16.

[53] *Id.*, pp. 3–4.

[54] *Id.*, p. 4., Technical Memo, p. 45.

of Muddy River flow, move more senior water rights into Garnet Valley to support a secure water supply for the municipal uses within the APEX area, and would support overall objectives relating to the management of the LWRFS.[55] CNLV advocated that transferring water rights between alluvial aquifer and carbonate-rock aquifer should be considered on a case-by-case basis with consideration given as to location, duration, and magnitude of pumping.[56]

CNLV disagreed with certain conclusions of the NPS relating to the inclusion of the entirety of the Black Mountains Area within the LWRFS boundaries and had concerns relating to the reliability of the Tetra Tech model for future water resource management within the LWRFS.[57] CNLV further disagreed with stakeholder conclusions that movement of groundwater withdrawals from the alluvial aquifer along the Muddy River to the carbonate-rock aquifer in Garnet Valley will not alleviate the conflicts to Muddy River flow, rather concluding that there may be benefits for overall management of the LWRFS.[58] Further, CNLV disagreed with certain findings regarding water flow through the carbonate-rock aquifer, finding that it is likely that some groundwater can be pumped within Garnet Valley without capturing groundwater that would otherwise discharge to the Warm Springs area and the Muddy River.[59] Finally, in its rebuttal the CNLV joined other stakeholders in supporting the conclusion that there is a quantity of water that may be sustainably developed within the LWRFS and that use of carbonate-rock aquifer groundwater in Garnet Valley is critical to the short-term and long-term management and development of the APEX Industrial Complex.[60]

Coyote Springs Investments

In presenting its opinions and conclusions CSI's focus was primarily on climate as the foundation for groundwater elevation declines after the Order 1169 aquifer test, and additional geophysical research that provided evidence of a structural block isolating the west side of Coyote Spring Valley.

---

[55] *Id.*, Technical Memo, p. 48–49.
[56] *Id.*
[57] *See* CNLV Ex. 6, pp. 1–2.
[58] *Id.*, p. 2.
[59] *Id.*, pp. 2–3.
[60] *Id.*, p. 3.

CSI did a statistical analysis of climate data, and determined from the results that 1998, 2004, 2005, and 2010 were wetter than normal, with a drying trend from 2006 to 2017.[61] The Order 1169 aquifer test took place toward the end of an extended dry period when all water resources throughout the LWRFS were negatively affected.[62] Additionally, annual cyclical patterns of groundwater pumping should not be confused with long-term climate variability.[63]

CSI challenged the basic assumption that the LWRFS, as proposed in Interim Order 1303, is a homogenous unit.[64] CSI could not duplicate the results of the SeriesSEE, and its own Theis solution modeling concluded that a greater impact occurred from pumping at a well closer in proximity to Pederson Spring than pumping from a well further away, or the combined effect of both wells.[65] CSI also acknowledged that due to the fragmented nature of the LWRFS, the Theis solution is of limited utility.[66]

CSI presented geologic and geophysical information in support of the idea that the LWRFS administrative unit is a geophysically and hydrogeologically heterogenous area, characterized by multiple flow paths defined by faults and structural elements that control the occurrence and movement of regional and local groundwater along the western side of Coyote Spring Valley, the eastern side of Coyote Spring Valley, and from Lower Meadow Valley Wash into the LWRFS.[67] CSI stated that the LWRFS does not include Kane Springs Valley.[68]

---

[61] CSI Ex. 1, *CSI July 3, 2019 Order 1303 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 4–5; Tr. 53.
[62] CSI Ex. 1, p. 5.
[63] CSI Ex. 2, *CSI August 16, 2019 Rebuttal Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 2, 7.
[64] CSI Ex. 1, p. 7.
[65] CSI Ex. 1, p. 7; Tr. 131–132.
[66] Tr. 154.
[67] CSI Ex. 2, p. 2; *CSI Closing Statement* (CSI Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources; CSI recommended including Lower Meadow Valley Wash in its Rebuttal report. See CSI Ex. 2, p. 12; Mr. Herrema said Lower Moapa Valley, but the report said Lower Meadow Valley 10:10.
[68] CSI Ex. 1, p. 15; the outflow from Kane Springs Valley is included in the water budget, but due to isolating geologic features, groundwater elevations in Kane Springs Valley are not impacted by pumping in the LWRFS, Tr. 135:7–137:3, 160:2–12.

CSI engaged a geophysicist to conduct a CSAMT survey at multiple points in the valley.[69] CSI's CSAMT study showed evidence of a prominent carbonate block bounded on either side by normal faults.[70] CIS asserts that the carbonate block isolates recharge from the zone west of the block, such that it eliminates or limits contribution of local recharge to the Warm Springs area.[71] Faulting has created a preferred path for groundwater flow "from the east side Coyote Spring Valley to the Muddy River Springs Area".[72]

CSI relied on a water budget as the best method to determine available water in the LWRFS, accounting for recharge and subsurface flow as well as climatic variations.[73] Comparing several models of recharge, CSI estimated recharge at 5,280 afy from the Sheep Range to the western side of Coyote Spring Valley.[74] CSI stated that 30,630 afa can be pumped from the LWRFS, but there would be impacts from pumping the water, and that the Coyote Spring Valley can sustain 5,280 afa of pumping from the western side without impact to the Warm Springs area or the Muddy River.[75]

As asserted by CSI, groundwater pumping from the carbonate-rock aquifer in the Muddy River Springs Area affects flow in the carbonate-rock aquifer to the alluvial aquifer, which then affects flow from the alluvial aquifer to the Muddy River.[76] CSI argues that effects are dependent on well location, geologic formations, hydraulic gradients, and elevation.[77] Transfers between carbonate and alluvial pumping should be made on a case-by-case basis, analyzing place of use, points of diversion, and quantity of groundwater.[78] Movement of water rights between alluvial wells and carbonate-rock aquifer wells will only serve to shift the timing and location of impacts and not the amount of the impact.[79]

---

[69] CSI Ex. 1, p. 25
[70] CSI Ex. 1, p. 25.
[71] CSI Ex. 1, p. 29; evidence of impermeability, Tr. 181.
[72] CSI Ex. 1, p. 29.
[73] CSI Closing.
[74] CSI Ex. 1, pp. 31–40.
[75] Tr. 221–223; CSI Closing, pp. 8–9.
[76] CSI Closing.
[77] CSI Closing, p. 19.
[78] CSI Closing.
[79] CSI Ex. 1, p. 58.

As a consequence of the heterogenous nature of the LWRFS, CSI recommended sustainable management of the LWRFS through the creation of "Management Areas" that recognize flow paths and their relative contributions to spring flow, surface flow, evapotranspiration, and sub-surface outflow.[80] For example, though pumping in the Muddy River Springs Area near the Warm Springs area would have a direct impact on available surface water resources, structural blocks and faults isolate the effect of groundwater pumping in other areas of the LWRFS.[81] Thus CSI does not recommend a blanket ban on carbonate-rock aquifer pumping, or a decrease in carbonate-rock aquifer pumping in exchange for alluvial aquifer pumping.

Georgia Pacific and Republic

Dry Lake Water, LLC, Georgia Pacific and Republic submitted initial and rebuttal responses to Interim Order 1303 and offered testimony during the hearing.[82] In their response, Georgia Pacific and Republic acknowledged impacts to groundwater elevations throughout the LWRFS, including wells in the Black Mountains Area and Garnet Valley, which does demonstrate a degree of hydraulic connectivity throughout the carbonate-rock aquifer. However, Georgia Pacific and Republic called for collection of more scientific evidence to further understand the LWRFS and its boundaries. Further, it was their opinion that climate, seasonal fluxes and pumping within Garnet Valley and the Black Mountains Area resulted in the groundwater declines observed during the Order 1169 aquifer test.[83] Ultimately, Georgia Pacific and Republic do not believe sufficient information exists to draw distinct conclusions as to the cause of the groundwater declines during the Order 1169 aquifer test and whether carbonate-rock aquifer pumping within

[80] CSI Closing.
[81] CSI Ex. 2, p. 17.
[82] The initial response was submitted on behalf of Dry Lake Water, LLC, Georgia Pacific, and Republic. *See* GP-REP Ex. 1, *Broadbent July 2, 2019 Initial Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources. The rebuttal response was submitted on behalf of Dry Lake Water, LLC, Georgia Pacific Gypsum LLC, and Republic. *See* GP-REP Ex. 2, *Broadbent August 16, 2019 Rebuttal Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources. However, the expert only appeared at the Hearing on Interim Order 1303 on behalf of Georgia Pacific and Republic. *See* Tr. 1588-91.
[83] *See* GP-REP Ex. 01, GP-REP Ex. 02, and *Closing Argument of Georgia Pacific Corporation and Republic Environmental Technologies, Inc.* (Closing GP-REP), Hearing on Interim Order 1303, official records of the Division of Water Resources.

the Garnet Valley and the Black Mountains Area has a measurable impact to spring flow in the Warm Springs area.[84]

Great Basin Water Network

GBWN elected to pose procedural suggestions relating to public involvement, availability of documents and data, transparency, and decision making, and did not submit a report with an independent analysis addressing the questions in Interim Order 1303.[85] GBWN advocates for sustainable management of the entirety of the White River Flow System as one unit based on the interconnected nature of all of the hydrologically connected basins, although no analysis to support which areas this would include was provided. GBWN relies on conclusory statements to establish the interconnected nature of the system as support for its position. Later, GBWN chose not to participate in the hearing nor submit a rebuttal report, closing arguments, or public comment.

Lincoln County Water District and Vidler Water Company

LC-V's participation in the LWRFS hearing was driven by their existing and pending groundwater rights in Kane Springs Valley, and an interest in excluding Kane Springs Valley from the LWRFS management area.[86] They disputed that Kane Springs Valley should be included within the LWRFS boundary based on their assertion of: prior decisions of the State Engineer that acknowledged the separate nature of the basin from the rest of the LWRFS, groundwater elevation comparisons, precipitation and recharge data, groundwater chemistry, and geophysical study results. In general, Kane Springs Valley should be managed based on its perennial yield, recognizing that there is groundwater flow to the LWRFS as there are from other basins into the LWRFS, but where they are excluded from the proposed management area.[87]

---

[84] *See* Closing GP-REP.
[85] *GBWN Report on Order 1303*, (GBWN Report), Hearing on Interim Order 1303, official records of the Division of Water Resources.
[86] LC-V Ex. 1, *Lower White River Flow System Interim Order #1303 Report Focused on the Northern Boundary of the Proposed Administrative Unit, prepared by Lincoln County Water District and Vidler Water Company in Association with Zonge International Inc., dated July 3, 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 2-1.
[87] LC-V Ex. 2, *Rebuttal Submittal to Reports Submitted in Response to Interim Order #1303, dated August 16, 2019 and Attachments A, B, C, D and E containing the reports or technical memorandums of Greg Bushner, Peter Mock, Thomas Butler, Todd Umstot and Norman Carlson.*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 7, 14–15.

Various rulings of the State Engineer have previously addressed whether appropriation of groundwater from Kane Springs Valley would affect the Muddy River Springs Area.[88] LC-V states that these findings have not been challenged by any of the Order 1169 participants.[89] However, to the extent that SNWA relied on multiple linear regression models to establish groundwater flow from Kane Springs Valley to the LWRFS, LC-V do not agree.[90]

LC-V identified a distinct "break," or local increase, in water levels in the regional hydraulic gradient between wells drilled in the LWRFS versus wells drilled in Kane Springs Valley and northern Coyote Spring Valley.[91] It attributed the break to geologic structures located throughout the carbonate-rock aquifer. Although wells within the LWRFS exhibit very consistent groundwater levels, indicative of high transmissivity values across the area, the gradient between well KPW-1 and down-basin wells is much steeper, implying an impediment to groundwater flow near the mouth of Kane Springs Valley.[92]

In a 2006 hearing for protested water rights applications, LC-V presented an analysis of the regional geochemistry data including stable isotopes, temperature, and carbon-14 data.[93] That analysis found that the groundwater pumped from Kane Springs Valley could not be identified in the source water for the Big Muddy Spring, nor other springs farther south and outside the boundaries of the LWRFS.[94] LC-V concluded that groundwater pumped from production well KPW-1 is on a different groundwater flow path from the springs, consistent with the differences in hydraulic gradients, groundwater levels, and geophysical data.[95] CSVM-4, a well located in Coyote Spring Valley, and KPW-1, in Kane Springs Valley, have similar temperatures compared to the other wells in the basin, and a lower percentage difference on other markers tracked throughout groundwater in the basin.[96] LC-V argues that the water from these wells is chemically

---

[88] LC-V Ex. 1, pp. 2-2 through 2-3, citing State Engineer's Rulings 5712, 6254, 5712.
[89] LC-V Ex. 1, p. 2-3.
[90] Testimony generally at Tr. 1311–1318. "... simply having correlation is not proof of causation. Causation is neither proved nor evaluated in a regression analysis." Tr. 1303.
[91] LC-V Ex. 1, p. 3-1.
[92] LC-V Ex. 1, pp. 1-1, 3-1 through 3-4. LC-V went on to conclude that local groundwater recharge occurs in Kane Springs Valley that does not flow to the LWRFS, and therefore there is available unappropriated water in the basin. LC-V Ex. 1, p. 3-5.
[93] LC-V Ex. 1, Appendix C, pp. 111–153.
[94] *Id.*, pp. 124–125.
[95] "Gradient alone does not mean flow." Thomas Butler, witness on behalf of LC-V, Tr. 1281.
[96] Tr. 1281–1282; LC-V Ex. 1, pp. 3-7 through 3-11.

unique and does not appear in any other wells in the LWRFS.[97] LC-V concludes carbon isotope data also confirmed that the water from Kane Springs Valley does not appear in the Muddy River Springs area.[98]

LC-V engaged a geophysical company to perform a CSAMT survey across the boundary line between Kane Springs Valley and Coyote Spring Valley, and identified significant geologic structures in southern Kane Springs Valley and northern Coyote Spring Valley.[99] Several transect lines were conducted perpendicular to the axis of the Kane Springs Valley, and one was also conducted along the axis of the southern part of the basin.[100] Additional transects were run in Coyote Spring Valley.[101] The results of the geophysical data validated concealed faulting indicated on existing maps, and was ground-truthed with observations in the field.[102] Results indicated a previously unmapped fault at the mouth of Kane Springs Valley, which LC-V named the Northern Boundary LWRFS fault, with a potentially 2,500-foot offset of materials with different resistivities.[103] LC-V argues that the extensive faulting that occurs in southern Kane Springs Valley and northern Coyote Spring Valley form the basis for the exclusion of Kane Springs Valley from the LWRFS.[104]

LC-V gave no opinion on the long-term annual quantity of groundwater that could be pumped from the LWRFS.[105] LC-V attributes all reduction in flows of the Muddy River and its associated springs to carbonate-rock aquifer pumping within the Muddy River Springs Area, and finds no discernable effect from carbonate-rock aquifer pumping occurring in Coyote Springs

---

[97] Tr. 1284.
[98] Tr. 1286.
[99] LC-V Ex. 1, pp. 1-1, 4-1 through 4-10.
[100] LC-V Ex. 1, p. 4-3.
[101] LC-V Ex. 1, p. 4-3.
[102] LC-V Ex. 1, p. 4-8, Tr. 1322.
[103] Tr. 1271–1272; LC-V Ex. 1, p. 4-9.
[104] LC-V Ex. 1, p. 7-1 through 7-2; Tr. 1408. Questions from the National Park Service and the State Engineer inquired whether the areas of high resistivity in the CSAMT necessarily implied low transmissivity, low permeability of the rock. LC-V conceded that the resistivity information alone does not provide data about the hydraulic properties of either side of the resistive area, but when considered with all available information, LC-V concluded that the fault is likely an impediment to groundwater flow. Tr. 1327–1328, 1363–1364.
[105] LC-V Ex. 1, p. 5-2.

Valley.[106] As a result, LC-V finds that the efforts to protect the Warm Springs area must focus on groundwater pumping within the Muddy River Springs Area itself.[107]

Moapa Band of Paiutes

The MBOP participated in the administrative hearing due to their interest in the outcome of the proceedings and how it may affect their pending water right applications within California Wash. A regional approach, spanning a large aerial expanse, was taken by MBOP; the analysis and modeling efforts extended into central Nevada and Utah. MBOP stands apart from other participants with their interpretation of the data.[108] MBOP opposed management of the LWRFS as one basin and argues the scientific consensus is lacking amongst participants.[109] Regarding the interpretation of other participants, MBOP disagreed with the methodology and application of the 2013 USFWS SeriesSEE analysis and SNWA's multiple linear regression and requests repudiation of both.[110]

While not agreeing with the proposed boundaries of the LWRFS, MBOP did not provide a clear suggestion for which basins or portions therein should be included or excluded. MBOP suggested that pumping in California Wash has little to no impact on the Warm Springs area.[111] MBOP further suggested there are two capture zones, separated by a hydrodynamic and hydrochemical divide, which transects the Moapa River Indian Reservation area and results in south-flowing groundwater into the Las Vegas Valley through the LWRFS, bypassing the Muddy

[106] LC-V Ex. 1, p. 5-3.
[107] LC-V Ex. 1, p. 5-3.
[108] Tr. 772– 773; 839.
[109] *See Closing Statement by the Moapa Band of Paiute Indians for Order 1303 Hearing* (MBOP Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 1–2, 6.
[110] *Id.*, pp. 7–12, 15–16; *See* MBOP Ex. 3, *Johnson, C., and Mifflin, M. Rebuttal Report of the Moapa Band of Paiutes in Response to Stakeholder Technical Reports Filed under Order #1303: unpublished report and appendices, August 16, 2019. 27 p.*, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[111] *See* MBOP Ex. 2, *Johnson, C., and Mifflin, M. Water Level Decline in the LWRFS: Managing for Sustainable Groundwater Development. Initial Report of the Moapa Band of Paiutes in Response to Order #1303: unpublished report and appendices, July 3, 2019. 84 p.*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 2, 4, 14, 35; Tr. 819.

