No. _____

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, on relation to its Division of Water Resources; DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES; ADAM SULLIVAN, Nevada State Engineer,
Petitioner,

v.

The Eighth Judicial District Court of the State of Nevada, in and for the County of Clark and the Honorable Mark R. Denton,
Respondent,

and

COYOTE SPRINGS INVESTMENT, LLC, COYOTE SPRINGS NEVADA, LLC, and COYOTE SPRINGS NURSERY, LLC,
Real Parties in Interest.

EMERGENCY PETITION FOR WRIT OF MANDAMUS UNDER NRAP 21(a)(6) AND NRAP 27(e) IMMEDIATE ACTION REQUESTED BY OCTOBER 10, 2023

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ROUTING STATEMENT

This Petition is presumptively retained by the Nevada Supreme Court pursuant to Rule 17(a)(12), because it raises as a principal issue a question of statewide public importance—namely, whether state district court proceedings, on which a pending Nevada Supreme Court appeal directly bears, should be stayed pending resolution of the Nevada Supreme Court's decision in that related case.

INTRODUCTION AND RELIEF SOUGHT

This Petition seeks an order directing the district court to stay proceedings until the Nevada Supreme Court files its decision in *Sullivan v. Lincoln County Water District*, Case No. 84739 ("*Sullivan*")[1], on the grounds that the *Sullivan* decision will have a direct and significant impact on overlapping issues presented in the district court proceedings. Both this case and *Sullivan* challenge the propriety of Order 1309, and this Court's decision could foreclose some claims and entirely reshape others.

Although the district court denied the State Engineer's Motion to Stay, it did so arbitrarily and capriciously, with no analysis beyond simply stating that the motion was "not ripe." That order forces the parties to continue massive discovery efforts and brief dispositive motions while knowing that *Sullivan* will render much of what they are doing moot, irrelevant or wrong. And the district court will then be called to determine dispositive motions even though this Court could imminently change the legal framework for evaluating Plaintiffs' claims.

[1] Case No. 84739 has been consolidated with Case Nos. 84741, 84742, 84809, and 85137.

This Court should consider and grant the writ to conserve judicial economy and the resources of the parties, as well as to ensure that any decisions coming out of the district court are not subject to unnecessary collateral attack, necessitating yet more intervention by this Court.

ISSUES PRESENTED

Whether the district court should stay proceedings for purposes of judicial economy pending resolution of a related appeal that has been submitted to the Nevada Supreme Court, where resolution of that appeal will significantly clarify and narrow the issues before the district court.

STATEMENT OF FACTS

I. The Nevada State Engineer Issues Order 1309.

On June 15, 2020, after decades of study and a yearslong factfinding process involving numerous stakeholders in the relevant geographical area, then-State Engineer Tim Wilson issued Order 1309. Order 1309 delineated the boundaries of the Lower White River Flow System ("LWRFS") and set forth a sustainable pumping limit of 8,000 afa or less of groundwater that may be pumped in the LWRFS on an average annual basis without causing further declines in Warm Springs area spring flow and flow in the Muddy River.

II. Coyote Springs Files Parallel Proceedings Challenging State Engineer Order 1309.

On July 9, 2020, Coyote Springs Investment, LLC ("CSI") filed in the Eighth Judicial District Court a Petition for Judicial Review of Nevada State Engineer Order 1309 ("Order 1309 PJR"). 1 PA 1–32. Therein, CSI detailed the factual and

procedural history leading up to the State Engineer's issuance of Order 1309, including:

- The issuance of Order 1169, which held in abeyance various water rights applications. *Id.* at 8–9 ¶ 15.
- The pump tests required by Order 1169. *Id.* at 9 ¶ 16.
- State Engineer Ruling 6255, which denied then-pending water rights applications in Coyote Spring Valley on the grounds that no unappropriated groundwater existed at the source of supply, that the proposed pumping of groundwater in the multi-basin region at issue might cause conflict with existing surface water rights in the Muddy River and Muddy River Springs, and that the proposed use would prove detrimental to the public interest in that it would threaten the water resources upon which the endangered Moapa dace are dependent.[2] *Id.* at 9–10 ¶ 17.
- The State Engineer's May 16, 2018 letter to the Las Vegas Valley Water District, since rescinded by settlement, stating, "the State Engineer cannot justify approval of any subdivision development maps based on the junior priority groundwater rights currently owned by" CSI or the Coyote Springs Water Resources General Improvement District. *Id.* at 10–11 ¶¶ 21–22.
- The State Engineer's September 19, 2018 draft order circulated at a