River Springs Area.[112] This hydrodynamic divide theory was not shared by SNWA, CBD, CSI, and NPS.[113]

Several participants agree that climate impacts were observed in the hydrographs, e.g., periods of wet and dry; however, MBOP interpreted the existing data to show that climate-driven decline, specifically drought, as the primary response observed in the long-term declining groundwater levels.[114] Thus, MBOP concluded that no reduction in pumping will restore high-elevation spring flows.[115] MBOP did not agree with other participants that decreasing groundwater levels and spring flows were attributed to increased carbonate-rock aquifer pumping beginning in the early 1990s.[116]

A quantity available for sustainable pumping was not proposed, but MBOP presumed more water is available in California Wash than previously thought.[117] A flux of approximately 40,000 afy of south-flowing groundwater into the Las Vegas Valley, bypassing the Muddy River Springs Area, was postulated in the initial report as possible with the hydrodynamic divide; however, during the hearing this quantity was given a range of plus or minus an order of magnitude based on assumptions for calculations.[118]

MBOP acknowledged that the Muddy River is connected to the alluvial aquifer and thus pumping from the alluvial and carbonate-rock aquifers in the Muddy River Springs Area impact the Muddy River flows.[119] Therefore, to mitigate impacts to the Muddy River, MBOP proposed that alluvial aquifer pumping, specifically between Arrow Canyon and White Narrows, can be moved to the carbonate-rock aquifer in basins to the south, such as California Wash, with minimal anticipated impacts to the Muddy River flows, rather than moving alluvial aquifer pumping from the Muddy River Springs Area to the carbonate-rock aquifer in connected areas, where impacts

---

[112] *See* MBOP Ex. 2, pp. 2, 4, 12, 14, 20, 35, 55; Tr. 812; 845.
[113] SNWA Ex. 9, pp. 12–13; CBD Ex. 4, p. 15; CSI Ex. 2, p. 23; NPS Ex. 3, *National Park Service's Response to July 2019 Interim Order 1303 Reports, Waddell, August 16, 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 4.
[114] *See* MBOP Ex. 2, pp. 3, 26–32, 35; Tr. 764–771; 805.
[115] *See* MBOP Ex. 2, pp. 3, 35; Tr. 821–826.
[116] *See* MBOP Ex. 2, p. 29; Tr. 775, 838–840; 848.
[117] *See* MBOP Ex. 2, pp. 2, 20, 35.
[118] *See* MBOP Ex. 2, pp. 6, 19, 35; Tr. 850–851.
[119] *See* MBOP Ex. 2, pp. 23–24, 35; Tr. 836.

proportional to pumping may be expected.[120] Thus, MBOP proposed favoring temporary over permanent uses and transferring of rights between the carbonate-rock and alluvial aquifers on a case-by-case basis.[121]

Moapa Valley Water District

MVWD was created by the Nevada legislature in 1983, pursuant to NRS Chapter 477, to provide water service "vital to the economy and well-being of Moapa Valley."[122] MVWD provides municipal water service to approximately 8,500 people with 3,250 metered service connections, including service to the MBOP.[123]

MVWD supported the inclusion of Kane Springs Valley within the LWRFS boundary.[124] Data indicated a direct connection between Kane Springs Valley and Coyote Spring Valley. This data included observations that the water level in KMW-1/KSM-1 decreased 0.5 foot over the duration of the Order 1169 aquifer test.[125] State Engineer's rulings have concluded that geochemical evidence and groundwater gradient data indicate that groundwater flows from the Kane Springs Valley into Coyote Spring Valley, and MVWD supports LVVWD's 2001 calculation of that quantity of water at approximately 6,000 afy.[126] MVWD performed its own calculations of the groundwater gradients from Kane Springs Valley at KMW-1 to EH-4, and concluded that the gradient was "an uninterrupted, continuous, exceptionally flat gradient," unlike gradients commonly seen in the western U.S., especially in highly fractured areas.[127] MVWD also

---

[120] *See* MBOP Ex. 2, pp. 23, 35.
[121] *See* MBOP Closing.
[122] Tr. 1172.
[123] MVWD Ex. 3, *District July 1, 2019 Report in response to Interim Order 1303*, p.5, Hearing on Interim Order 1303, official records of the Division of Water Resources; MVWD Ex. 4, *District August 16, 2019 Rebuttal Report*, p, 1, Hearing on Interim Order 1303, official records of the Division of Water Resources. MVWD has 3,147 afa of water rights in Arrow Canyon. Tr. 1169–1170.
[124] MVWD Ex. 3, p. 1; Tr. 1175.
[125] MVWD Ex. 3, p. 1; MVWD Ex. 4, p. 2.
[126] MVWD Ex. 3, pp. 1–2, referring to State Engineer's Ruling 5712 (*see*, NSE Ex. 12, *Ruling 5712*, Hearing on Interim Order 1303, official records of the Division of Water Resources) and MVWD Ex. 8, *Las Vegas Valley Water District, Water Resources and Ground-Water Modeling in the White River and Meadow Valley Flow Systems, Clark, Lincoln, Nye, and White Pine Counties, Nevada (2001)*, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 6-3.
[127] Tr. 1177–1178.

introduced evidence of a stipulation between LC-V and the USFWS that bases a reduction in pumping in Kane Springs Valley on a lowering of spring discharges in the Warm Springs area, and introduced a letter from SNWA to the State Engineer, as additional support that the participants to the Interim Order 1303 hearing have previously recognized Kane Springs Valley is part of the LWRFS.[128]

MVWD disagreed that a hydrologic barrier exists between Coyote Springs Valley and Kane Springs Valley.[129] Relying on a 2006 report prepared by another consultant, MVWD said the evidence indicated that the fault at the mouth of Kane Springs Valley was not an impediment to flow, and that there was no evidence of having encountered hydraulic barriers to groundwater flow during a seven-day aquifer test.[130] Additionally, the "highly transmissive fault zone" is continuous across the basin boundary between Kane Springs Valley and Coyote Spring Valley.[131] MVWD found further support for its position from evidence that KMW-1 showed drawdown during both the seven-day aquifer test on KPW-1, as well as from the Order 1169 aquifer test pumping that occurred from MX-5.[132] MVWD considered the water level data collected before, during and after the Order 1169 aquifer test, and Warm Springs area spring discharge to support its finding that the fault is not interrupting groundwater flow.[133] MVWD found it "questionable" that the first suggestion of a fault that impedes southward groundwater flow would be prepared by LC-V for this hearing.[134]

Although water levels and spring discharge did not recover to the levels measured before the Order 1169 aquifer test, MVWD believed that the LWRFS is at or near steady-state conditions

---

[128] Tr. 1195–1197.
[129] Tr. 1176–1177.
[130] Tr. 1181–1182. MVWD also quoted from the report that "the fracturing was so extensive that the fractured aquifer system really behaved as an equivalent porous media." *Id.* MVWD later agreed that this would behave like a sandy aquifer. Tr. 1224.
[131] Tr. 1185.
[132] Tr. 1250.
[133] Tr. 1219.
[134] *Post-Hearing Brief of Moapa Valley Water District* (MVWD Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 5.

regarding aquifer recovery.[135] MVWD viewed this as being consistent with the State Engineer's statements in Interim Order 1303.[136]

Finally, MVWD did not provide a specific quantity of available water but did acknowledge that the "actual safe pumpage" is less than current pumping rates, and recognized a direct relationship between pumping from the carbonate-rock aquifer, spring and Muddy River flows, and alluvial aquifer pumping.[137] The timing and magnitude of carbonate-rock aquifer pumping effects on spring discharge is dependent on the volume of water pumped and the proximity of a pumping center to the springs; however, all cumulative carbonate-rock aquifer pumping in the seven interconnected basins will eventually cause depletions on the Warm Springs area springs.[138] Further, if carbonate rights are transferred to the alluvial aquifer there will be depletions to Muddy River flows and impacts to senior Muddy River water right owners.[139]

MVWD raised additional matters that they believed relevant to the analysis under Interim Order 1303. First, they stressed the importance of municipal water rights, and the necessity for a reasonably certain supply of water for future permanent uses without jeopardizing the economies of the communities that depend on the water supply, and to protect the health and safety of those who rely on the water supply.[140] To that end, MVWD requested that the State Engineer consider designating municipal use as the most protected and highest use of water, and to give MVWD the perpetual right to divert 6,791 afa of permitted and certificated rights from its carbonate-rock aquifer wells.[141] Second, MVWD stated that it had already satisfied its obligation to protect Moapa dace habitat and senior water rights when it dedicated 1cfs/724 afa, or approximately 25% of the MVWD current diversions, from its most senior water right, to the enhancement of the Moapa dace habitat.[142]

---

[135] Tr. 1198, MVWD Ex. 3, p. 4.
[136] Tr. 1199.
[137] Tr. 1199–1200; MVWD Closing, pp. 9–10.
[138] MVWD Ex. 3, p. 5.
[139] *Id.*
[140] MVWD Ex. 3, p. 5.
[141] MVWD Ex. 3, p. 6; Tr. 1203–1204; 6,791 afa constitutes an increase in the carbonate-rock aquifer pumping for MVWD. Tr. 1228.
[142] MVWD Ex. 3, pp. 6–7; Tr. 1202–1203.

Muddy Valley Irrigation Company

The MVIC is a non-profit Nevada corporation with the senior decreed water rights to the Muddy River, who provided testimony that SNWA is a majority shareholder while other participants such as CSI, LC-V, and MVWD are minority shareholders of the decreed rights.[143] MVIC concurred with SNWA's conclusions regarding aquifer recovery, long-term quantity of groundwater, and movement of water between the alluvial and the carbonate-rock aquifers.[144] Specifically, that any groundwater pumping, from both alluvial or carbonate-rock aquifers, within the Muddy River Springs Area impacts Muddy River flows, thus violating the Muddy River Decree.[145] MVIC did not dispute the geographic boundaries as identified in Interim Order 1303.[146] MVIC argued that the Muddy River and all of its sources are fully appropriated and emphasized the decreed seniority to groundwater rights, and further asserts that these surface water rights are protected by the Muddy River Decree and the prior appropriation doctrine.[147]

United States Department of the Interior, National Park Service

NPS submitted both an initial and rebuttal report in response to the Interim Order 1303 solicitation and presented testimony during the hearing.[148] Based upon NPS's evaluation of the evidence relating to the Order 1169 aquifer test, the use of an updated numerical groundwater flow model previously developed to predict conditions within the LWRFS, data compiled since the conclusion of the Order 1169 aquifer test, and review of other available data, NPS came to multiple conclusions relating to the delineation and management of the LWRFS. NPS advocates for the

---

[143] Tr. 1693–1696, 1705.

[144] MVIC Ex. 1, *MVIC Rebuttal Report dated August 15, 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources. MVIC identified sections from the SNWA report, but the references do not correspond with sections in SNWA's report. The State Engineer assumes that these section numbers correspond to page numbers of the SNWA report; *See also*, SNWA Ex. 7, *Burns, A., Drici, W., Collins, C., and Watrus, J., 2019, Assessment of Lower White River Flow System water resource conditions and aquifer response, Presentation to the Office of the Nevada State Engineer: Southern Nevada Water Authority, Las Vegas, Nevada*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

[145] MVIC Ex. 1, p. 5; Tr. 1698.

[146] *See* MVIC Ex. 1, p. 3; Tr. 1697–1968.

[147] *Muddy Valley Irrigation Company Post Hearing Closing Statement* (MVIC Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources; Tr. 1967, 1700–1708. *See also*, NSE Ex. 333, *Muddy River Decree*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

[148] *See* NPS Ex. 2, *Prediction of the Effects of Changing the Spatial Distribution of Pumping in the Lower White River Flow System, Waddell, July 3, 2019*; Tr. 494–597.

inclusion of the entirety of the Black Mountains Area within the geographic boundary of the LWRFS based upon its review of geologic conditions that facilitate flow from the southern portion of the LWRFS through the Muddy Mountains thrust sheet and discharging in Rogers Spring and Blue Point Spring.[149] Further supporting this opinion, NPS cites to spring chemistry and isotopic composition of the water discharging from Rogers Spring and Blue Point Spring and the hydraulic head conditions that NPS believes supports the flow of groundwater beneath the Muddy Mountains from the carbonate-rock aquifer to those springs.[150] NPS acknowledge that there is a weak hydraulic connection between Rogers Spring and Blue Point Spring to the LWRFS based upon the geologic conditions within the Muddy Mountains, but argues that the entirety of the Black Mountains Area should be included to allow for management of the regional carbonate-aquifer to protect against diminished discharge to those springs.[151]

In addition to advocating for the inclusion of the entirety of the Black Mountains Area, the NPS provided evidence and analysis to support its conclusion that Kane Springs Valley too should be included within the geographic boundary of the LWRFS.[152] Based upon a review of the hydrologic data, geology of the Kane Springs Valley and basin boundaries, Coyote Spring Valley, and data from the Order 1169 aquifer test, NPS concludes that there is a clearly established hydrological connection between Kane Springs Valley and the other LWRFS basins, including discharge to the Warm Springs area.[153] While NPS advocates for the inclusion of the entire Black Mountains Area and Kane Springs Valley, it did not find any evidence to support the inclusion of the Las Vegas Valley within the LWRFS based upon a similar review of the geology and hydrological data.[154]

In interpreting data since the conclusion of the Order 1169 aquifer test, NPS reviewed the available data, concluding that the decades long decline of groundwater levels is not attributable to climate, but rather that the groundwater pumping within the LWRFS is the contributing

---

[149] *See* NPS Ex. 2, p. 22. *See also*, Tr. 569–70; NPS, *Closing Statements Interim Order 1303 Hearing Testimony* (NPS Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 2.
[150] NPS Ex. 2, p. 22; NPS Closing, pp. 2–4.
[151] *Id.*
[152] NPS Ex. 2, p. 22; NPS Ex. 3, pp. 5–11; Tr. 550–551; NPS Closing, pp. 4–5.
[153] NPS Ex. 2, p. 22; NPS Ex. 3, pp. 5–11; Tr. 550–551; NPS Closing, pp. 5–6.
[154] NPS Ex. 2, p. 22; Tr. 552–554.

factor.[155] NPS opined that if recent pumping withdrawals continued, the current declining trend would be accelerated, adversely impacting spring discharge in the Warm Springs area and Muddy River flow.[156] Further, NPS's review of the data lead to its conclusion that it will take many years, if not decades for the LWRFS carbonate-rock aquifer to reach equilibrium, particularly at the current groundwater pumping withdrawals and even longer if pumping withdrawals occurred at Order 1169 aquifer test levels.[157] However, NPS did not provide an opinion as what rate of groundwater withdrawals would be sustainable within the LWRFS.

Finally, NPS concluded that the movement of groundwater withdrawals from the alluvial aquifer within the Muddy River Springs Area to the carbonate-rock aquifer within the LWRFS would ultimately have little impact on capture of Muddy River flow. Specifically, NPS found that while there may be near-term benefits to the Warm Springs area and Muddy River flow, those benefits would eventually disappear, as the impact would only be delayed and not eliminated.[158]

Nevada Cogeneration Associates

NCA submitted a Rebuttal Report Pertaining to Interim Order 1303 and provided testimony at the Interim Order 1303 hearing.[159] NCA objected to the inclusion of certain non-profit organizations on the basis that those organizations were not stakeholders and did not have an interest to protect as the non-governmental organizations did not have water rights within the LWRFS basins effected by the proceedings.[160]

With respect to the geographic boundary of the LWRFS, in its Rebuttal Report, NCA is of the opinion that the northwestern portion of the Black Mountains Area, as identified by the State Engineer, should be within the LWRFS basins, but expressed its disagreement with other opinions advocating for the inclusion of the entire Black Mountains Area based upon NCA's analysis of the geology and groundwater elevations.[161] During the Interim Order 1303 hearing and in its Post-Hearing Brief, NCA's opinion shifted to advocate for the boundary of the LWRFS to be adjusted

[155] NPS Ex. 2, pp. 7, 22–23. *See also* NPS Closing, pp. 5–6.
[156] *Id.*
[157] *Id.*
[158] NPS Ex. 2, p. 23. *See also* NPS Closing, p. 6, and Tr. 593–594.
[159] NCA Ex. 1, *NCA Rebuttal Report Pertaining to Interim Order 1303 August 16, 2019,* Hearing on Interim Order 1303, official records of the Division of Water Resources; Tr. 1602–50.
[160] NCA Ex. 1, pp. 1, 23.
[161] *Id.*, pp. 2, 23.

to exclude its production wells in the Black Mountains Area; however, NCA did not alter its opinion regarding the remaining portion of the Black Mountains Area staying within the LWRFS.[162]

NCA further expressed that the Lower Meadow Valley Wash should not be included in the LWRFS boundaries based upon the fact that observed groundwater levels do not indicate a hydrologic response to carbonate-rock aquifer pumping and that insufficient data supports a finding of continuity between water level trends to support its inclusion in the LWRFS.[163] However, NCA advocated for the inclusion of the Kane Springs Valley within the LWRFS based upon its opinion that the groundwater data demonstrated hydrologic connectivity between Coyote Spring Valley and Kane Springs Valley, acknowledging that the data is slightly attenuated resulting from the Kane Springs fault.[164] Ultimately, NCA concluded that Kane Springs Valley is tributary to the Coyote Spring Valley and the other LWRFS basins, which justify its inclusion within the boundary of the LWRFS.[165]

Similarly, based upon the groundwater data from the northern portion of Coyote Spring Valley demonstrating similar water level responses as other wells throughout the LWRFS and pumping data demonstrating high hydrologic connectivity across all the LWRFS basins, NCA concluded that there was no basis to exclude the northern portion of Coyote Spring Valley.[166] Finally, NCA rejected a suggestion that the entirety of the White River Flow system, which extends into northeastern Nevada, be included within the management area.[167] Specifically, NCA concluded that the Pahranagat Shear Zone creates a significant barrier to the northwestern portion of the LWRFS and that review of groundwater levels does not support a finding that groundwater level declines propagate into the northern reaches of the White River Flow System.[168] NCA concluded, advocating that proper management of the LWRFS is appropriate and sufficient for the