[2] Ruling 6255 was one of a handful of rulings issued contemporaneously, denying all pending applications in each of the respective sub-basins comprising the LWRFS.

public workshop. *Id.* at 13–14 ¶ 29.

- The State Engineer's January 11, 2019 issuance of Interim Order 1303, since rescinded (to the extent not specifically addressed in Order 1309), which established the LWRFS and declared a temporary moratorium on approvals regarding any final subdivision maps or other submissions concerning development and construction submitted to the State Engineer. *Id.* at 14–15 ¶¶ 33–35.
- Public workshops and meetings following the issuance of Interim Order 1303, which led up to the hearing on Interim Order 1303 from September 23, 2019 to October 4, 2019. *Id.* at 16–17 ¶¶ 39–42.
- The State Engineer's June 15, 2020 issuance of Order 1309. *Id.* at 18–19 ¶¶ 47–49.
- The State Engineer's June 17, 2020 letter recommending disapproval of a final subdivision map submitted by CSI. *Id.* at 19–20 ¶¶ 50–51.

Following its factual and procedural recitation, CSI alleged that it was aggrieved by the State Engineer's issuance on June 15, 2020, in that water rights it owned and water rights in which it had a contractual interest would be injured by Order 1309. *Id.* at 20 ¶ 52. Specifically, CSI argued that the State Engineer's decision in Order 1309 was "arbitrary, capricious, an abuse of discretion and devoid of supporting facts and substantial evidence." *Id.* at 20–21 ¶¶ 54–55. CSI further argued that the inclusion of Kane Springs Valley Hydrographic Basin as part of the LWRFS "was a violation of CSI's due process rights." *Id.* at 23 ¶ 60. CSI ultimately requested that the district court "reverse the decision of the State Engineer made on

June 15, 2020[.]" *Id.* at 29 ¶ 73.

On August 28, 2020, approximately seven weeks after CSI filed the Order 1309 PJR, Coyote Springs Investment LLC, Coyote Springs Nevada LLC, and Coyote Springs Nursery LLC,[3] filed a Complaint in the Eighth Judicial District alleging that the State of Nevada, through its State Engineer, had, *inter alia*, wrongfully taken CSI's water rights ("Takings Case"). 1 PA 106–36. CSI's Complaint alleges a substantially similar factual and procedural history to that alleged in the Order 1309 PJR. Specifically, the Takings Case Complaint made allegations about Order 1169, *id.* at 114–15 ¶ 15, the Order 1169 pump tests and Ruling 6255, *id.* at 115 ¶ 16, the May 16, 2018 letter *id.* at 119 ¶¶ 25–26, the September 19, 2018 draft order, *id.* at 122 ¶ 34, the January 11, 2019 issuance of Interim Order 1303, *id.* at 124–25 ¶ 37, the June 15, 2020 issuance of Order 1309, *id.* at 127–28 ¶¶ 41–42, and the June 17, 2020 letter recommending disapproval of CSI's final subdivision maps, *id.* at 128–29 ¶¶ 43.

The original Takings Case Complaint alleged six claims for relief: (1) Inverse Condemnation (*Lucas* Regulatory Taking); (2) Inverse Condemnation (*Penn Central* Regulatory Taking); (3) Pre-Condemnation Damages; (4) Equal Protection Violations; (5) Violation of 42 U.S.C. § 1983; and (6) Claim of Attorney's Fees. *See id.* at 130– 35 ¶¶ 47–79. These claims for relief are based on the State Engineer's actions, commencing with the May 16, 2018 letter and culminating in the issuance of Order 1309. *See id.* CSI has amended its Complaint in the Takings Case twice,

[3] The State Engineer refers to these three plaintiff entities as "CSI," as all entities have common ownership and a common interest in the outcome of the proceedings.

see 2 PA 137–68; 3 PA 278–312, but the factual underpinnings of the operative Complaint remain substantively the same.[4]

III. The Order 1309 PJR and the Takings Case Proceed in Tandem.

In the Order 1309 PJR, following the district court's August 17, 2020 order consolidating related petitions for judicial review, 1 PA 105–06, and extensive briefing, the district court held oral argument in early 2022. 3 PA 455. On April 19, 2022, the district court filed its Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review, wherein the district court invalidated Order 1309. *Id.* at 454–93.