---

[162] *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* (NCA Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 2–10. *See also* Tr. 1619–22.
[163] NCA Ex. 1 pp. 3–7, 23. *See also* NCA Closing, pp. 15–16.
[164] NCA Ex. 1, pp. 8–17, 23. *See also* NCA Closing, pp. 10–14, and Tr. 1629–44.
[165] NCA Ex. 1, pp. 11–16.
[166] *Id.*, pp. 17–18, 23.
[167] *Id.*, pp. 19, 24.
[168] *Id.*

purpose of managing discharge of groundwater to the Warm Springs area to support habitat for the Moapa dace and serve senior Muddy River decreed rights.[169]

In addressing the annual amount of groundwater that could be developed within the LWRFS without adversely impacting senior decreed rights on the Muddy River or Warm Springs area discharge supporting the habitat for the Moapa dace, NCA supported a target of 9,318 afa, a recent three-year average of annual pumping within the LWRFS,[170] as it did not believe there to be sufficient data to support either an increase or decrease from this amount.[171] However, in its post-hearing brief, NCA opined that if their production wells located within the northwestern portion of the Black Mountains Area were excluded from the LWRFS boundary, then the annual amount of water that could be sustainably developed was less than the 9,318 afa.[172]

Finally, NCA did not support movement of water rights from the Muddy River Springs Area alluvial aquifer to the carbonate-rock aquifer, as it was of the opinion that the movement of those rights would not mitigate impact to the Warm Springs area.[173] Rather, NCA concluded that movement of those rights would compound the impact of pumping from the carbonate-rock aquifer.[174] However, NCA did express some support for movement of senior alluvial water rights as a management tool to offset existing junior carbonate-rock aquifer pumping within the LWRFS.[175]

NV Energy

NV Energy submitted a rebuttal report outlining its responses to the five matters the State Engineer solicited in Interim Order 1303 and presented its opinions and conclusions during the Interim Order 1303 hearing.[176] In its rebuttal report, NV Energy opined that the geographic boundary of the LWRFS should be as established in Interim Order 1303.[177] NV Energy further

---

[169] *Id.*
[170] NCA Ex. 1, p. 19. *See, e.g.* Draft order of the State Engineer distributed to LWRFS stakeholders at the LWRFS Working Group meeting, September 19, 2018, official records of the Division of Water Resources.
[171] *Id.*, pp. 18, 24.
[172] NCA Closing, pp. 14–15.
[173] NCA Ex. 1, pp. 19–23, 24.
[174] *Id.*
[175] *Id.*
[176] NVE Ex. 1, *NV Energy Rebuttal Report to State Engineer's Order 1303 Initial Reports by Respondents*, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[177] *Id.*, pp. 1–2.

opined that the existence of subsurface outflow from Kane Springs Valley into the LWRFS basins was insufficient to support its inclusion.[178]

NV Energy, in its rebuttal report, disagreed with MBOP's conclusion that the groundwater level declines observed during and after the Order 1169 aquifer test were primarily caused by drought. Rather, NV Energy agreed with SNWA's and MVWD's conclusions that the groundwater recovery occurred between 2–3 years following the conclusion of the aquifer test, but that continued pumping within the carbonate-rock aquifer has inhibited recovery to pre-Order 1169 aquifer test groundwater levels, and that at the current rate of carbonate-rock aquifer pumping the aquifer has nearly reached steady-state conditions and discharge to the Warm Springs area has reached equilibrium.[179]

NV Energy further agreed in its rebuttal report with MBOP's and CNLV's conclusions that some groundwater flowing within the carbonate-rock aquifer bypassed the Muddy River Springs Area, and ultimately the Muddy River. NV Energy also agreed that groundwater development within the southern boundary of the LWRFS would likely have less of an effect on discharge to the Warm Springs area and the river. NV Energy did not opine as to the quantity of water that bypassed the springs, but inferred that the current 7,000–8,000 afy of carbonate-rock aquifer pumping appeared to support the conclusion that steady-state conditions had been reached.[180] NV Energy also opined that movement of senior certificated alluvial water rights in the Muddy River Springs Area to carbonate-rock aquifer wells located in the southern portion of the LWRFS may be considered acceptable as Nevada law allows for the reasonable lowering of the groundwater table, and such movement would not necessarily result in a conflict to existing rights.[181] NV Energy further concluded that, contrary to the conclusions of MBOP, drought was not a significant cause for the groundwater level declines observed.[182] Finally, NV Energy concluded with suggestions that the State Engineer either: (1) combine the LWRFS basins into a single hydrographic basin and declare the new basin to be a Critical Management Area pursuant to NRS 534.037 and 534.110; or, (2) for the State Engineer to, under his authority in NRS 534.020 and

---

[178] *Id.*
[179] *Id.*, pp. 2–7.
[180] NVE Ex. 1, p. 8.
[181] *Id.*, pp. 8–9; *Nevada Energy's Closing Statements* (NV Energy Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 4–5.
[182] *Id.*, pp. 9–12.

534.120, require the water right holders within the LWRFS to develop a conjunctive management plan.[183]

After considering all of the evidence and testimony presented at the Interim Order 1303 hearing, NV Energy ultimately altered its opinion and found compelling arguments to both support the inclusion of Kane Springs Valley in the LWRFS as well as its exclusion.[184] Ultimately, NV Energy changed its opinion with respect to the geographic boundary of the LWRFS and in its closing statement expressed support for the inclusion of Kane Springs Valley within the LWRFS boundary due to the connection with Coyote Spring Valley and thus the potential for impacts to LWRFS from pumping within Kane Springs Valley.[185] NV Energy proposes that the current pumping regime of 7,000 to 8,000 afy be maintained to evaluate the potential for steady-state conditions and the continued monitoring of the Warm Springs West gage and agrees that moving pumping further south may reduce impact to the Muddy River and springs. With regards to moving water between the alluvial and carbonate-rock aquifers, similar to others, NV Energy agrees with the evaluation of change applications on a case-by-case basis with demonstration that impacts are reduced or unchanged by the proposed point of diversion compared to the existing point of diversion. NV Energy supports an agreement that would include all water users within the LWRFS for the purposes of not exceeding stresses within system and protecting the Moapa dace.[186]

Southern Nevada Water Authority and Las Vegas Valley Water District

The SNWA and LVVWD submitted multiple reports in response to the Interim Order 1303 solicitation.[187] SNWA and LVVWD supported the boundary of the LWRFS as identified in Interim Order 1303, and argued that there was a general consensus of the participants regarding the

---

[183] *Id.*, p. 12.
[184] Tr. 1761–1762.
[185] NV Energy Closing, pp. 2–3.
[186] *Id.*, pp. 3–6.
[187] SNWA Ex. 7; SNWA Ex. 8, *Marshall, Z.L., and Williams, R.D., 2019, Assessment of Moapa dace and other groundwater- dependent special status species in the Lower White River Flow System, Presentation to the Office of the Nevada State Engineer: Southern Nevada Water Authority, Las Vegas, Nevada*, Hearing on Interim Order 1303, official records of the Division of Water Resources; SNWA Ex. 9, *Burns, A., Drici, W., and Marshall Z.L., 2019, Response to stakeholder reports submitted to the Nevada State Engineer with regards to Interim Order 1303, Presentation to the Office of the Nevada State Engineer: Southern Nevada Water Authority, Las Vegas, Nevada*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

boundaries based upon the hydraulic connectivity within the identified basins.[188] Further, SNWA and LVVWD argued against the exclusion of the northern and western portions of Coyote Spring Valley, that management of adjoining basins should be done in a manner recognizing an impact on pumping from those basins on water availability in the LWRFS basins, and that the Las Vegas Valley should be excluded from the LWRFS.[189]

With respect to the evaluation of the carbonate-rock aquifer recovery since the conclusion of the Order 1169 aquifer test, SNWA and LVVWD concluded that the aquifer has not returned to pre-Order 1169 levels, and that the evidence demonstrates a continued declining trend within the carbonate-rock aquifer as a result of continued groundwater pumping.[190] SNWA and LVVWD concluded that the current pumping continues to capture groundwater storage and that based upon the current rate of groundwater withdrawals, water levels within the carbonate-rock aquifer will continue to decline for the foreseeable future.[191] Further, SNWA and LVVWD rejected the premise that climate was a significant factor over groundwater withdrawals for the observed groundwater level decline.[192]

Based upon a review of the evidence, SNWA and LVVWD concluded that current rate of groundwater withdrawals were not sustainable without adversely impacting senior Muddy River water rights and Moapa dace habitat.[193] Based upon the analysis performed by SNWA and LVVWD, examining the discharge from the Muddy River Springs Area and groundwater production within the carbonate-rock aquifer within the LWRFS, SNWA and LVVWD concluded that any groundwater development within the carbonate-rock aquifer resulted in a one-to-one (1:1) ratio of capture of Muddy River flow, and that regardless of where that pumping occurred, it still resulted in a 1:1 ratio of capture, only that the period of time that the capture was realized was longer.[194] Ultimately, SNWA and LVVWD concluded that while any amount of pumping results

---

[188] SNWA Ex. 7, pp. 5-1 through 5-18, 8-1. *See also*, Tr. 953.
[189] *Closing Brief of Southern Nevada Water Authority and Las Vegas Valley Water District* (SNWA Closing), pp. 4–9, Hearing on Interim Order 1303, official records of the Division of Water Resources. *See also* SNWA Ex. 9 at sections 6, 7 and 12.
[190] SNWA Closing, pp. 9–12. *See also* SNWA Ex. 7, pp. 5-1 through 5-18, and SNWA Ex. 9, pp. 15–20.
[191] SNWA Closing, pp. 11–12. *See also* Tr. 932.
[192] SNWA Closing, pp. 12–14. *See also* SNWA Ex. 9, pp. 15–17.
[193] SNWA Ex. 7, pp. 6-3 through 6-4, 8-2 through 8-4.
[194] *Id.*, pp. 6-4 through 6-11, 8-2 through 8-4; SNWA Ex. 9, pp. 22–27.

in a conflict with senior decreed Muddy River rights, approximately 4,000 to 6,000 afa could be sustainably pumped from the aquifer.[195] In conjunction with SNWA and LVVWD's evaluation of the quantity of water that may be sustainably developed within the LWRFS, SNWA and LVVWD reviewed the interrelationship between discharge from the carbonate-rock aquifer underlying the LWRFS, groundwater pumping and the impact on the habitat and recovery of the Moapa dace.[196] SNWA and LVVWD ultimately concluded that the flow required to sustain the Moapa dace from adverse effects, including habitat loss and fish population declines was a minimum 3.2 cfs at the Warm Springs West gage.[197]

Finally, it was SNWA and LVVWD's opinion that movement of water rights from the Muddy River Springs Area alluvial aquifer to the carbonate-rock aquifer within the LWRFS may delay the capture of water serving senior decreed rights on the Muddy River, but that movement of water from the alluvial aquifer to the carbonate-rock aquifer would adversely impact the habitat of the Moapa dace.[198] Thus, SNWA and LVVWD concluded transfer of water rights from the Muddy River Springs Area alluvial aquifer to the LWRFS carbonate-rock aquifer would result in further depletion of flow to the Warm Springs area.[199]

Technichrome

Technichrome submitted a response and additional response to the Interim Order in July 2019 but did not participate in the hearing.[200] Technichrome stated that it had no objection to a "joint administrative basin" consisting of Coyote Spring Valley, Black Mountain Area, Garnet Valley, Hidden Valley, Muddy River Springs Area, and Lower Moapa Valley, expressed no comment regarding the inclusion of Kane Springs Valley, but questioned whether the entirety of the White River Flow System should be included in the State Engineer's analysis.[201] However,

---

[195] Tr. 921–22. *See also* SNWA Ex. 7, pp. 8-1 through 8-5; SNWA Ex. 9, p. 27.
[196] *See* SNWA Ex. 8.
[197] *Id.*, pp. 8-1 through 8-2. *See also* SNWA Closing, pp. 17–19.
[198] *See* SNWA Closing, pp. 19–20. *See also* SNWA Ex. 7, pp. 6-3 through 6-11, 8-4; SNWA Ex. 9, pp. 21–22.
[199] SNWA Closing, p. 20. *See also* Tr. 904–05.
[200] *Response to Interim Order #1303 Submitted [sic] by Technichrome* (Technichrome Response), Hearing on Interim Order 1303, official records of the Division of Water Resources, and *Additional Comments from Technichrome* (Technichrome Addendum), Hearing on Interim Order 1303, official records of the Division of Water Resources.
[201] Technichrome Response, pp. 1–3.

Technichrome did note that it believed that combining all water rights into a single management structure reduced the State Engineer's ability to control groundwater withdrawals. Technichrome stated that it believed that the State Engineer should have the ability to control withdrawals in small areas to best manage the discharge to the Warm Springs area, and that more targeted control over the groundwater withdrawals would be more effective in managing the discharge.[202] Technichrome supported this opinion with some analysis of the results of the Order 1169 aquifer test and its opinion that pumping farther from the Warm Springs area had little to no impact on discharge to Pederson Spring.[203]

In Technichrome's additional comments, Technichrome addressed concerns regarding the injury that would result from a system-wide reduction of groundwater rights throughout the LWRFS.[204] Finally, Technichrome addressed concerns regarding reliance on the priority system, as utilization of the prior appropriation system would benefit senior irrigation uses over the junior industrial uses, and that removal of basin boundaries would remove limitations on movement of water rights between the existing hydrographic basins, which would disrupt junior uses in areas where senior rights may be moved.[205]

U.S. Fish and Wildlife Service

USFWS holds several water rights within the LWRFS and its mission is consistent with the scientific and management aspects of the LWRFS and the management area as established in Interim Order 1303.[206] USFWS opted to participate in the proceeding by submitting initial and rebuttal reports and providing testimony during the administrative hearing.[207] The approach of

---

[202] *Id.*
[203] *Id.*, and Technichrome Addendum.
[204] Technichrome Addendum.
[205] *Id.*
[206] The USFWS' mission is to work with others to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people. *See also,* USFWS, *About the U.S. Fish and Wildlife Service*, https://bit.ly/aboutusfws (last accessed June 4, 2020).
[207] USFWS Ex. 5, *Report in Response to Order 1303*, Hearing on Interim Order 1303, official records of the Division of Water Resources; USFWS Ex. 7, *Rebuttal to: Water Level Decline in the LWRFS: Managing for Sustainable Groundwater Development by Cady Johnson and Martin Mifflin* [sic], *Mifflin & Associates, Inc., submitted by the Moapa Band of Paiutes in accordance with Order 1303*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

USFWS was to review available data, develop a hydrogeologic conceptual model, and answer the specific questions posed in Interim Order 1303.

USFWS proposed that the boundary be based on geologic breaks rather than the surface drainage areas. The boundary would then encompass all Muddy River Springs Area, Hidden Valley, Garnet Valley, most of Coyote Spring Valley, most of California Wash, the northwest portion of the Black Mountains area, Kane Springs Valley, and most of Lower Meadow Valley Wash. The extent to which Kane Springs Valley and Lower Meadow Valley Wash are included would depend on the data from an aquifer test that has not yet been performed.[208]

Although, USFWS did not directly opine their view on recovery, their report discusses a conceptual model with insight into lag times and hydraulic connections, and how current conditions relate to sustainable pumping. An "undiminished state of decline" in water levels and spring flows indicated that the system was not in equilibrium at the end of the Order 1169 aquifer test. USFWS postulated there was generally good connectivity within the aquifer system with areas of higher and lower transmittivity. Trends in water levels and spring flows allude to the connection between high elevation springs and carbonate-rock aquifer pumping, with a time lag observed in the recovery of carbonate-rock aquifer water levels and spring flows following the cessation of the Order 1169 aquifer test. The exception is Big Muddy Spring where surface water level trends appeared to be unrelated to the carbonate-rock aquifer water levels.[209]

USFWS determined that the optimum method currently available to estimate the maximum allowable rate of pumping in the LWRFS is the average annual rate of pumping from 2015–2017.[210] USFWS considered the period from 2015 to 2017 because it found that the groundwater withdrawals, the discharge of the Muddy River Springs, and the flow of the Muddy River were all relatively constant; flow rates from Plummer, Pederson, Jones and Baldwin springs, though generally lower than before the Order 1169 aquifer test, were reasonably stable compared to earlier

[208] *See* USFWS Ex. 5, pp. 2, 28–36.
[209] USFWS Ex. 5, pp. 3, 32–33, 35, 37–45; Tr. 266–270, 273–281, 299-301, 433-435.
[210] USFWS Ex. 5, p. 3.

periods.[211] Using the pumpage inventories for this time period, USFWS estimated the sustainable groundwater withdrawals to be 9,318 afa.[212]

Even if total carbonate-rock and alluvial aquifer pumping is maintained at a "sustainable" overall level, USFWS did not support increased carbonated-rock aquifer pumping in exchange for reductions in alluvial aquifer pumping, nor did USFWS support increased alluvial aquifer pumping in exchange for reductions in carbonate-rock aquifer pumping. USFWS suggested that carbonate-rock aquifer pumping should not be moved closer to the springs or the river. Similarly, USFWS suggests that alluvial aquifer pumping in the vicinity of the river should not be moved closer to the river. USFWS opines that any movement of water nearer to the springs or the river is anticipated to decrease the lag time for observing responses from pumping and shorten the time to respond to unfavorable impacts.[213]

Moving forward with management of the LWRFS, USFWS supported the use of the triggers at the Warm Springs West gage, as established under the 2006 MOA. Continuing to use these Warm Springs West flows as a trigger for management will protect and provide habitat for the Moapa dace; a reduction in the flow translates to a reduction in habitat.[214]

USFWS did not deny that water levels were independent of a climate response signal. Using observed data for Nevada Climate Divisions, USFWS visually inspected hydrographs for climate signals. USFWS opined that response to wet periods are observed for wells in both the carbonate-rock and alluvial aquifers and springs that discharge from the carbonate-rock aquifer but stated that response to dry periods cannot be separated from the impacts of pumping. USFWS did not observe these same climate signals in the hydrographs for Jones and Baldwin Springs or the Big Muddy Spring. USFWS disagreed with the conclusion of the MBOP regarding long-term, regional drought, as well as the analytical methods.[215]

---

[211] USFWS Ex. 5, pp. 3, 37; Tr. 269–270, 433–435.
[212] USFWS Ex. 5, pp. 3, 36–38; Tr. 268–270.
[213] *See* USFWS Ex. 5, pp. 3–4, 38–39; Tr. 272–273.
[214] *See* USFWS Ex. 5, pp. 4, 39–45; Tr. 273–282; *See also*, NSE Ex. 256; NSE Ex. 244, *2006 Memorandum of Agreement Trigger Levels agreed to by the Southern Nevada Water Authority, Moapa Valley Water District, Coyotes Springs Investments LLC and Moapa Band of Paiute Indians*, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[215] *See* USFWS Ex. 5, pp. 24–28, 34–35; *See* USFWS Ex. 7, pp. 2–16; Tr. 258–260, 299–322, 429–432.