On May 13, 2022, the State Engineer filed its Notice of Appeal, which was subsequently amended on May 19, 2022. 4 PA 494–96. Other parties, including the Southern Nevada Water Authority, the Muddy Valley Irrigation Company, and the Center for Biological Diversity also filed notices of appeal from the district court's Order invalidating Order 1309. 6 PA 795–98; 6 PA 852–55; 5 PA 557–59. This Court consolidated each of the related appeals into Case No. 84739. 6 PA 916–21. Thereafter, and after having first moved in the district court, the parties briefed an emergency motion to stay the district court's decision, which was granted by this Court, and motions to dismiss the appeal, which were denied. *See* 6 PA 922–30; 5

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[4] On August 21, 2023, less than two weeks after oral argument in *Sullivan*, CSI filed a Motion for Leave to File Third Amended Complaint, which remains pending before the district court. The Proposed Third Amended Complaint alleges four new claims for relief: (1) Per Se Appropriation Taking of CSI's Water Rights; (2) *Lucas* taking of 6,937.66 acres of land; (3) *Penn Central* Taking of 6,937.66 acres of land; and (4) Temporary Taking. 6 PA 960–1006. It is set for hearing on September 28, 2023.

PA 931–35. Briefing closed in May 2023 and this Court held oral argument last August, after which it submitted the case for decision.

During the same time period, the State Engineer and CSI moved forward in the Takings Case, including removal to federal court, two amendments to the Complaint, remand back to state court, and two motions to dismiss. In March 2022, the Takings Case proceeded to discovery based on the allegations and claims in the operative Second Amended Complaint. Throughout both written and oral fact discovery, CSI has focused heavily on Order 1309 and its impact on CSI's ability to use its water rights to develop its master planned community.

The current discovery deadlines are as follows[5]:

Deadline	
Close of Discovery	March 1, 2024 (except for depositions of rebuttal experts as necessary)
Final Date to File Motions to Amend Pleadings or Add Parties	November 1, 2023
Final Date to File Expert Disclosures	January 16, 2024
Final Date to File Rebuttal Expert Disclosure	February 16, 2024
Final Date to File Dispositive Motions	March 29, 2024

7 PA 1036–47.

IV. The State Engineer's Motion to Stay before the District Court.

Following oral argument in *Sullivan*, the State Engineer filed, on order shortening time, a Motion to Stay Proceedings pending this Court's resolution of

[5] On September 20, 2023, the district court granted a stipulation of the parties to extend discovery deadlines to the dates listed in the table. Prior to that extension, initial expert disclosures were due November 1, 2023, the close of discovery was January 1, 2024, and the final date to file dispositive motions was January 31, 2024.

the related *Sullivan* matter. 6 PA 936–60; *see* NRAP 8(a)(1)(A) (requiring party to move first in district court for stay of proceedings in district court pending appeal).[6]

On September 14, 2023, the district court denied the Motion to Stay without prejudice on the grounds that it was not ripe. 6 PA 1030–36. This Petition ensued.

POINTS AND LEGAL AUTHORITIES

I. Legal Standard.

"A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion." *Endo Health Solutions, Inc. v. Second Judicial Dist. Court in and for Cty. of Washoe*, 137 Nev. 390, 392, 492 P.3d 565, 568 (2021) (citations omitted). Mandamus relief is warranted when (1) the petitioner shows a legal right to have the act done which is sought by the writ; (2) the act to be enforced by the mandate is that which it is the plain legal duty of the respondent, without discretion to do or refuse; and (3) the writ will provide the requested relief and the petitioner has no other plain, speedy, and adequate remedy. *Id.* (cleaned up).

With respect to the district court's denial of the State Engineer's Motion to Stay, "[t]he judiciary has the inherent power to govern its own procedures." *Borger v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 120 Nev. 1021, 1029, 102 P.3d 600, 606 (2004) (quoting *State v. Connery*, 99 Nev. 342, 345, 661 P.2d 1298, 1300

This matter presents a unique posture, in which the State Engineer requests a stay of district court proceedings pending this Court's resolution of a ***related*** appeal, which is not explicitly addressed by NRAP 8. Nevertheless, out of an abundance of caution, the State Engineer complied with NRAP 8(a)(1)(A) by seeking relief first in the district court.

(1983). Intrinsic in this authority is the "discretion of district courts in the procedural management of litigation, which includes conservation of judicial resources." *Borger*, 120 Nev. at 1029. Here, writ relief is appropriate because the district court arbitrarily and capriciously abused its discretion in denying the State Engineer's Motion to Stay.

II. This Court Should Issue the Writ and Stay the District Court Proceedings While This Court Decides Legal Issues that Bear Directly on the Claims in the Takings Case in Furtherance of Judicial Economy.

Petitioner State Engineer has no plain, speedy, and adequate remedy. An interlocutory denial of a stay motion is not an appealable order. *Aspen Fin. Servs. v. Dist. Court*, 128 Nev. 635, 640 (2012). And by the time this case reaches final judgment, and the issue is ripe for direct appeal, the harm detailed below—the waste of judicial and party resources due in part to what is certain to be a multitude of appeals, writs, and other collateral attacks on district court decisions—will have already occurred.

This Court has before it, in *Sullivan*, issues of extraordinary magnitude that, regardless of the outcome, will profoundly impact the viability and scope of CSI's claims in the Takings Case. The issues in *Sullivan* not only hold importance to the stakeholders involved, but also are issues of first impression that will shape the contours of Nevada water law. And *Sullivan*'s holdings will flow directly to the district court's analysis of the claims in the Takings Case. To allow the Takings Case to proceed before the issues in *Sullivan* are resolved would be to put the cart before the horse and invite potentially conflicting decisions between the district court and this Court.

For example, implicit in the district court's determination of whether Order 1309 constituted a taking of CSI's water rights is whether Order 1309 took any management action with respect to stakeholders' water rights—as CSI argues—or whether it was simply fact-finding to inform future management decisions—as the State Engineer argues. If the district court decides on summary judgment that Order 1309 was a taking as a matter of law, and this Court thereafter finds that Order 1309 did not violate CSI's due process rights because it was purely fact finding, as opposed to managerial, it will unleash a torrent of further filings in this Court and the district court—NRCP 60(b) motions, direct appeals, extraordinary writs, and the like—to correct the district court judgment. This is so because, in the regulatory taking context, a plaintiff must show "*de facto* finality" of a government action to have standing to sue. *See Pakdel v. City & Cty. of San Francisco*, __ U.S. __, 141 S.Ct. 2226, 2230, 210 L.Ed.2d 617 (2021).[7] This requirement ensures that "a plaintiff has actually been injured by the Government's action and is not prematurely suing over a hypothetical harm." *Id.* (cleaned up). To establish such finality, "a plaintiff must show . . . that there is no question about how the regulations at issue apply to the particular land in question." *Id.* (cleaned up). This is but one example. It is not difficult to imagine that there may be numerous district court orders and decisions subject to collateral attack following this Court's decision in *Sullivan*.

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[7] *Pakdel* is cited for its persuasive value but is not binding precedent due to the fact that CSI's takings claims arise only under the Nevada Constitution. However, the result must be the same; without final action by the State Engineer actually taking CSI's water rights, its claims are not ripe.