Western Elite Environmental/Bedroc

Bedroc is the land holding and water-right holding entity for Western Elite Environmental, Inc., a provider of construction and recyclable waste collection and disposal in Southern Nevada.[216] Bedroc submitted an undated rebuttal report signed by Derek Muaina, General Counsel, and a closing statement.[217] Bedroc presented Jay Dixon as its expert to give a presentation and to discuss the rebuttal report.[218] Mr. Dixon stated that he contributed to the report, and that he agreed with it, but he did not sign the report because he was working for another participant in the hearing (NCA).[219] Mr. Dixon did provide testimony consistent with the report, and adopted the findings of that report, and both the testimony and the report will be considered in this Order.[220]

Bedroc presented testimony and evidence that its source of groundwater is hydraulically disconnected from the regional carbonate aquifer of the LWRFS and that additional groundwater may be available for pumping in their part of Coyote Spring Valley. Bedroc also argued that its basin fill alluvial groundwater pumping should be managed outside of the proposed LWRFS joint administrative unit.[221]

To show the hydraulic disconnect, Bedroc presented geologic information demonstrating its unique location.[222] Bedroc showed that a confining shelf of sedimentary rock was noticeably absent in the vicinity of the Bedroc site where recharge from the Sheep Range rises toward the surface between two faults, which results in shallow groundwater that is subject to ET and capture from shallow groundwater wells at the Bedroc site.[223] Recharge from the Sheep Range was estimated to be 750 afy, an average of the high and low estimates of the maximum recharge

---

[216] Bedroc Ex. 2, *Interim Order 1303- Rebuttal Report- Prepared by Bedroc and Dixon Hydrologic, PLLC- August 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[217] Bedroc Ex. 2; *Western Elite Environmental Inc.'s and Bedroc Limited, LLC's Closing Statement* (Bedroc Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources.
[218] *See* Tr. 1718–1719.
[219] Tr. 1719, 1741.
[220] Tr. 1718–1757, 1749–1750.
[221] Bedroc Closing, pp. 13–14. Bedroc offered summary responses to the first four questions posed by Order 1303 but did no independent analysis. *See* Bedroc Closing, p. 12.
[222] Bedroc Closing, p. 2.
[223] *Id*; Tr. 1726–1733.

available.[224] SNWA challenged this calculation, pointing out that the estimated recharge could be as low as 130 acre-feet.[225]

Bedroc believes that it is capturing the recharge that would otherwise be lost to evapotranspiration.[226] Groundwater conditions at Bedroc's site show a rise in water levels between 2003 and 2006.[227] Bedroc attributed this rise in part to the installation of an unlined storage pond upgradient from the well, but also to the 2005 recharge event that was discussed by many participants to the proceeding.[228] Between 2006 and 2011, Bedroc showed that groundwater levels had been relatively stable even though pumping by Bedroc was fairly constant.[229] Bedroc showed photo evidence of evapotranspiration occurring around the Bedroc site, pointing to areas of white surface soils and green occurring in the photo as evidence of salt residue and phreatophytes, both occurring as a result of shallow groundwater evaporation.[230] The area is estimated to be about 2,200 acres, and the ET range is estimated to be 0.2 to 0.3 feet per year.[231] This results in an estimate of 400 to 600 afa of groundwater that potentially could be captured every year without pulling groundwater from storage.[232] If pumping in this area exceeded ET, water levels to the east of Bedroc would be dropping.[233]

Bedroc considered the alluvial system at its location to be a separate aquifer from the carbonate-rock aquifer in the LWRFS.[234] CBD in its report also supports this conclusion, suggesting that some groundwater can be withdrawn from the Coyote Spring Valley alluvial aquifer system because that system is disconnected from and not responsible for substantial recharge to the carbonate-rock aquifer.[235] SNWA testified similarly during the hearing.[236]

---

[224] Tr. 1724–1725, 1755.
[225] Tr. 1755.
[226] Bedroc Closing, pp. 5–9.
[227] Tr. 1735.
[228] *Id.*
[229] Tr. 1735–1736.
[230] Tr. 1734, 1738.
[231] Tr. 1739.
[232] Tr. 1739.
[233] Tr. 1739. *See also* Bedroc Closing, p. 8.
[234] Tr. 1746.
[235] Bedroc Ex. 2, p. 5.
[236] Tr. 1024.

Relying on a lack of connection between pumping at Bedroc and the carbonate-rock aquifer, Bedroc asserted that there is no likely impact to the Warm Springs area caused by Bedroc.[237] Bedroc compared groundwater elevations over time in two alluvial wells, CSV-3009M and CSVM-7, and showed an upward trend in groundwater elevations.[238] But, when comparing groundwater elevations of two monitoring wells in different sources, CSVM-7 in the alluvium and CSVM-4 in the carbonate-rock aquifers, the carbonate-rock aquifer well elevations showed a decline during the Order 1169 aquifer test, but the alluvial well elevation rose during the same period and leveled off after the conclusion of the test.[239] Bedroc concluded that these data illustrate 1) the hydraulic disconnect between the local alluvial aquifer and carbonate-rock aquifer and 2) if historical alluvial pumping at Bedroc has not impacted water levels in nearby alluvial wells, then there is likely no impact to spring or streamflow in the Muddy River Springs Area.

Finally, Bedroc stated that managing all users in the region under the same system would arbitrarily impact users whose water neither comes from the regional carbonate-rock aquifer system nor impacts the springs of concern downstream.[240] It urged caution in allowing transfer of water rights between alluvial and carbonate-rock aquifers due to potential impacts on senior users that are using local recharge that may not sustain pumping from additional users.[241] Transfers of senior alluvial rights from the Muddy River Springs Area to the area near Bedroc should be considered on a case-by-case basis to protect Bedroc's senior water rights.[242]

III. PUBLIC COMMENT

WHEREAS, following the conclusion of the Interim Order 1303 hearing, opportunity for public comment was offered, including the opportunity to submit written public comment, which was due to be submitted to the Division no later than December 3, 2019. Lincoln County Board of

---

[237] Bedroc Closing, p.11. *See also* SNWA testimony of Andrew Burns that pumping at Bedroc wells is not likely to impact the carbonate system or the Muddy River. Tr. 1024–1025.
[238] Bedroc Closing, p. 12. *See also* Tr. 1736–1737, 1752.
[239] Tr. 1737–1738.
[240] Bedroc Ex. 2, pp. 2–4.
[241] *Id.*, p. 6.
[242] Tr. 1740.

County Commissioners submitted written public comment in addition to the closing argument submitted by LC-V.[243]

IV. AUTHORITY AND NECESSITY

WHEREAS, NRS 533.024(1)(c) directs the State Engineer "to consider the best available science in rendering decisions concerning the availability of surface and underground sources of water in Nevada."

WHEREAS, in 2017 the Nevada Legislature added NRS 533.024(1)(e), declaring the policy of the State to "manage conjunctively the appropriation, use and administration of all waters of this State regardless of the source of the water."

WHEREAS, NRS 534.020 provides that all waters of the State belong to the public and are subject to all existing rights.

WHEREAS, as demonstrated by the results of the Order 1169 aquifer test and in the data collected in the years since the conclusion of the aquifer test, the LWRFS exhibits a direct hydraulic connection that demonstrates that conjunctive management and joint administration of these groundwater basins is necessary and supported by the best available science.[244]

WHEREAS, the pre-development discharge of 34,000 acre-feet of the fully appropriated Muddy River system plus the more than 38,000 acre-feet of groundwater appropriations within the LWRFS greatly exceed the total water budget that may be developed without impairment of senior existing rights or proving detrimental to the public interest.

WHEREAS, the available groundwater supply within the LWRFS that can be continually pumped over the long-term is limited to the amount that may be developed without impairing existing senior rights, rights on the Muddy River or adversely affecting the public interest in

---

[243] *See* Board of County Commissioners, Lincoln County, Nevada, *Public Comment to Interim Order #1303 Hearing, Reports, and Evidence on the Lower White River Flow System,* Hearing on Interim Order 1303, official records of the Division of Water Resources.

[244] *See, e.g.*, NSE Ex. 245; NSE Ex. 248; NSE Ex. 256; NSE Ex. 252; 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 Endo of the Order 1169 Test, and Prediction of the Rates of Recovery from the Test, TetraTech, 2013*, Hearing on Interim Order 1303, official records of the Division of Water Resources. *See also, e.g.*, CBD Ex. 3; MVWD Exs. 3– 4; MVIC Ex. 1; NCA Ex. 1, SNWA Exs. 7–9; USFWS Exs. 5–6; NPS Exs. 2–3.

protection of the endangered Moapa dace and the habitat necessary to support the management and recovery of the Moapa dace.

WHEREAS, pursuant to NRS 532.120, the State Engineer is empowered to make such reasonable rules and regulations as may be necessary for the proper and orderly execution of the powers conferred by law.

WHEREAS, pursuant to NRS 534.110(6) the State Engineer is directed to conduct investigations in groundwater basins where it appears that the average annual replenishment of the groundwater is insufficient to meet the needs of all water right holders, and if there is such a finding, the State Engineer may restrict withdrawals to conform to priority rights.

WHEREAS, within an area that has been designated by the State Engineer, as provided for in NRS Chapter 534, and specifically, NRS 534.120, where, in the judgment of the State Engineer, the groundwater basin is being depleted, the State Engineer in his or her administrative capacity may make such rules, regulations and orders as are deemed essential for the welfare of the area involved.[245]

WHEREAS, the State Engineer has the authority to hold a hearing to take evidence and the interpretation of the evidence with respect to its responsibility to manage Nevada's water resources and to allow willing participants to present evidence and testimony regarding the conclusions relating to the questions presented in Interim Order 1303. The State Engineer recognizes that the MBOP is a federally recognized tribe, and that its participation in the hearing was to facilitate the understanding of the interpretation of data with respect to the Interim Order 1303 solicitation.

V. ENDANGERED SPECIES ACT

WHEREAS, the Endangered Species Act (ESA), 16 U.S.C. §1531 et seq. is a federal law designed to serve the purpose of identifying, conserving and ultimately recovering species declining toward extinction.[246] Specifically, while the ESA is primarily a conservation program, a critical element of the conservation component seeks to encourage cooperation and coordination

[245] *See also* NRS 534.030, NRS 534.110.
[246] 16 U.S.C. § 1531(a)–(b).

with state and local agencies.[247] The responsibility of enforcement and management under the ESA rests predominately with the federal government; however, the ultimate responsibility is shared.[248]

WHEREAS, the ESA makes it unlawful for any person to "take" an endangered species – or to attempt to commit, solicit another to commit, or cause to be committed, a taking.[249] The term "person" is broadly defined to include the State and its instrumentalities.[250] "Take" encompasses actions that "harass, harm" or otherwise disturb listed species, including indirect actions that result in a take.[251] For example, a state regulator is not exempted from the ESA for takings that occur as a result of a licensee's regulated activity. States have been faced with the impediment of their administrative management actions being subservient to the ESA. For example, the Massachusetts Division of Marine Fisheries was subject to an injunction prohibiting it from issuing commercial fishing licenses because doing so would likely lead to the taking of an endangered species.[252] In *Strahan v. Coxe*, the court's decision relied on reading two provisions of the ESA— the definition of the prohibited activity of a "taking" and the causation by a third party of a taking— "to apply to acts by third parties that allow or authorize acts that exact a taking and that, but for the permitting process, could not take place."[253] Although Massachusetts was not the one directly causing the harm to the endangered species, the court upheld the injunction because "a governmental third party pursuant to whose authority an actor directly exacts a taking of an endangered species may be deemed to have violated the provisions of the ESA."[254] At least three other circuits have held similarly.[255] In each case, "the regulatory entity purports to make lawful an activity that allegedly violates the ESA."[256] Thus the action of granting the permit for the regulated activity has been considered an indirect cause of a prohibited taking under the ESA.

---

[247] 16 U.S.C. § 1531(c); 16 U.S.C. § 1536.
[248] 16 U.S.C.A. § 1536.
[249] 16 U.S.C.A. § 1538(g).
[250] 16 U.S.C.A. § 1532(13).
[251] 16 U.S.C.A. § 1532(19). The term "harm" is defined by regulation, 50 C.F.R. § 17.3 (1999).
[252] *Strahan v. Coxe*, 127 F.3d 155 (1st.Cir.1997), *cert denied* 525 U.S. 830 (1998).
[253] *Id.*, p. 163.
[254] *Id.*
[255] *See Sierra Club v. Yeutter*, 926 F.2d 429 (5th Cir.1991); *Defenders of Wildlife v. EPA*, 882 F.2d 1294 (8th Cir. 1989); *Loggerhead Turtle v. County Council*, 148 F.3d 1231 (11th Cir.1998); *Palila v. Hawaii Dept. of Land & Natural Resources*, 852 F.2d 1106 (9th Cir.1988).
[256] *Loggerhead Turtle*, 148 F.3d at 1251.

WHEREAS, the use of water in Nevada is a regulated activity.[257] It is the responsibility of the State to manage the appropriation, use and administration of all waters of the state.[258] Based on *Strahan* and similar decisions, the act of issuing a permit to withdraw groundwater that reduces the flow of the springs that form the habitat of the Moapa dace and were to result in harm to the Moapa dace exposes the Division, the State Engineer and the State of Nevada to liability under the ESA.

WHEREAS, a USFWS biological opinion for the MOA found that the reduction in spring flow from the warm springs could impact the dace population in multiple ways. First, the USFWS found that declines in groundwater levels will reduce the flow to the Warm Springs area and allow for cooler groundwater seepage into streams. With reduced spring flow, Moapa dace habitat is reduced.[259] Additionally, USFWS determined that the reduced flows of warm water from the springs will also result in cooler water available throughout the dace habitat, reducing spawning habitat and resulting in a population decline.[260]

WHEREAS, based upon the testimony and evidence offered in response to Interim Order 1303, it is clear that it is necessary for spring flow measured at the Warm Springs West gage to flow at a minimum rate of 3.2 cfs in order to maintain habitat for the Moapa dace.[261] A reduction of flow below this rate may result in a decline in the dace population. This minimum flow rate is not necessarily sufficient to support the rehabilitation of the Moapa dace.[262]

---

[257] NRS 533.030; 533.325; 534.020.
[258] NRS 533.325; 533.024(1)(e); 534.020.
[259] USFWS Ex. 5, pp. 50–52.
[260] SNWA Ex. 8, pp. 6-2 through 6-3; SNWA Ex. 40, *Hatten, J.R., Batt, T.R., Scoppettone, G.G., and Dixon, C.J., 2013, An ecohydraulic model to identify and monitor Moapa dace habitat. PLoS ONE 8(2):e55551, doi:10.1371/journal.pone.0055551.*, Hearing on Interim Order 1303, official records of the Division of Water Resources; SNWA Ex. 41, *U.S. Fish and Wildlife Service, 2006a, Intra-service programmatic biological opinion for the proposed Muddy River Memorandum of Agreement regarding the groundwater withdrawal of 16,100 acre-feet per year from the regional carbonate aquifer in Coyote Spring Valley and California Wash basins, and establish conservation measures for the Moapa Dace, Clark County, Nevada. File No. 1-5-05 FW-536, January 30, 2006.*, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[261] Tr. 1127–1128.
[262] Tr. 401–402, 1147, 1157–1158.

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

WHEREAS, the State Engineer concludes that it is against the public interest to allow groundwater pumping from the LWRFS that will reduce spring flow in the Warm Springs area to a level that would impair habitat necessary for the survival of the Moapa dace and could result in take of the endangered species.

VI. GEOGRAPHIC BOUNDARY OF THE LWRFS

WHEREAS, the geographic boundary of the hydrologically connected groundwater and surface water systems comprising the LWRFS, as presented in Interim Order 1303, encompasses the area that includes Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley and the northwest portion of the Black Mountains Area.[264] The rationale for incorporating these areas into a single administrative unit included the presence of a distinct regional carbonate-rock aquifer that underlies and uniquely connects these areas; the remarkably flat potentiometric surface observed within the area; the diagnostic groundwater level hydrographic pattern exhibited by monitoring wells distributed across the area; and the area-wide diagnostic water level response to pumping during the Order 1169 aquifer test. Each of these characteristics were previously identified and examined in the hydrological studies and subsequent hearing that followed the completion of the Order 1169 aquifer test. Indeed, these characteristics were the foundational basis for the State Engineer's determination in Rulings 6254–6261 that the

[263] NSE Ex. 236; SNWA Ex. 8, pp. 5-1 through 5-8.
[264] *See* NSE Ex. 1, p. 6.

close hydrologic connection[265] and shared source and supply of water in the LWRFS required joint management.[266]

WHEREAS, evidence and testimony presented during the Interim Order 1303 hearing indicated a majority consensus among stakeholder participants that this originally defined area is appropriately combined into a single unit.[267] Evidence and testimony was also presented on whether to add adjacent basins, or parts of basins to the administrative unit; to modify boundaries within the existing administrative unit; or to eliminate the common administrative unit boundaries. The State Engineer has considered this evidence and testimony on the basis of a common set of criteria that are consistent with the original characteristics considered critical in demonstrating a close hydrologic connection requiring joint management in Rulings 6254–6261 and more specifically, include the following:

1) Water level observations whose spatial distribution indicates a relatively uniform or flat potentiometric surface are consistent with a close hydrologic connection.