Staying district court proceedings pending related appellate court proceedings is not unprecedented, particularly in cases where the state of the law is in flux. In *Nationstar Mortgage, LLC v. RAM LLC*, No. 2:15-cv-01776-KJD-CWH, 2017 WL 1752933, at *2 (D. Nev. May 4, 2017), the federal district court for the District of Nevada stayed proceedings challenging mortgage foreclosures pending related U.S. Supreme Court proceedings that would impact the state of Nevada foreclosure law. The court noted that the evolving jurisprudence in Nevada foreclosure law caused "parties in the scores of foreclosure-challenging actions pending to file new motions or supplement the ones that they already have pending, resulting in docket-clogging entries and an impossible-to-follow chain of briefs in which arguments are abandoned and replaced." *Id.* (cleaned up). Thus, the court granted the stay to "simplify and streamline the proceedings and promote the efficient use of the parties' and the court's resources." *Id.*

Judicial economy and common sense militate in favor of staying the Takings Case to allow this Court to settle the legal issues that will necessarily impact the Takings Case. A stay would also further judicial economy by narrowing both CSI's claims and the scope of remaining discovery in the Takings Case.

A. A Stay Would Further Judicial Economy by Narrowing CSI's Claims in the Takings Case.

The operative Second Amended Complaint contains nine claims for relief, including claims for a *Lucas* regulatory taking, a *Penn Central* regulatory taking, pre-condemnation damages, equal protection violations, and breaches of contract and of the implied covenant of good faith and fair dealing. As the State Engineer

currently understands CSI's theory of the case with respect to the takings claims, if this Court in *Sullivan* upholds the district court and Order 1309 is invalid, CSI will claim a total taking of its property. If this Court reverses the district court and upholds Order 1309 as valid, CSI will claim a partial taking of its property. The State Engineer, of course, believes no taking has occurred in either circumstance.

While parties are certainly entitled to plead in the alternative, as CSI appears to have done here, this is a unique case where one alternative will be definitively eliminated following this Court's issuance of the *Sullivan* decision. Thus, judicial economy would be served by staying proceedings and waiting until the legal landscape on which CSI bases its claims is settled.

With respect to CSI's claims for breach of contract and breach of the implied covenant of good faith and fair dealing, if this Court holds that the State Engineer had the authority to issue Order 1309, there is a strong case to move the district court for summary judgment. Thus, a ruling in the State Engineer's favor may eliminate two of nine claims for relief. By contrast, if the parties proceed to dispositive motions, the deadline for which is currently March 29, 2024, without clarity from this Court as to the propriety of the State Engineer's actions in issuing Order 1309, the district court will have to make its own determination about whether the State Engineer was acting in good faith when it recommended disapproval of CSI's subdivision maps on the basis of Order 1309.

Similar issues arise when considering CSI's claims for declaratory relief and injunctive relief. In its seventh claim for relief, CSI seeks a declaration from the Court, in relevant part, "that the State's wrongful actions as described herein has

precluded Plaintiffs from moving forward with its Master Planned Development and caused Plaintiffs to 'permanently cease development of the Clark County Development' and that "Plaintiffs have the right . . . to seek just compensation and damages associated with the State's wrongful take of the 2000 afa previously conveyed by CSI, . . . for use at the Coyote Springs Master Planned Community." 3 PA 308–09 ¶¶ 94–95. If the district court were inclined to grant declaratory relief to CSI, it may very well craft such a declaration in a way that would conflict with the forthcoming *Sullivan* opinion.

The same can be said for CSI's eighth claim for injunctive relief. Therein, CSI seeks "a preliminary and permanent injunction enjoining further arbitrary and capricious actions and unfair and unconstitutional takings of Plaintiffs' water rights and development rights at its Coyote Springs Master Planned Community," as well as and order enjoining the State "from any further violations of its obligations under the Settlement Agreement and from taking any further wrongful and unlawful actions related to CS-Entities' water and development rights." *Id.* at 309 ¶ 98. It is unclear how the district court could appropriately issue such an injunction without knowing whether the State Engineer in fact acted arbitrarily and capriciously in issuing Order 1309, the scope of any potential taking, and the scope of any potential breach of agreement.

Perhaps the most concerning aspect of what is likely to occur if a stay is ***not*** granted before dispositive motions are filed and decided in the Takings Case, is that such decisions are likely to conflict with this Court's forthcoming decision in *Sullivan* in material ways. Were that to happen, it is likely that any aggrieved party

would file for relief with the district court, this Court, or both, clogging the docket with otherwise unnecessary filings for simple error correction. On the contrary, if a stay is put in place, the legal issues relating to Order 1309 will be settled, CSI's claims will necessarily be narrowed, and the district court can make decisions that are more sound and not subject to collateral attack.

B. A Stay Would Further Judicial Economy by Narrowing the Scope of Remaining Discovery in the Takings Case.

Finally, the scope of remaining discovery in the Takings Case would be narrowed, conserving the resources of the Parties and promoting judicial economy by, hopefully, requiring less judicial intervention to resolve discovery disputes and/or reopen discovery following the *Sullivan* decision. To date, CSI has propounded a significant amount of discovery relating to the procedure and substance of Order 1309, including seeking admissions and deposition testimony on legal questions squarely before this Court in *Sullivan*. In effect, this shows an intent by CSI to relitigate matters that are currently pending before, and will be resolved by, the *Sullivan* appeal. Because the scope of discovery in Nevada is broad, the State Engineer has cooperated in good faith in this discovery thus far. However, as the parties move to the end of fact discovery and into expert discovery, the issues become more complicated, and the costs increase greatly.

The State Engineer has additional written and oral discovery to take in the Takings Case, the scope of which will be broadened in the absence of a stay. For example, without certainty surrounding the scope of CSI's claims, the State Engineer may need to seek discovery on the hydrological connection among the sub-basins in

the LWRFS—an issue the State Engineer expects to be resolved by this Court's decision in *Sullivan*, but one that CSI is attempting to relitigate in the Takings Case. The deposition of a 30(b)(6) corporate representative for CSI will pose similar challenges. Without a stay, the State Engineer will be forced to waste time and resources on topics and issues that may ultimately prove irrelevant following resolution of *Sullivan*. Likewise, CSI will waste its time and resources preparing witnesses and responding to discovery that may also prove irrelevant. Such an exercise in futility can be avoided by the requested stay.

Further, the current initial expert disclosure deadline is January 16, 2023, less than four months away. With CSI's alternative legal theories, the State Engineer will have to prepare potentially unnecessary experts for any number of different eventualities. For example, if the case proceeds to expert discovery before the issues in *Sullivan* are decided, the State Engineer may need to be prepared with a water expert to opine on the hydrological connection in the Lower White River Flow System under the expectation that CSI will challenge the soundness of the science underlying Order 1309. Of course, the State Engineer believes that such expert discovery is irrelevant and not proportional to the needs of the case, as the NRS 533.450 judicial review process is the sole avenue for such a challenge[8], but he also needs to be able to contest expert testimony, which, based on how fact discovery has

[8] CSI should not be permitted to make a collateral attack on the State Engineer's scientific and technical expertise to avoid the legislatively approved relevant standard of review, which gives significant deference to the State Engineer. *See Diamond Nat. Res. Prot. & Conservation Ass'n*, 138 Nev. Adv. Op. 43, 511 P.3d at 1011 (*citing Pahrump Fair Water, LLC*, 137 Nev. at 16, 481 P.3d at 858 (explaining that the Court's deference to the State Engineer's judgment "is especially warranted" when "technical and scientifically complex" issues are involved)); *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979).

proceeded, CSI is likely to disclose. However, if the case is stayed until this Court reaches a decision in *Sullivan*, the soundness of the State Engineer's decision will be resolved and not subject to collateral attack.

Likewise, damages discovery, which will be the subject of expert testimony, will be significantly narrowed once this Court renders its decision in *Sullivan*. Rather than have to prepare experts for the different damages scenarios of a total *Lucas* taking, a partial *Penn Central* taking, or a temporary taking (if the Third Amended Complaint is permitted to be filed), the Parties could wait, and conduct damages discovery based on the ***actual*** theory of the case that advances.

The district court's order was arbitrary and capricious because it did not grapple with any of those harms. It concluded merely that the motion was "not ripe." But it didn't explain why the currently occurring problems that the parties face in discovery, and the soon-to-occur problems the parties will face in drafting dispositive motions, did not satisfy ripeness requirements. Nor did the order explain what future event could render a stay motion ripe, if the currently occurring harms are not enough.