---

[265] The State Engineer notes that the terminology "***hydrologic*** connection" and "***hydraulic*** connection" have been used by different parties sometimes interchangeably, and commonly with nearly the same meaning. The State Engineer considers a hydraulic connection to be intrinsically tied to the behavior and movement of water. With regard to aquifers, it may be thought of as the natural or induced movement of water through permeable geologic material. The degree of hydraulic connection can be considered a measure of the interconnection between locations as defined by a cause and effect change in potentiometric surface or a change in groundwater inflow or outflow that reflects characteristics of both the aquifer material and geometry, and groundwater behavior. It is commonly characterized by a response that is transmitted through the aquifer via changes in hydraulic head, ie., groundwater levels. Hydrologic connections may include hydraulic connections but can also represent more complex system interactions that can encompass all parts of the water cycle, and in some cases may focus on flow paths, water budgets, geochemical interactions, etc. The State Engineer's use of the term "***close*** hydrological connection" is intended to encompass and include a direct hydraulic connection that is reflected in changes in groundwater levels in response to pumping or other fluxes into or out of the aquifer system within a matter of days, months, or years. The closeness, strength, or directness of the response is indicated by timing, with more distinct and more immediate responses being more "close".

[266] *See* NSE Ex. 14, p. 12, 24.

[267] *See* Participant testimony from SNWA (Tr. 875–876), CNLV (Tr. 1418), and CSI (Tr. 95–96). Several other participants agreed, too, that the State Engineer's delineation of the LWRS as defined in Interim Order 1303 was acceptable. *See also* Bedroc Closing, p. 12, Church Closing, p. 1; Technichrome Response, p. 1. Other participants recommended larger areas be included within the LWRFS boundary. *See* Tr. 261–266 (USFWS), 1571–1572 (CBD), 1697–1698 (MVIC). *See also* NV Energy Closing, pp. 2–3; NPS Closing pp. 2–5.

2) Water level hydrographs that, in well-to-well comparisons, demonstrate a similar temporal pattern, irrespective of whether the pattern is caused by climate, pumping, or other dynamic is consistent with a close hydrologic connection.

3) Water level hydrographs that demonstrate an observable increase in drawdown that corresponds to an increase in pumping and an observable decrease in drawdown, or a recovery, that corresponds to a decrease in pumping, are consistent with a direct hydraulic connection and close hydrologic connection to the pumping location(s).

4) Water level observations that demonstrate a relatively steep hydraulic gradient are consistent with a poor hydraulic connection and a potential boundary.

5) Geological structures that have caused a juxtaposition of the carbonate-rock aquifer with low permeability bedrock are consistent with a boundary.

6) When hydrogeologic information indicate a close hydraulic connection (based on criteria 1-5), but limited, poor quality, or low resolution water level data obfuscate a determination of the extent of that connection, a boundary should be established such that it extends out to the nearest mapped feature that juxtaposes the carbonate-rock aquifer with low-permeability bedrock, or in the absence of that, to the basin boundary.

WHEREAS, some testimony was presented advocating to include additional areas to the LWRFS based principally on water budget considerations and/or common groundwater flow pathways.[268] Indeed, some participants advocate to include the entire White River Flow System, or other basins whose water may ultimately flow into or flow out of the system.[269] Other participants used, but did not rely on, water budget and groundwater flow path considerations to support their analysis. Like those participants, the State Engineer agrees that while water budget and groundwater flow path analysis are useful to demonstrate a hydrologic connection, additional information is required to demonstrate the relative strength of that connection. Thus, the State

[268] *See e.g.*, CNLV Ex. 3, p. 33, Tr. 1430; NPS Closing, p. 2. *See also* Tr. 253–257; Sue Braumiller, *Interpretations of available Geologic and Hydrologic Data Leading to Responses to Questions Posed by the State Engineer in Order 1303 regarding Conjunctive Management of the Lower White River Flow System* (USFWS Braumiller presentation), slide 11, Item 6., bullet 1, official records of the Division of Water Resources; MBOP Ex. 2, p. 11.
[269] *See e.g.*, GBWN Report, pp. 1–2.

Engineer recognizes that while any hydrologic connection, weak or strong, needs to be considered in any management approach, many of the connections advocated based principally on a water budget or flow path analysis, including those between nearby basins like Las Vegas Valley and Lower Meadow Valley Wash, are not demonstrated to provide for the uniquely close hydraulic connection that require joint management.

WHEREAS, in their closing statement, NPS proposes that all adjacent hydrographic areas to the original Interim Order 1303 administrative unit where a hydraulic interconnection exists, whether weak or strong, be included in the LWRFS.[270] It does so to alleviate the need for developing new management schemes for the excluded remnants and to provide for appropriate management approaches based on new information and improved understanding of differing degrees of hydraulic interconnection in various sub-basins. The State Engineer agrees with this logic, up to a point, and has applied these concepts to the extent practical as demonstrated in his criteria for determining the extent of the LWRFS. However, the State Engineer also finds that there must be reasonable and technically defensible limits to the geographic boundary. Otherwise, if management were to be based on the entire spectrum of weak to strong hydraulic interconnection, then exclusion of an area from the LWRFS would require absolute isolation from the LWRFS; every sub-basin would have its own management scheme based on some measure of its degree of connectedness; and proper joint management would be intractable.

WHEREAS, evidence and testimony was also presented by the NPS regarding the specific inclusion of the entirety of the Black Mountains Area in the LWRFS.[271] The State Engineer recognizes that there may be a hydrologic connection between the Black Mountains Area and upgradient basins that are sources of inflow, and that outflow from the LWRFS carbonate-rock aquifer may contribute to discharge from Rogers and Blue Point Springs. However, the State Engineer does not find that this supports inclusion of the entirety of the Black Mountains Area. This determination is made based on the lack of contiguity of the carbonate-rock aquifer into this

---

[270] NPS Closing, pp. 3–5.

[271] NPS Closing pp. 3–4. *See also* Tr.534, 555–569; Richard K. Waddell, Jr., *Testimony of Richard K. Waddell on behalf of the National Park Service*, presentation during hearing for Interim Order 1303 (NPS Presentation), slides 32–46, official records of the Division of Water Resources.

area,[272] the difference in observed water level elevations compared to those in adjacent carbonate-rock aquifer wells to the north and west,[273] and the absence of observed diagnostic hydrographic patterns and responses that define the uniquely close hydraulic connection that characterizes the LWRFS.[274]

WHEREAS, evidence and testimony presented by USFWS relied principally on SeriesSEE analysis of water level responses submitted by the Department of Interior Bureaus following the Order 1169 aquifer test to establish the general extent of the LWRFS. This was supported by the application of hydrogeology and principles of groundwater flow to define specific boundary limits to the LWRFS. It proposed that most of the Lower Meadow Valley Wash be considered for inclusion in the LWRFS based on the potential geologic continuity between carbonate rocks underlying the Lower Meadow Valley Wash and the carbonate-rock aquifer underlying Coyote Spring Valley, the Muddy River Springs Area, and California Wash.[275] Additionally, it asserted that the alluvial aquifer system in Lower Meadow Valley Wash contributes to and is connected to both the Muddy River and the alluvial aquifer system in California Wash. The State Engineer finds that while carbonate rocks may underlie the Lower Meadow Valley Wash and be contiguous with carbonate rocks to the south and west, data are lacking to characterize the potential hydraulic connection that may exist. Regarding the hydraulic connection between the Lower Meadow Valley Wash alluvial aquifer and the LWRFS, the State Engineer agrees with USFWS that a connection exists, but finds that any impacts related to water development in the Lower Meadow Valley Wash alluvial aquifer are localized, and unrelated to the carbonate-rock aquifer, and can be appropriately managed outside the LWRFS joint management process.

WHEREAS, NCA advocated for the exclusion of the portion of the Black Mountains Area from the LWRFS that contains their individual production wells. NCA premise this primarily on testimony and analysis performed by SNWA with respect to the impact of pumping from this area

---

[272] *See* CSI Ex. 14, Plate 2, Map and Plate 4, Cross section K–K', in Peter D. Rowley et. al., *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.
[273] *See, e.g.*, USFWS Ex. 5, p. 30.
[274] *Id.*, p. 17.
[275] *Id.*, pp. 19–24.

on discharge to the Warm Springs area.[276] It also used hydrogeologic and water level response information to conclude that strike-slip faulting and a weak statistical correlation between water levels at NCA well EBM-3 and EH-4 in the Warm Springs area support a boundary to the north of the NCA production wells. While the State Engineer finds logic in NCA's position, other testimony describing flaws in the SNWA analysis make for a compelling argument against relying on SNWA's statistically-based results.[277] The substantial similarity in observed water level elevation and water level response at EBM-3 compared to EH-4[278] and limitations in relying on poor resolution water level measurements for statistical or comparative analysis[279] requires a more inclusive approach that places the boundary to the south of the NCA production wells to a geological location that coincides with the projection of the Muddy Mountain Thrust. This more closely coincides with the measurable drop in water levels recognized to occur south of the NCA wells, between EBM-3 and BM-ONCO-1 and 2, that is indicative of a hydraulic barrier or zone of lower permeability.[280] It also better honors the State Engineer's criteria by acknowledging the uncertainty in the data while reflecting a recognized physical boundary in the carbonate-rock aquifer. Specifically, this shall be defined to include that portion of the Black Mountains Area lying within portions of Sections 29, 30, 31, 32, and 33, T.18S., R.64E., M.D.B.&M.; portions of Sections 1, 11, 12, 14, 22, 23, 27, 28, 33, and 34 and all of Sections 13, 24, 25, 26, 35, and 36, T.19S., R.63E., M.D.B.&M.; portions of Sections 4, 6, 9, 10, and 15 and all of Sections 5, 7, 8, 16, 17, 18, 19, 20, 21, 29, 30, and 31, T.19S., R.64E., M.D.B.&M.[281]

WHEREAS, numerous participants advocated to include Kane Springs Valley in the LWRFS basins.[282] Other participants advocated to exclude Kane Springs Valley.[283] Several expert witnesses recommended the exclusion of Kane Springs Valley based on their characterization of water level elevation data, temporal hydrographic response patterns, geochemistry, and/or the

---

[276] *See,* Tr. 1622, 1624; NCA Closing.
[277] *See, e.g.,* Tr. 1467–1469 CNLV presentation, slides 21–23; Tr. 1784–1786; NV Energy presentation, slides 32–33.
[278] NCA Closing, p. 18, Figure 3.
[279] NCA Closing, p. 8.
[280] *See e.g.,* USFWS Ex. 5.
[281] See map of the LWRFS Hydrographic Basin as defined by this Order, Attachment A.
[282] *See, e.g.,* NV Energy Closing, p. 2; NCA Closing, p. 10–14; MVWD Closing, p. 2–8.
[283] *See e.g., Written Closing Statement of Lincoln County Water District and Vidler Water Company, Inc.* (LC-V Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 3–6; CSI Closing, p. 2.

geophysically-inferred presence of structures that may act as flow barriers. Others recommended inclusion based on the same or similar set of information. Water level elevations observed near the southern edge of Kane Springs Valley are approximately 60 feet higher than those observed in the majority of carbonate-rock aquifer wells within the LWRFS to the south; consistent with a zone of lower permeability.[284] Some experts suggested that the hydrographic response pattern exhibited in wells located in the southern edge of Kane Springs Valley is different compared to that exhibited in wells in the LWRFS, being muted, lagged, obscured by climate response, or compromised by low-resolution data.[285] In this regard, the State Engineer recognizes these differences. However, he finds that the evidence and testimony supporting a similarity in hydrographic patterns and response as provided by expert witnesses, like that of the NPS, to be persuasive.[286] Namely, that while attenuated, the general hydrographic pattern observed in southern Kane Springs Valley reflects a response to Order 1169 pumping, consistent with a close hydraulic connection with the LWRFS. The State Engineer also finds that occurrence of the carbonate-rock aquifer in the southern Kane Springs Valley indicates that there is no known geologic feature at or near the southern Kane Springs Valley border that serves to juxtapose the carbonate-rock aquifer within the LWRFS with low permeability rocks in Kane Springs Valley.[287] He also finds that while geologic mapping[288] indicates that the carbonate-rock aquifer does not extend across the northern portion of the Kane Springs Valley, there is insufficient information available to determine whether the non-carbonate bedrock interpreted to underlie the northern part of the Kane Springs Valley represents low-permeability bedrock that would define a hydraulic boundary to the carbonate-rock aquifer.[289] After weighing all of the testimony and evidence relative to his criteria

---

[284] LC-V Closing, p. 7.

[285] *See, e.g.*, LC-V Closing, pp. 5–6; LC-V Ex. 1, pp. 3-3–3-4; CSI Closing, pp. 5–6.

[286] *See* Tr. 524–55. *See, e.g.*, NPS presentation, slides 23–27.

[287] Pursuant to the criteria requiring joint management of hydrographic basins and the sixth criteria establishing that the boundary should extend to the nearest mapped feature that juxtaposes the carbonate-rock aquifer with low-permeability bedrock, or where a mapped feature cannot be adequately identified, to the basin boundary, the State Engineer includes the entirety of Kane Springs Valley.

[288] *See, e.g.*, NSE Ex. 12; Page, W.R., Dixon, G.L., Rowley, P.D., and Brickey, D.W., 2005, *Geologic 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, Plate plus text.

[289] *See, e.g.*, SNWA Ex. 7, pp. 2-4, 2-5, 2-10, 2-11, and 4-1, that describe volcanic rocks as important aquifers, and calderas as both flow paths and barriers depending on structural controls

for inclusion into the LWRFS, the State Engineer finds that the available information requires that Kane Springs Valley be included within the geographic boundary of the LWRFS.

WHEREAS, limited evidence and testimony were provided by participants advocating to either include or exclude the northern portion of Coyote Spring Valley. The State Engineer finds that while information such as that provided by Bedroc is convincing and supports a finding that local, potentially discrete aquifers may exist in parts of the northern Coyote Springs Valley, his criteria for defining the LWRFS calls for the inclusion of the entirety of the basin in the LWRFS. However, the State Engineer also acknowledges that there may be circumstances, like in the northern Coyote Spring Valley, where case-by-case considerations for proper management are warranted.

WHEREAS, evidence and testimony from Georgia-Pacific and Republic, and MBOP advocated against creating a single LWRFS administrative unit. Their arguments were principally based on concerns that there was insufficient consensus on defining the LWRFS geographic boundaries and that there were inherent policy implications to establishing an LWRFS administrative unit. MBOP recommended continuing to collect data and focusing on areas of scientific consensus. Georgia-Pacific and Republic asserted that boundaries are premature without additional data and without a legally defensible policy and management tools in place. They expressed concern that creating an administrative unit at this time inherently directs policy without providing for due process. The State Engineer has considered these concerns an . agrees that additional data and improved understanding of the hydrologic system is critical to the process. He also believes that the data currently available provide enough information to delineate LWRFS boundaries, and that an effective management scheme will provide for the flexibility to adjust boundaries based on additional information, retain the ability to address unique management issues on a sub-basin scale, and maintain partnership with water users who may be affected by management actions throughout the LWRFS.

---

to flow, citing Peter D. Rowley, and Dixon, G.L., 2011, *Geology and Geophysics of Spring, Cave, Dry Lake, and Delamar Valleys, White Pine and Lincoln Counties, and Adjacent Areas, Nevada and Utah: The Geologic Framework of Regional Flow Systems*,.

WHEREAS, evidence and testimony support the delineation of a single hydrographic basin as originally defined by the State Engineer in Interim Order 1303, with the adjustment of the Black Mountain Area boundary and the addition of Kane Springs Valley. The State Engineer acknowledges that special circumstances will exist with regard to both internal and external management. Water development both inside and outside of the perimeter of the LWRFS will continue to be evaluated on the best available data and may become subject to or excluded from the constraints or regulations of the LWRFS.

WHEREAS, the geographic extent of the LWRFS is intended to represent the area that shares both a unique and close hydrologic connection and virtually all of the same source and supply of water, and therefore will benefit from joint and conjunctive management. In that light, the State Engineer recognizes that different areas, jointly considered for inclusion into the LWRFS, have been advocated both to be included and to be excluded by the different hearing participants based on different perspectives, different data subsets, and different criteria. For the Muddy River Springs Area, California Wash, Garnet Valley, Hidden Valley, Coyote Spring Valley, and a portion of the Black Mountain Area, there is a persuasive case previously laid out in Rulings 6254–6261, and the consensus amongst the participants support their inclusion in the LWRFS. For other sub-basins such as Kane Springs Valley and the area around the NCA production wells in the Black Mountain Area, there is persuasive evidence to support their inclusion or exclusion; however, the State Engineer's criteria and available data mandate their inclusion. Their inclusion in the LWRFS provides the opportunity for conducting additional hydrologic studies in sub-basins such as these, to determine the degree to which water use would impact water resources in the LWRFS and to allow continued participation by holders of water rights in future management decisions. Thus, these sub-basins, and any other portions of the LWRFS that may benefit from additional hydrological study, can be managed more effectively and fairly within the LWRFS. For other basins whose inclusion was advocated, such as the northern portion of Las Vegas Valley and the Lower Meadow Valley Wash, the State Engineer finds that data do not exist to apply his criteria, and therefore they cannot be considered for inclusion into the LWRFS. These types of areas may require additional study and special consideration regarding the potential effects of water use in these areas on water resources within the LWRFS.

VII. AQUIFER RECOVERY SINCE COMPLETION OF THE ORDER 1169 AQUIFER TEST

WHEREAS, during the Order 1169 aquifer test an average of 5,290 afa were pumped from the carbonate-rock aquifer wells in Coyote Spring Valley and a cumulative total of 14,535 afa were pumped throughout the Order 1169 study basins. A portion of this total, approximately 3,840 acre-feet per year, was pumped from the alluvial aquifer in the Muddy River Springs Area.[290] In the years since completion of the Order 1169 aquifer test, pumping from wells in the LWRFS has gradually declined.[291] Pumping in 2013-2014 averaged 12,635 afa; pumping in 2015-2017 averaged 9,318 afa.[292] Pumpage inventories for 2018 that were published after the completion of the hearing report a total of 8,300 afa.[293] Pumping from alluvial aquifer wells in the Muddy River Spring Area has consistently declined since closure of the Reid Gardner power plant beginning in 2014, while pumping from the carbonate-rock aquifer since the completion of the aquifer test has consistently ranged between approximately 7,000 and 8,000 afa.