The order's statement that "an indefinite stay [was] not warranted" did not save the order from arbitrariness because it is based on an incorrect premise. The State Engineer has never asked for an indefinite stay. He asked for a stay tied to a specific, discrete event: this Court's filing an opinion in a case that has already been argued. Only at that time will the parties and the district court know the legal framework for litigating CSI's claims.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant its Petition for Writ of Mandamus and direct the district court below to stay proceedings pending this Court's resolution of the appeal in *Sullivan v. Lincoln County Water District*.

Dated this 27th day of September, 2023.

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Attorney General

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NRAP 21(a)(5) VERIFICATION

JESSICA E. WHELAN, ESQ., declares under all penalties of perjury of the State of Nevada as follows:

That she is an attorney licensed to practice law in all courts of the State of Nevada, and is a Senior Deputy Attorney General with the Attorney General's Office of the State of Nevada, and is counsel for Petitioner in the above-entitled Petition; that she has obtained copies of district court papers relating to this case and she is familiar with the facts and circumstances set forth in the Petition; and that she knows the contents thereof to be true, based on the information she has received, except as to those matters stated on information and belief, and as to those matters, she believes them to be true.

This Verification is made pursuant to NRS 15.010.

Dated this 27th day of September, 2023.

AARON FORD
Attorney General

By: /s/ Jessica E. Whelan
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NRAP 27(e) CERTIFICATE

I, Jessica E. Whelan, declare as follows:

1. I am currently employed in the Office of the Attorney General as a Deputy Attorney General. I am counsel for the Petitioner named herein.

2. The facts showing the existence and nature of the emergency are set forth in the Petition.

3. A stay of the district court proceedings is needed prior to Tuesday, October 10, 2023. Petitioner has noticed depositions of percipient witnesses under the control of Real Parties in Interest for October 12–13, 2023, to take place in Reno, Nevada. If this Court denies the Emergency Petition, Petitioner must proceed with depositions to comply with the current discovery deadlines ordered by the district court. However, if the Court is inclined to grant the Emergency Petition, a stay imposed by October 10, 2023, would conserve the time and financial resources of the parties by allowing counsel for Petitioner to avoid preparation time and travel costs from Las Vegas to Reno for these depositions. A stay issued by October 10, 2023 would also pause the clock on other looming discovery deadlines, including the initial expert disclosure deadline currently set for January 16, 2023.

4. The emergency relief sought is all the more pressing should the district court grant Real Parties in Interest's Motion for Leave to File Third Amended Complaint, set for hearing on September 28, 2023, which adds four new claims for relief, on which Petitioner has not conducted any written discovery.

5. Petitioner moved the district court for the requested stay, on order shortening time, prior to requesting relief from this Court. Specifically, Petitioner

filed its Motion to Stay Proceedings in the district court on August 21, 2023. On September 14, 2023, the district court held a hearing and denied the Motion to Stay. On September 19, 2023, the district court entered its written order denying the Motion to Stay.

6. I have made every practical effort to notify the Nevada Supreme Court Clerk and opposing counsel of the filing of this Emergency Petition. I called the Clerk of Court in advance of filing the Petition. And I notified counsel for Real Parties in Interest via email prior to filing. Petitioner will serve a courtesy copy of this Emergency Petition on counsel for Real Parties in Interest via email at the time the Emergency Petition is filed with this Court.

7. Below are the telephone numbers and office addresses of the known participating attorneys:

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I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Date: September 27, 2023

AARON D. FORD
Attorney General

/s/ Jessica E. Whelan
Jessica E. Whelan (Nevada Bar No. 14781)

Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 pt. font and Times New Roman; or

□ This brief has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

2. I further certify that this brief complies with the page- or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ Proportionately spaced, has a typeface of 14 points or more and contains 6,097 words; or

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□ Does not exceed ___ pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where

the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 27th day of September, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on September 27, 2023.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

I further certify that any of the participants in the case that are not registered as electronic users will be mailed the foregoing document by First-Class Mail, postage prepaid.

/s/ Jeny Beesley
An employee of the Office of the Attorney General