WHEREAS, the information obtained from the Order 1169 aquifer test and in the years since the conclusion of the test demonstrates that while, following conclusion of the aquifer test, there was a recovery of groundwater levels, the carbonate-rock aquifer has not recovered to pre-Order 1169 test levels.[294] Evidence and testimony submitted during the 2019 hearing does not refute the conclusions made by the State Engineer in Rulings 6254–6261 regarding interpretations of the Order 1169 aquifer test results, which were based on observations and analysis by multiple technical experts. Groundwater level recovery reached completion approximately two to three years after the Order 1169 aquifer test pumping ended.[295]

---

[290] NSE Ex. 1, p. 4.
[291] *See, e.g.* NSE Ex. 50, *Pumpage Report Coyote Spring Valley 2017*; NSE Ex. 67, *Pumpage Report Black Mountains Area 2017*; NSE Ex. 84, *Pumpage Report Garnet Valley Area 2017*; NSE Ex. 86, *Pumpage Report California Wash Area 2017*; Ex. 88, *Pumpage Report Muddy River Springs Area 2017*, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[292] *Id.*
[293] *Id.*
[294] *See, e.g.*, SNWA Ex. 7, pp. 5-17–5-18, 8-2; NPS Closing, p. 4; MVWD Closing, p. 8. *See also* Tr. 1807; NV Energy presentation, p. 11.
[295] SNWA Ex, 7, pp. 5-17–5-18; NVE Ex. 1, p. 2

WHEREAS, several participants testified about the effects of drought and climate on the recovery of groundwater levels and spring discharge after the Order 1169 aquifer test. Droughts, or periods of drier than normal conditions that last weeks, months, or years can lead to declines in groundwater levels.[296] The LWRFS is within National Oceanic and Atmospheric Administration's Nevada Climate Division 4 (Division 4). Precipitation records for Division 4 from 2006 to the 2019 season records indicate that 10 of those 14 seasons received lower than average precipitation.[297] Despite low precipitation, several participants submitted evidence that water levels continue to rise under current climate conditions in other areas with a relative lack of pumping that are tributary to the LWRFS, such as Dry Lake Valley, Delamar Valley, Garden Valley, Tule Desert, Dry Lake Valley, and other areas.[298] These rises have been attributed to efficient winter recharge that has occurred despite low cumulative precipitation.[299] Based on these observations, it was argued that the continued stress of pumping in the LWRFS carbonate-rock aquifer is limiting the recovery of water levels.[300] The State Engineer acknowledges that spring discharge is affected by both pumping and climate, and finds that groundwater levels remain a useful tool for monitoring the state of the aquifer system in the LWRFS regardless of the relative contribution of climate and drought to the measured groundwater levels. The State Engineer only has the authority to regulate pumping, not climate, in consideration of its potential to cause conflict or to be detrimental to the public interest and must do so regardless of the relative contributing effects of climate.

WHEREAS, evidence and testimony during the 2019 hearing was divided on whether water levels in the Warm Springs area and carbonate-rock aquifer indicate the system has reached or is approaching equilibrium,[301] or is still in a state of decline.[302] Hydrographs and evidence presented show that water levels at well EH-4 near the Warm Springs area have been relatively stable for several years following recovery from the Order 1169 aquifer test.[303] However, other

---

[296] *See* USGS, 1993, *Drought,* US Geological Survey Open File Report 93-642, accessible at https://bit.ly/93-642, (last accessed June 6, 2020).
[297] SNWA Ex. 7, pp. 4-1–4-4.
[298] Tr. 577, 304–307.
[299] NPS Ex. 3, Appendix A.
[300] *See, e.g.*, SNWA Closing, p. 11. NPS Closing, p. 4. *See also* Tr. 642, 644–45, 1545.
[301] MVWD Closing, pp. 8–9. *See also* NV Energy Closing, p. 3; CNLV Closing, pp. 5–7.
[302] SNWA Closing, pp. 11–12. NPS Closing, pp. 4–5.
[303] SNWA Ex. 7, pp. 5–7.

carbonate-rock aquifer wells located further away from the Warm Springs area such as CSVM-1, TH-2, GV-1, and BM-DL-2 appear to have reached peak recovery from the Order 1169 aquifer test in 2015-2016 and have exhibited downward trends for the past several years.[304] The State Engineer agrees that water levels in the Warm Springs area may be approaching steady state with current pumping conditions. However, the trend is of insufficient duration to make this determination with absolute assurance and continued monitoring is necessary to determine if this trend continues or if water levels are continuing to decline slowly.

VIII. LONG-TERM ANNUAL QUANTITY OF WATER THAT CAN BE PUMPED

WHEREAS, the evidence and testimony presented at the 2019 hearing did not result in a consensus among experts of the long-term annual quantity of groundwater that can be pumped. Recommendations range from zero to over 30,000 afa, though most experts agreed that the amount must be equal to or less than the current rate of pumping. There is a near consensus that the exact amount that can be continually pumped for the long-term cannot be absolutely determined with the data available and that to make that determination will require more monitoring of spring flows, water levels, and pumping amounts over time.

WHEREAS, evidence and testimony were presented arguing that the regional water budget demonstrates that far more groundwater is available for development within the LWRFS than is currently being pumped. CSI argues that the total amount of groundwater available for extraction from the LWRFS may be up to 30,630,[305] which is an estimate of the entirety of natural discharge from the system that occurs through groundwater evapotranspiration and subsurface groundwater outflow. Nearly all other experts disagreed that pumping to that extent could occur without causing harm to the Moapa dace or conflict with senior Muddy River decreed rights. The disagreement is not about the amount of the water budget, but rather the importance of the water budget in determining the amount of groundwater in the LWRFS that can continually be pumped,[306] not the amount of inflow and outflow to the system. In addition, availability of groundwater for pumping based on water budget should consider whether the same water is appropriated for use in upgradient and downgradient basins, and CSI did not account for this.

---

[304] *Id.*
[305] CSI Closing, p. 2.
[306] *See e.g.*, SNWA Ex. 9, p. 24.; MVWD Ex. 3, p. 4; NPS Ex. 3, p. 23.

The State Engineer recognizes that the water budget is important to fully understand the hydrology of the regional flow system but also agrees with nearly all participants that the regional water budget is not the limiting measure to determine water available for development in the LWRFS. The potential for conflict with senior rights and impacts that are detrimental to the public interest in the LWRFS is controlled by aquifer hydraulics and the effect of pumping on discharge at the Warm Springs area rather than the regional water budget.

WHEREAS, evidence and testimony were presented arguing that the location of pumping within the LWRFS is an important variable in the determination of the amount that can be pumped. Participants representing groundwater users in Garnet Valley and the APEX area at the south end of the LWRFS testified that pumping within Garnet Valley does not have a discernable signal at wells near the Warm Springs area and that the hydraulic gradient from north-to-south within the LWRFS indicates that there is a component of groundwater flow in Garnet Valley that does not discharge to the Warm Springs area.[307] Several participants agreed that moving pumping to more distal locations within the LWRFS will lessen the effect of that pumping on spring flows. NV Energy testified that there would be a lesser effect because pumping areas around the periphery of the main carbonate-rock aquifer are less well-connected to the springs, and because of the likelihood that some amount of subsurface outflow occurs along and southern and southeastern boundary of the LWRFS and it is possible to capture some of that subsurface outflow without a drop-for-drop effect on discharge at the Warm Springs area[308] Others drew the same conclusion based on their review of the data and characterization of a heterogeneous system[309] or on weak connectivity between peripheral locations and the Warm Springs area.[310]

CSI argues that more groundwater development can occur in the LWRFS because subsurface fault structures create compartmentalization and barriers to groundwater flow that reduce the effects of pumping on discharge at the Warm Springs area.[311] They rebut the contention by others that spring flow is affected homogeneously by pumping within the LWRFS.[312] CSI used geophysical data to map a north-south trending subsurface feature that bisects Coyote Spring

---

[307] *See* CNLV Ex. 3, pp. 45–47; GP-REP Ex. 1, pp. 2–3.
[308] NVE Ex. 1, pp. 8–9.
[309] *See e.g.* MBOP Ex. 2, p. 23; GP-REP Ex. 2, pp. 4–5. *See also* Technichrome Response.
[310] *See e.g.* NCA Closing, pp. 2–10; LC-V Closing, pp. 4–6; Bedroc Closing, pp. 9–11.
[311] CSI Closing, pp. 2–5.
[312] CSI Ex. 2, pp. 40–41.

Valley. They hypothesize that this structure is an impermeable flow barrier that creates an isolated groundwater flow path on the west side of Coyote Spring Valley from which pumping would capture recharge from the Sheep Range without spring flow depletion at the Warm Springs area.[313] MBOP also contends that the system is far too complex to characterize it as a homogeneous "bathtub" and that preferential flow paths within the region mean that pumping stress will greatly differ within the LWRFS depending on where the pumping occurs.[314] Rebuttals to MBOP and CSI contend that an emphasis on complexities in geologic structure is a distraction from the question at hand, and that the hydraulic data collected during and after the Order 1169 aquifer test clearly demonstrate close connectivity and disproves CSI's hypothesis.[315]

The State Engineer finds that the 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 connection than others. For instance, the Order 1169 aquifer test demonstrated that pumping 5,290 afa from carbonate-rock aquifer wells in Coyote Spring Valley caused a sharp decline in discharge at the springs, but distributed pumping since the completion of the aquifer test in excess of 8,000 afa has correlated with a stabilization of spring discharge. The data collected during and after the Order 1169 aquifer test provide substantial evidence that groundwater levels throughout the LWRFS rise and fall in common response to the combined effects of climate and pumping stress, which controls discharge at the Warm Springs area.[316] The State Engineer finds that the best available data do not support the hypotheses that variable groundwater flow paths and heterogeneous subsurface geology are demonstrated to exist that create hydraulically isolated compartments or subareas within the LWRFS carbonate-rock aquifer from which pumping can occur without effect on the Warm Springs area. However, there 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.

---

[313] *Id. See also* CSI Ex. 1, pp. 31–40.
[314] MBOP Closing, p. 7.
[315] *See e.g.*, SNWA Ex. 9, pp. 23–24.
[316] NSE Exs. 15–21.

WHEREAS, evidence and testimony were presented to argue that no amount of groundwater can be pumped from the carbonate-rock aquifer or from the LWRFS without conflicting with the Muddy River decree or causing harm to the Moapa dace habitat. This argument is predicated on the interpretation that lowering of groundwater level anywhere within the LWRFS, whether caused by climate or pumping, eventually has an effect on spring discharge, and that any reduction in spring discharge caused by pumping conflicts with senior decreed rights or harms the Moapa dace or both.[317] MVIC and SNWA agree that capturing discharge from the Warm Springs area springs and the Muddy River are a conflict with the Muddy River decree, which appropriates "all of the flow of the said stream, its sources of supply, headwaters and tributaries."

The Muddy River Decree was finalized in 1920, decades before any significant amount of groundwater development within the Muddy River springs area or the LWRFS. The statement quoted above, or something similar to it, is a common conclusion in decrees to establish finality to the determination of relative priority of rights. By including this statement, the decreed right holders are afforded the assurance that no future claimants will interject a new priority right. However, it is also common on decreed systems for junior rights to be appropriated for floodwater or other excess flows, provided that no conflict occurs with the senior priorities. Similarly, groundwater development almost always exists in the tributary watersheds of decreed river systems, even though groundwater in a headwater or tributary basin is part of the same hydrologic system. There is no conflict as long as the senior water rights are served.

The State Engineer disagrees with SNWA and MVIC that the above quoted statement in the decree means that any amount of groundwater pumped within the headwaters that would reduce flow in the Muddy River conflicts with decreed rights. The State Engineer finds that capture or potential capture of the waters of a decreed system does not constitute a conflict with decreed right holders if the flow of the source is sufficient to serve decreed rights. Muddy River decreed rights were defined by acres irrigated and diversion rates for each user.[318] The sum of diversion rates greatly exceeds the full flow of the River, but all users are still served through a rotation schedule managed by the water master. The total amount of irrigated land in the decree is 5,614 acres.[319]

---

[317] *See, e.g.*, CBD Ex. 3, p. 23; SNWA Ex. 7, p. 8-4; MVIC Ex. 1, p. 3.
[318] NSE Ex. 333.
[319] *Id.*

Flow in the Muddy River at the Moapa Gage has averaged approximately 30,600 afa since 2015,[320] which is less than the predevelopment baseflow of about 33,900.[321] If all decreed acres were planted with a high-water use crop like alfalfa, the net irrigation water requirement would be 28,300 afa, based on a consumptive use rate of 4.7 afa.[322] Conveyance loss due to infiltration is an additional consideration to serve all decreed users; however, this is limited in the Muddy River because the alluvial corridor is narrow and well defined so water stays within the shallow groundwater or discharges back to the river. The State Engineer finds that the current flow in the Muddy River is sufficient to serve all decreed rights in conformance with the Muddy River Decree, and that reductions in flow that have occurred because of groundwater pumping in the headwaters basins is not conflicting with Decreed rights.

WHEREAS, the majority of experts agree that there is an intermediate amount of pumping approximated by recent pumping rates that can continue to occur in the LWRFS and still protect the Moapa dace and not conflict with decreed rights. USFWS and NCA endorsed the use of average pumping over the years 2015-2017 (9,318 afa as reported by State Engineer pumpage inventories) as a supportable amount that can continue to be pumped, because the system appears to have somewhat stabilized.[323] CSI also endorsed this approach as an initial phase, though they suggested 11,400 afa, which was the average pumping reported by State Engineer inventories over the years 2010-2015 that included the period of the Order 1169 aquifer test.[324] CNLV makes a rough estimate that no more than 10,000 afa can be supported throughout the entire region, based on their professional judgment and review of the data.[325] NV Energy concludes that 7,000–8,000 afa can continue to be pumped, based on the amount of pumping in recent years from carbonate-rock aquifer wells and the observation that steady-state conditions in Warm Springs area spring

---

[320] NSE Ex. 211, *USGS 09416000 Muddy River Moapa 1914-2013*, Hearing on Interim Order 1303, official records of the Division of Water Resources.
[321] SNWA Ex. 7, p. 5-4.
[322] *See, e.g.*, Huntington, J.L. and R. Allen, (2010), *Evapotranspiration and Net Irrigation Water Requirements for Nevada*, Nevada State Engineer's Office Publication, accessible at https://bit.ly/etniwr, (last accessed June 7, 2020), official records of the Division of Water Resources.
[323] USFWS Ex. 5, p. 3; NCA Ex. 1, p. 19.
[324] CSI Closing, p. 2.
[325] CNLV Ex. 3, p. 2.

flow are being reached.[326] SNWA estimates that only 4,000–6,000 afa of carbonate-rock aquifer pumping can continually occur within the LWRFS.[327]

WHEREAS, the State Engineer finds that the evidence and testimony projecting continual future decline in spring flow at the current rate of pumping is compelling but not certain. Several participants pointed out rising trends in groundwater levels at many locations in Southern Nevada, outside of the LWRFS, that are distant from pumping[328] even though total precipitation has been below average and since 2006 has been described as a drought.[329] This suggests that climate and recharge efficiency may have actually buffered the full effect of pumping on discharge at the Warm Springs area, and that the system could not support the current amount of groundwater pumping during an extended dry period with lesser recharge. In addition, slight declining trends that are observed in Garnet Valley monitoring wells are not evident in wells close to the Warm Springs area.[330] If drawdown in Garnet Valley has not yet propagated to the Muddy Springs area, then the resilience of the apparent steady state of spring flow is in doubt. Projections of continued future decline in spring discharge suggests that the current amount of pumping in the LWRFS is a maximum amount that may need to be reduced in the future if the stabilizing trend in spring discharge does not continue.

WHEREAS, there is an almost unanimous agreement among experts that data collection is needed to further refine with certainty the extent of groundwater development that can be continually pumped over the long term. The State Engineer finds that the current data are adequate to establish an approximate limit on the amount of pumping that can occur within the system, but that continued monitoring of pumping, water levels, and spring flow is essential to refine and validate this limit.

---

[326] NVE Ex. 1, p. 8.
[327] SNWA Ex. 7, p. 8-4.
[328] NPS Ex. 3, Appendix A. *See also* Tr. 304–307, 577.
[329] Tr. 1292–1300. *See, also* LC-V Ex. 11, *PowerPoint Presentation of Todd G. Umstot, entitled Drought and Groundwater*, Hearing on Interim Order 1303, official records of the Division of Water Resources, slides 3–10.
[330] CNLV Ex. 3, pp. 45–46.

WHEREAS, pumping from wells in the LWRFS has gradually declined since completion of the Order 1169 aquifer test and is approaching 8,000 afa. This coincides with the period of time when spring discharge may be approaching steady state. The State Engineer finds that the maximum amount of groundwater that can continue to be developed over the long term in the LWRFS is 8,000 afa. The best available data at this time indicate that continued groundwater pumping that consistently exceeds this amount will cause conditions that harm the Moapa dace and threaten to conflict with Muddy River decreed rights.

IX. MOVEMENT OF WATER RIGHTS

WHEREAS, the data and evidence are clear that location of pumping within the LWRFS relative to the Warm Springs area and the Muddy River can influence the relative impact to discharge to the Warm Springs area and/or senior decreed rights on the Muddy River. The transfer of groundwater pumping from the Muddy River Springs Area alluvial wells to carbonate-rock aquifer wells may change the timing of any impact to Muddy River flows and amplify the effect on discharge to the Warm Springs area, thus potentially adversely impacting habitat for the Moapa dace. And the transfer of groundwater withdrawals from the carbonate-rock aquifer into the Muddy River alluvial aquifer may reduce the impact to the Moapa dace habitat but increase the severity of impact to the senior decreed rights on the Muddy River. The State Engineer recognizes that the LWRFS is fundamentally defined by its uniquely close hydrologic interconnection and shared source and supply of water. However, the State Engineer also recognizes that there can be areas within the LWRFS that have a greater or lesser degree of hydraulic connection due to distance, local changes in aquifer properties, or proximity to other potential sources of capturable water.

WHEREAS, Rulings 6254–6261 acknowledge that one of the main goals of Order 1169 and the associated pumping test at well MX-5 was to observe the effects of increased pumping on groundwater levels and spring flows. Coyote Spring Valley carbonate-rock aquifer pumping during the Order 1169 aquifer test was the largest localized carbonate-rock aquifer pumping in the LWRFS. In addition, concurrent carbonate-rock aquifer and alluvial aquifer pumping in Garnet Valley, Muddy River Springs Area, California Wash, and the northwest portion of the Black Mountains Area occurred during the test period. Rulings 6254–6261 described the data and analysis used to determine that additional pumping at the MX-5 well contributed significantly to decreases in high elevation springs (Pederson Springs) and other springs that are the sources to the

Muddy River. Evidence and reports provided under Interim Order 1303 do not challenge the findings in Rulings 6254–6261 that pumping impacts were witnessed. There is a strong consensus among participants that pumping during the Order 1169 aquifer test along with concurrent pumping caused drawdowns of water levels throughout the LWRFS.[331] However, the effects of pumping from different locations within the LWRFS on discharge at the Warm Springs area is not homogeneous.[332] The State Engineer finds that movement of water rights that are relatively distal from the Warm Springs area into carbonate-rock aquifer wells that have a closer hydraulic connection to the Warm Springs area is not favorable.

WHEREAS, evidence and testimony provided by participants during the Interim Order 1303 hearing provides a strong consensus that alluvial aquifer pumping in the Muddy River Springs Area affects Muddy River discharge.[333] There is also strong evidence that carbonate-rock aquifer pumping throughout the LWRFS affects spring flow but can also be dependent on proximity of pumping to springs.[334] No participant is a proponent of moving additional water rights closer to the headwaters of the Muddy River within the Muddy River Springs Area, and most participants agree that carbonate-rock aquifer and alluvial aquifer pumping in the Muddy River Springs Area captures Muddy River flow. The State Engineer finds that any pumping within close proximity to the Muddy River could result in capture of the Muddy River. The State Engineer also finds that any movement of water rights into carbonate-rock aquifer and alluvial aquifer wells in the Muddy River Springs Area that may increase the impact to Muddy River decreed rights is disfavored.

WHEREAS, the Order 1169 aquifer test demonstrated that impacts from the test along with concurrent pumping was widespread within the LWRFS encompassing 1,100 square miles and supported the conclusion of a close hydrologic connection among the basins.[335] While the effects of movement of water rights between alluvial aquifer wells and carbonate-rock aquifer wells on deliveries of senior decreed rights to the Muddy River or impacts to the Moapa dace may not be uniform across the entirety of the LWRFS, the relative degree of hydrologic connectedness

---

[331] *See* SNWA Closing, pp. 10, 16; MVIC Closing, p. 6.
[332] *See, e.g.*, SNWA Closing, p. 10.
[333] CNLV Closing, p. 8; Tr. 1456–1457, 1458. *See also* SNWA Closing, p. 16; MVWD Closing, p. 11; MVIC Closing, p. 6.
[334] CNLV Closing, pp. 8–10; Tr. 1457, 1458; NV Energy Closing, p. 4; MVIC Closing, p. 6.
[335] NSE Ex. 256. *See also* NSE Ex. 14, pp. 20–21; NSE Ex. 17, p. 19; SNWA Closing pp. 2, 3.

in the LWRFS will be the principle factor in determining the impact of movement of water rights. The State Engineer recognizes that there may be discrete, local aquifers within the LWRFS with an uncertain hydrologic connection to the Warm Springs area. Determining the effect of moving water rights into these areas may require additional scientific data and analysis. Applications to move water rights under scenarios not addressed in this Order will be evaluated on their individual merits to determine potential impact to existing senior rights, potential impact to the Warm Springs area and Moapa dace habitat, and impacts to the Muddy River.

X. ORDER

NOW THEREFORE, the State Engineer orders:

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

2. The maximum quantity of groundwater that may be pumped from the Lower 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.

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

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

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

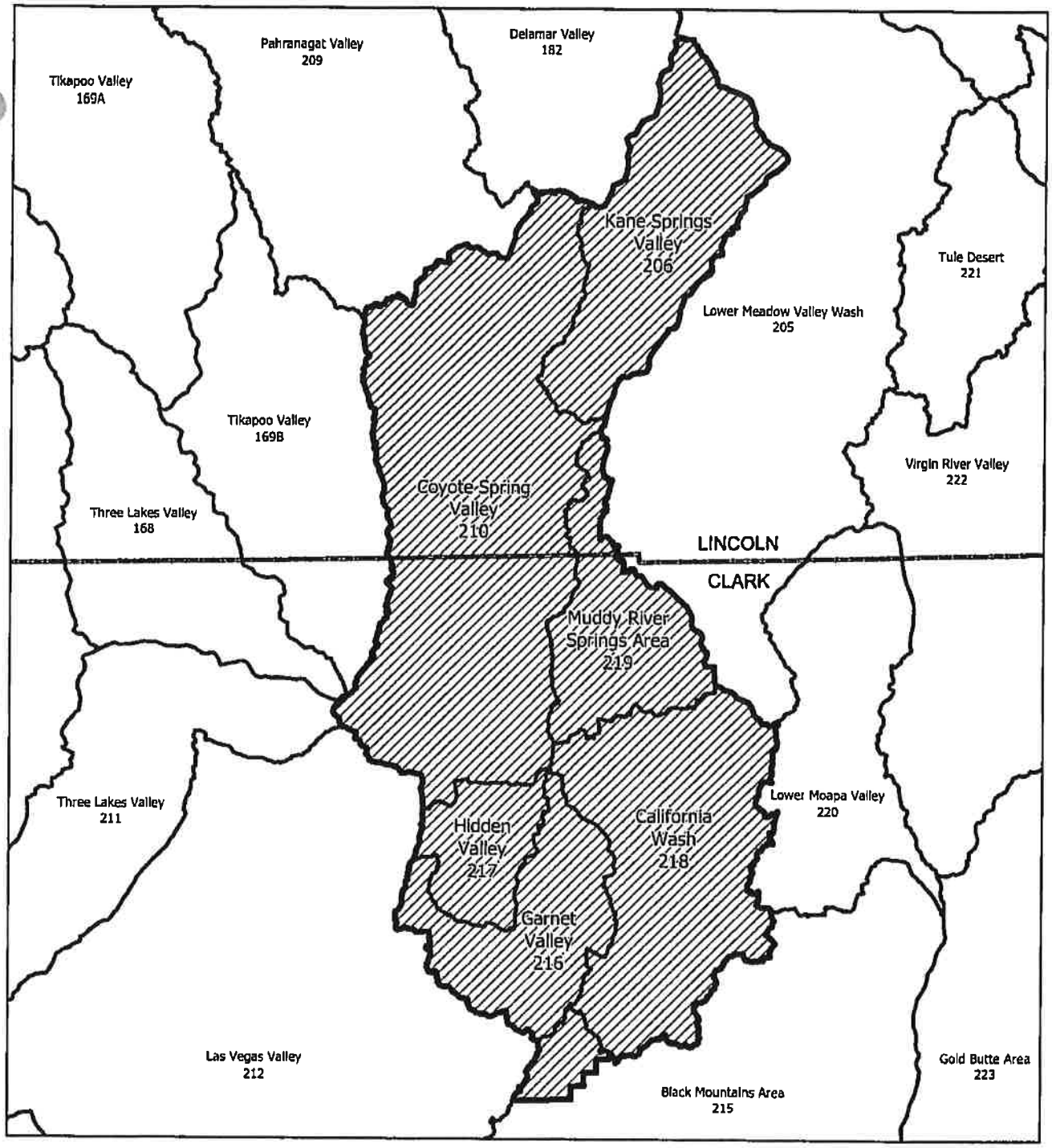
Tim Wilson, P.E.

TIM WILSON, P.E.
State Engineer

Dated at Carson City, Nevada this

15th day of June, 2020.

ATTACHMENT A



Location and Extent of LWRFS Hydrographic Basin, Clark and Lincoln Counties, Nevada

LWRFS Boundary
Hydrographic Basin Boundary
County Boundary

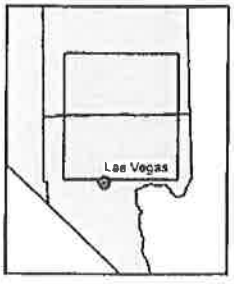
N
W
E
S

0 10 Miles

State of Nevada
Department of Conservation and Natural Resources
Office of the State Engineer
Division of Water Resources

Tim Wilson, P.E
State Engineer

June 2020



ATTACHMENT 3

ATTACHMENT 3

Electronically Filed
07/22/2022 12:51 AM
CLERK OF THE COURT

ORDD

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS VALLEY WATER DISTRICT, and SOUTHERN NEVADA WATER AUTHORITY, Petitioners, vs. ADAM SULLIVAN, P.E., Nevada State Engineer, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, Respondent. And All Consolidated Cases.	Case No. A-20-816761-C Dept. No. 1 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 A-21-833572-J

ORDER DENYING COYOTE SPRINGS INVESTMENT, LLC'S AND LINCOLN COUNTY WATER DISTRICT AND VIDLER WATER COMPANY, INC.'S MOTIONS FOR ATTORNEY'S FEES

This matter came before this Court pursuant to two Motions for Attorney's Fees filed by Petitioner Coyote Springs Investment, LLC ("CSI"), and Petitioners Lincoln County Water District and Vidler Water Company, Inc. (collectively "Lincoln/Vidler") on May 5, 2022, and May 10, 2022, respectively. The State Engineer filed an Omnibus Opposition to Respective Motions for Attorney's Fees on May 19, 2022. After the conclusion of briefing on the Motions, the Court held a hearing on July 5, 2022. The Court having reviewed these filings and the briefing related thereto, and holding a hearing, hereby **DENIES** CSI's and Lincoln/Vidler's Motions for Attorney's Fees as set forth in further detail below.

A. Standard for Recovering Attorney's Fees

Nevada follows the American rule that attorney's fees may not be awarded absent a statute, rule, or contract authorizing such an award. *Thomas v. City of N. Las Vegas*,

122 Nev. 82, ~~91~~ 90, 127 P.3d 1057, 1063 (2006) (citing *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1356, 971 P.2d 383, 388 (1998); *Consumers League v. Southwest Gas*, 94 Nev. 153, 156, 576 P.2d 737, 738 (1978)). CSI and Lincoln/Vidler cite two statutory bases under which they seek to recover attorney's fees in this action: NRS 18.010(2)(a) and NRS 18.010(2)(b). First, NRS 18.010(2)(a) provides that the court may award attorney's fees to a prevailing party "when the prevailing party has not recovered more than $20,000." Second, NRS 18.010(2)(b) provides that the court may award attorney's fees to a prevailing party:

> Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

NRS 533.450, under which this proceeding was commenced, expressly provides costs must be paid as in civil cases brought in the district court, except by the State Engineer and the State but is silent on fees. *See* NRS 533.450(7).

The Nevada Supreme Court has held that a money judgment is a prerequisite to recover attorney's fees under NRS 18.010(2)(a). *Thomas*, 122 Nev. at 93–94, 127 P.3d at 1065–66. Where a party does not recover a monetary judgment, they are not entitled to attorney's fees under NRS 18.010(2)(a). *Id.*

Further, the Nevada Supreme Court has also held that attorney's fees are not recoverable under NRS 18.010(2)(b) in petitions for judicial review of agency actions filed under the Administrative Procedure Act. *Zenor v. State, Dep't of Transp.*, 134 Nev. 109, 110–11, 412 P.3d 28, 30 (2018). The Court has "repeatedly refused to imply provisions not expressly included in the legislative scheme." *Id.*, 134 Nev. at 110, 412 P.3d at 30 (citing

State Indus. Ins. Sys. v. Wrenn, 104 Nev. 536, 539, 762 P.2d 884, 886 (1988)). For example, in *Wrenn*, the Court refused to award attorney's fees because "the legislature has not expressly authorized an award of attorney's fees in worker's compensation cases. … [And] we decline to allow a claimant recovery of attorney's fees in a worker's compensation case absent express statutory authorization." 104 Nev. at 539, 762 P.2d at 886. The Nevada Supreme Court has likewise declined to award attorney's fees in a water law case (albeit brought under NRS 533.190(1) and NRS 533.240(3) rather than NRS 533.450) because "attorney fees are not mentioned anywhere in the statute." *Rand Props., LLC v. Filippini*, 2016 WL 1619306, Docket No. 66933, filed April 21, 2016, *6 (unpublished disposition) (holding that if fees are not expressly provided in NRS Chapter 533 they are unavailable).

B. CSI and Lincoln/Vidler Are Not Entitled to Recover Attorney's Fees

First, in applying NRS 18.010(2)(a), the Court finds the *Thomas* case controlling and on point. This is a consolidated action involving multiple Petitions for Judicial Review filed pursuant to NRS 533.450 challenging the State Engineer's Order 1309, in whole or in part. By their very nature, these are not actions whereby parties did, or could, seek a monetary judgment. Accordingly, although CSI and Lincoln/Vidler did "prevail" on the merits, they did not seek nor did they recover a monetary judgment in this case. In fact, NRS 533.450 does not provide for monetary judgments but rather simply provides that an aggrieved party may have a court review an order or decision of the State Engineer, in the nature of an appeal, where the order or decision relates to the administration of determined rights or is made pursuant to NRS 533.270 to 533.445, inclusive, or NRS 533.481, 534.193, 535.200 or 536.200. NRS 533.450(1). Because CSI and Lincoln/Vidler did not recover a monetary judgment, they may not recover attorney's fees under NRS 18.010(2)(a).

Second, in applying NRS 18.010(2)(b), while the State Engineer is entirely exempted from NRS Chapter 233B under NRS 233B.039(1)(i), the reasoning in *Zenor* is controlling here. Like the provisions of NRS Chapter 233B in *Zenor*, NRS 533.450 is the exclusive means of judicial review of a final decision or order of the State Engineer. NRS 533.450 is entirely silent on attorney's fees. It is not the role of this Court to imply provisions into

NRS 533.450 that are not expressly included in the legislative scheme, particularly where the Legislature expressly stated that costs are not recoverable from the State Engineer but did not mention attorney's fees anywhere in the statute. *See Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 287, 890 P.2d 769, 776 (1995) (attorney fees are not considered costs). Furthermore, although it is unpublished and not controlling, the Court finds the *Rand* case to be persuasive. Like *Rand*, this case deals with water law and attorney's fees are not mentioned anywhere in NRS 533.450, the statute providing the authority for the Petitions for Judicial Review filed in this case. Accordingly, the Court declines to allow a party to recover attorney's fees under NRS 18.010(2)(b) in a judicial review proceeding under NRS 533.450 absent express statutory authorization. Since NRS 533.450 does not provide for attorney's fees, they are precluded and may not be awarded under NRS 18.010(2)(b)

Lastly, even if NRS 18.010(2)(b) did apply to NRS 533.450 (which it does not), the Court finds that the State Engineer's defense of Order 1309 was not brought or maintained without reasonable ground or to harass the prevailing parties. Order 1309, and the defense maintained by the State Engineer, presented substantial issues of public policy and issues of first impression that are now pending on appeal at the Nevada Supreme Court. The Court finds that the State Engineer's defense of Order 1309 was not made without reasonable grounds, nor was it frivolous or vexatious as required by NRS 18.010(2)(b). Therefore, even in the event NRS 18.010(2)(b) could apply to this action, the Court finds that attorney's fees would not be warranted under NRS 18.010(2)(b).

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

Therefore, CSI and Lincoln/Vidler are not entitled to recover attorney's fees under either NRS 18.010(2)(a) or NRS 18.010(2)(b) as alleged in their Motions. Accordingly, the Court **DENIES** the Motions for Attorney's fees filed by CSI and Lincoln/Vidler.

IT IS SO ORDERED.

Dated this 22nd day of July, 2022

Bita Yeager

9F9 0BE E0F9 4C97
Bita Yeager
District Court Judge

Submitted this 18th day of July, 2022, and approved as to form and content by:

AARON D. FORD
Attorney General

/s/ James N. Bolotin
STEVE SHEVORSKI (Bar No. 8256)
Chief Litigation Counsel
JAMES N. BOLOTIN (Bar No. 13829)
Senior Deputy Attorney General
KIEL B. IRELAND (Bar No. 15368)
Deputy Solicitor General
LAENA ST-JULES (Bar No. 15156)
Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717
T: (775) 684-1231
E: sshevorski@ag.nv.gov
jbolotin@ag.nv.gov
kireland@ag.nv.gov
lstjules@ag.nv.gov
Attorneys for Respondent State Engineer

/ / /

ROBISON, SHARP, SULLIVAN & BRUST

/s/ Hannah E. Winston
KENT R. ROBISON, ESQ. (Bar No. 1167)
HANNAH E. WINSTON, ESQ. (Bar No. 14520)
71 Washington Street
Reno, NV 89503
T: (775) 329-3151
E: krobison@rssblaw.com
hwinston@rssblaw.com
Attorneys for Petitioner Coyote Springs Investment, LLC

ALLISON MACKENZIE, LTD.

/s/ Karen A. Peterson
KAREN A. PETERSON, ESQ. (Bar No. 366)
402 North Division Street
Carson City, NV 89703
T: (775) 687-0202
E: kpeterson@allisonmackenzie.com
Attorneys for Petitioners Lincoln County Water District and Vidler Water Company, Inc.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Southern Nevada Water Authority, Plaintiff(s) vs. Nevada State Engineer, Division of Water Resources, Defendant(s)	CASE NO: A-20-816761-C DEPT. NO. Department 1

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/22/2022

Sev Carlson	scarlson@kcnvlaw.com
Dorene Wright	dwright@ag.nv.gov
James Bolotin	jbolotin@ag.nv.gov
Diane Resch	dresch@ag.nv.gov
Justina Caviglia	jcaviglia@nvenergy.com
Bradley Herrema	bherrema@bhfs.com
Kent Robison	krobison@rssblaw.com
Mike Knox	mknox@nvenergy.com
Christian Balducci	cbalducci@maclaw.com
Pamela Montgomery	p.montgomery@kempjones.com

Laena St-Jules	lstjules@ag.nv.gov
Kiel Ireland	kireland@ag.nv.gov
Derek Muaina	DerekM@WesternElite.com
Andy Moore	moorea@cityofnorthvegas.com
Steven Anderson	Sc.anderson@lvvwd.com
Steven Anderson	Sc.anderson@lvvwd.com
Lisa Belenky	lbelenky@biologicaldiversity.org
Douglas Wolf	dwolf@biologicaldiversity.org
Sylvia Harrison	sharrison@mcdonaldcarano.com
Sylvia Harrison	sharrison@mcdonaldcarano.com
Lucas Foletta	lfoletta@mcdonaldcarano.com
Therese Shanks	tshanks@rssblaw.com
William Coulthard	wlc@coulthardlaw.com
Emilia Cargill	emilia.cargill@coyotesprings.com
Therese Ure	counsel@water-law.com
Sharon Stice	sstice@kcnvlaw.com
Gregory Morrison	gmorrison@parsonsbehle.com
Paul Taggart	paul@legaltnt.com
Lucas Foletta	lfoletta@mcdonaldcarano.com
Sarah Ferguson	sferguson@mcdonaldcarano.com
Sarah Ferguson	sferguson@mcdonaldcarano.com
Alex Flangas	aflangas@kcnvlaw.com
Kent Robison	krobison@rssblaw.com

Bradley Herrema	bherrema@bhfs.com
Emilia Cargill	emilia.cargill@wingfieldnevadagroup.com
William Coulthard	wlc@coulthardlaw.com
Christian Balducci	cbalducci@maclaw.com
Christian Balducci	cbalducci@maclaw.com
Andrew Moore	moorea@cityofnorthlasvegas.com
Nancy Hoy	nhoy@mcdonaldcarano.com
Carole Davis	cdavis@mcdonaldcarano.com
Thomas Duensing	tom@legaltnt.com
Thomas Duensing	tom@legaltnt.com
Robert Dotson	rdotson@dotsonlaw.legal
Justin Vance	jvance@dotsonlaw.legal
Steve King	kingmont@charter.net
Justin Vance	jvance@dotsonlaw.legal
Steve King	kingmont@charter.net
Don Springmeyer	d.springmeyer@kempjones.com
Karen Peterson	kpeterson@allisonmackenzie.com
Wayne Klomp	wayne@greatbasinlawyer.com
Dylan Frehner	dfrehner@lincolncountynv.gov
Scott Lake	slake@biologicaldiversity.org
Hannah Winston	hwinston@rssblaw.com
Jane Susskind	jsusskind@mcdonaldcarano.com
Jane Susskind	jsusskind@mcdonaldcarano.com

Kellie Piet	kpiet@maclaw.com
Francis Flaherty	fflaherty@dyerlawrence.com
Courtney Droessler	cdroessler@kcnvlaw.com

ATTACHMENT 4

ATTACHMENT 4

NEOJ
AARON D. FORD
Attorney General
STEVE SHEVORSKI (Bar No. 8256)
Chief Litigation Counsel
JAMES N. BOLOTIN (Bar No. 13829)
Senior Deputy Attorney General
KIEL B. IRELAND (Bar No. 15368)
Deputy Solicitor General
LAENA ST-JULES (Bar No. 15156)
Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
T: (775) 684-1231
E: sshevorski@ag.nv.gov
jbolotin@ag.nv.gov
kireland@ag.nv.gov
lstjules@ag.nv.gov
Attorneys for Respondent State Engineer

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS VALLEY WATER DISTRICT, and SOUTHERN NEVADA WATER AUTHORITY, Petitioners, vs. ADAM SULLIVAN, P.E., Nevada State Engineer, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, Respondent. And All Consolidated Cases.	Case No. A-20-816761-C Dept. No. 1 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 A-21-833572-J

NOTICE OF ENTRY OF ORDER DENYING COYOTE SPRINGS INVESTMENT, LLC'S AND LINCOLN COUNTY WATER DISTRICT AND VIDLER WATER COMPANY, INC.'S MOTIONS FOR ATTORNEY'S FEES

/ / /

/ / /

TO: ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

YOU, AND EACH OF YOU, please take notice that an Order Denying Coyote Springs Investment, LLC's and Lincoln County Water District and Vidler Water Company, Inc.'s Motions for Attorney's Fees was entered in the above-entitled matter on the 22nd day of July, 2022. A copy of said Order is attached hereto as Exhibit 1.

AFFIRMATION

The undersigned does hereby affirm that the foregoing Notice of Entry of Order does not contain the social security number of any person.

DATED this 22nd day of July, 2022.

AARON D. FORD
Attorney General

By: */s/ James N. Bolotin*
STEVE SHEVORSKI
Chief Litigation Counsel
JAMES N. BOLOTIN
Senior Deputy Attorney General
KIEL B. IRELAND
Deputy Solicitor General
LAENA ST-JULES
Deputy Attorney General
Attorneys for Respondent State Engineer

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 22nd day of July, 2022, I served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER DENYING COYOTE SPRINGS INVESTMENT, LLC'S AND LINCOLN COUNTY WATER DISTRICT AND VIDLER WATER COMPANY, INC.'S MOTIONS FOR ATTORNEY'S FEES, by electronic service to the participants in this case who are registered with the Eighth Judicial District Court's Odyssey eFileNV File & Serve system to this matter.

/s/ Dorene A. Wright

INDEX OF EXHIBITS

EXHIBIT NO.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	Order Denying Coyote Springs Investment, LLC's and Lincoln County Water District and Vidler Water Company, Inc.'s Motions for Attorney's Fees filed July 22, 2022	10

EXHIBIT 1

EXHIBIT 1

ELECTRONICALLY SERVED
7/22/2022 12:52 AM

Electronically Filed
07/22/2022 12:51 AM
CLERK OF THE COURT

ORDD

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS VALLEY WATER DISTRICT, and SOUTHERN NEVADA WATER AUTHORITY, Petitioners, vs. ADAM SULLIVAN, P.E., Nevada State Engineer, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, Respondent. And All Consolidated Cases.	Case No. A-20-816761-C Dept. No. 1 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 A-21-833572-J

ORDER DENYING COYOTE SPRINGS INVESTMENT, LLC'S AND LINCOLN COUNTY WATER DISTRICT AND VIDLER WATER COMPANY, INC.'S MOTIONS FOR ATTORNEY'S FEES

This matter came before this Court pursuant to two Motions for Attorney's Fees filed by Petitioner Coyote Springs Investment, LLC ("CSI"), and Petitioners Lincoln County Water District and Vidler Water Company, Inc. (collectively "Lincoln/Vidler") on May 5, 2022, and May 10, 2022, respectively. The State Engineer filed an Omnibus Opposition to Respective Motions for Attorney's Fees on May 19, 2022. After the conclusion of briefing on the Motions, the Court held a hearing on July 5, 2022. The Court having reviewed these filings and the briefing related thereto, and holding a hearing, hereby **DENIES** CSI's and Lincoln/Vidler's Motions for Attorney's Fees as set forth in further detail below.

A. Standard for Recovering Attorney's Fees

Nevada follows the American rule that attorney's fees may not be awarded absent a statute, rule, or contract authorizing such an award. *Thomas v. City of N. Las Vegas*,

Case Number: A-20-816761-C

122 Nev. 82, ~~91~~ 90, 127 P.3d 1057, 1063 (2006) (citing *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1356, 971 P.2d 383, 388 (1998); *Consumers League v. Southwest Gas*, 94 Nev. 153, 156, 576 P.2d 737, 738 (1978)). CSI and Lincoln/Vidler cite two statutory bases under which they seek to recover attorney's fees in this action: NRS 18.010(2)(a) and NRS 18.010(2)(b). First, NRS 18.010(2)(a) provides that the court may award attorney's fees to a prevailing party "when the prevailing party has not recovered more than $20,000." Second, NRS 18.010(2)(b) provides that the court may award attorney's fees to a prevailing party:

> Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

NRS 533.450, under which this proceeding was commenced, expressly provides costs must be paid as in civil cases brought in the district court, except by the State Engineer and the State but is silent on fees. *See* NRS 533.450(7).

The Nevada Supreme Court has held that a money judgment is a prerequisite to recover attorney's fees under NRS 18.010(2)(a). *Thomas*, 122 Nev. at 93–94, 127 P.3d at 1065–66. Where a party does not recover a monetary judgment, they are not entitled to attorney's fees under NRS 18.010(2)(a). *Id.*

Further, the Nevada Supreme Court has also held that attorney's fees are not recoverable under NRS 18.010(2)(b) in petitions for judicial review of agency actions filed under the Administrative Procedure Act. *Zenor v. State, Dep't of Transp.*, 134 Nev. 109, 110–11, 412 P.3d 28, 30 (2018). The Court has "repeatedly refused to imply provisions not expressly included in the legislative scheme." *Id.*, 134 Nev. at 110, 412 P.3d at 30 (citing

State Indus. Ins. Sys. v. Wrenn, 104 Nev. 536, 539, 762 P.2d 884, 886 (1988)). For example, in *Wrenn*, the Court refused to award attorney's fees because "the legislature has not expressly authorized an award of attorney's fees in worker's compensation cases. … [And] we decline to allow a claimant recovery of attorney's fees in a worker's compensation case absent express statutory authorization." 104 Nev. at 539, 762 P.2d at 886. The Nevada Supreme Court has likewise declined to award attorney's fees in a water law case (albeit brought under NRS 533.190(1) and NRS 533.240(3) rather than NRS 533.450) because "attorney fees are not mentioned anywhere in the statute." *Rand Props., LLC v. Filippini*, 2016 WL 1619306, Docket No. 66933, filed April 21, 2016, *6 (unpublished disposition) (holding that if fees are not expressly provided in NRS Chapter 533 they are unavailable).

B. CSI and Lincoln/Vidler Are Not Entitled to Recover Attorney's Fees

First, in applying NRS 18.010(2)(a), the Court finds the *Thomas* case controlling and on point. This is a consolidated action involving multiple Petitions for Judicial Review filed pursuant to NRS 533.450 challenging the State Engineer's Order 1309, in whole or in part. By their very nature, these are not actions whereby parties did, or could, seek a monetary judgment. Accordingly, although CSI and Lincoln/Vidler did "prevail" on the merits, they did not seek nor did they recover a monetary judgment in this case. In fact, NRS 533.450 does not provide for monetary judgments but rather simply provides that an aggrieved party may have a court review an order or decision of the State Engineer, in the nature of an appeal, where the order or decision relates to the administration of determined rights or is made pursuant to NRS 533.270 to 533.445, inclusive, or NRS 533.481, 534.193, 535.200 or 536.200. NRS 533.450(1). Because CSI and Lincoln/Vidler did not recover a monetary judgment, they may not recover attorney's fees under NRS 18.010(2)(a).

Second, in applying NRS 18.010(2)(b), while the State Engineer is entirely exempted from NRS Chapter 233B under NRS 233B.039(1)(i), the reasoning in *Zenor* is controlling here. Like the provisions of NRS Chapter 233B in *Zenor*, NRS 533.450 is the exclusive means of judicial review of a final decision or order of the State Engineer. NRS 533.450 is entirely silent on attorney's fees. It is not the role of this Court to imply provisions into

NRS 533.450 that are not expressly included in the legislative scheme, particularly where the Legislature expressly stated that costs are not recoverable from the State Engineer but did not mention attorney's fees anywhere in the statute. *See Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 287, 890 P.2d 769, 776 (1995) (attorney fees are not considered costs). Furthermore, although it is unpublished and not controlling, the Court finds the *Rand* case to be persuasive. Like *Rand*, this case deals with water law and attorney's fees are not mentioned anywhere in NRS 533.450, the statute providing the authority for the Petitions for Judicial Review filed in this case. Accordingly, the Court declines to allow a party to recover attorney's fees under NRS 18.010(2)(b) in a judicial review proceeding under NRS 533.450 absent express statutory authorization. Since NRS 533.450 does not provide for attorney's fees, they are precluded and may not be awarded under NRS 18.010(2)(b)

Lastly, even if NRS 18.010(2)(b) did apply to NRS 533.450 (which it does not), the Court finds that the State Engineer's defense of Order 1309 was not brought or maintained without reasonable ground or to harass the prevailing parties. Order 1309, and the defense maintained by the State Engineer, presented substantial issues of public policy and issues of first impression that are now pending on appeal at the Nevada Supreme Court. The Court finds that the State Engineer's defense of Order 1309 was not made without reasonable grounds, nor was it frivolous or vexatious as required by NRS 18.010(2)(b). Therefore, even in the event NRS 18.010(2)(b) could apply to this action, the Court finds that attorney's fees would not be warranted under NRS 18.010(2)(b).

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

Therefore, CSI and Lincoln/Vidler are not entitled to recover attorney's fees under either NRS 18.010(2)(a) or NRS 18.010(2)(b) as alleged in their Motions. Accordingly, the Court **DENIES** the Motions for Attorney's fees filed by CSI and Lincoln/Vidler.

IT IS SO ORDERED.

Dated this 22nd day of July, 2022

Bita Yeager

9F9 0BE E0F9 4C97
Bita Yeager
District Court Judge

Submitted this 18th day of July, 2022, and approved as to form and content by:

AARON D. FORD
Attorney General

/s/ James N. Bolotin
STEVE SHEVORSKI (Bar No. 8256)
Chief Litigation Counsel
JAMES N. BOLOTIN (Bar No. 13829)
Senior Deputy Attorney General
KIEL B. IRELAND (Bar No. 15368)
Deputy Solicitor General
LAENA ST-JULES (Bar No. 15156)
Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717
T: (775) 684-1231
E: sshevorski@ag.nv.gov
jbolotin@ag.nv.gov
kireland@ag.nv.gov
lstjules@ag.nv.gov
Attorneys for Respondent State Engineer

/ / /

ROBISON, SHARP, SULLIVAN & BRUST

/s/ Hannah E. Winston
KENT R. ROBISON, ESQ. (Bar No. 1167)
HANNAH E. WINSTON, ESQ. (Bar No. 14520)
71 Washington Street
Reno, NV 89503
T: (775) 329-3151
E: krobison@rssblaw.com
hwinston@rssblaw.com
Attorneys for Petitioner Coyote Springs Investment, LLC

ALLISON MACKENZIE, LTD.

/s/ Karen A. Peterson
KAREN A. PETERSON, ESQ. (Bar No. 366)
402 North Division Street
Carson City, NV 89703
T: (775) 687-0202
E: kpeterson@allisonmackenzie.com
Attorneys for Petitioners Lincoln County Water District and Vidler Water Company, Inc.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Southern Nevada Water Authority, Plaintiff(s) vs. Nevada State Engineer, Division of Water Resources, Defendant(s)	CASE NO: A-20-816761-C DEPT. NO. Department 1

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/22/2022

Sev Carlson	scarlson@kcnvlaw.com
Dorene Wright	dwright@ag.nv.gov
James Bolotin	jbolotin@ag.nv.gov
Diane Resch	dresch@ag.nv.gov
Justina Caviglia	jcaviglia@nvenergy.com
Bradley Herrema	bherrema@bhfs.com
Kent Robison	krobison@rssblaw.com
Mike Knox	mknox@nvenergy.com
Christian Balducci	cbalducci@maclaw.com
Pamela Montgomery	p.montgomery@kempjones.com

Laena St-Jules	lstjules@ag.nv.gov
Kiel Ireland	kireland@ag.nv.gov
Derek Muaina	DerekM@WesternElite.com
Andy Moore	moorea@cityofnorthvegas.com
Steven Anderson	Sc.anderson@lvvwd.com
Steven Anderson	Sc.anderson@lvvwd.com
Lisa Belenky	lbelenky@biologicaldiversity.org
Douglas Wolf	dwolf@biologicaldiversity.org
Sylvia Harrison	sharrison@mcdonaldcarano.com
Sylvia Harrison	sharrison@mcdonaldcarano.com
Lucas Foletta	lfoletta@mcdonaldcarano.com
Therese Shanks	tshanks@rssblaw.com
William Coulthard	wlc@coulthardlaw.com
Emilia Cargill	emilia.cargill@coyotesprings.com
Therese Ure	counsel@water-law.com
Sharon Stice	sstice@kcnvlaw.com
Gregory Morrison	gmorrison@parsonsbehle.com
Paul Taggart	paul@legaltnt.com
Lucas Foletta	lfoletta@mcdonaldcarano.com
Sarah Ferguson	sferguson@mcdonaldcarano.com
Sarah Ferguson	sferguson@mcdonaldcarano.com
Alex Flangas	aflangas@kcnvlaw.com
Kent Robison	krobison@rssblaw.com

Bradley Herrema	bherrema@bhfs.com
Emilia Cargill	emilia.cargill@wingfieldnevadagroup.com
William Coulthard	wlc@coulthardlaw.com
Christian Balducci	cbalducci@maclaw.com
Christian Balducci	cbalducci@maclaw.com
Andrew Moore	moorea@cityofnorthlasvegas.com
Nancy Hoy	nhoy@mcdonaldcarano.com
Carole Davis	cdavis@mcdonaldcarano.com
Thomas Duensing	tom@legaltnt.com
Thomas Duensing	tom@legaltnt.com
Robert Dotson	rdotson@dotsonlaw.legal
Justin Vance	jvance@dotsonlaw.legal
Steve King	kingmont@charter.net
Justin Vance	jvance@dotsonlaw.legal
Steve King	kingmont@charter.net
Don Springmeyer	d.springmeyer@kempjones.com
Karen Peterson	kpeterson@allisonmackenzie.com
Wayne Klomp	wayne@greatbasinlawyer.com
Dylan Frehner	dfrehner@lincolncountynv.gov
Scott Lake	slake@biologicaldiversity.org
Hannah Winston	hwinston@rssblaw.com
Jane Susskind	jsusskind@mcdonaldcarano.com
Jane Susskind	jsusskind@mcdonaldcarano.com

Kellie Piet	kpiet@maclaw.com
Francis Flaherty	fflaherty@dyerlawrence.com
Courtney Droessler	cdroessler@kcnvlaw.com