IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, ON RELATION TO ITS DIVISION OF WATER RESOURCES; THE STATE OF NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES; AND ADAM SULLIVAN, P.E., NEVADA STATE ENGINEER, Petitioners, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MARK R. DENTON, DISTRICT JUDGE, Respondents, and COYOTE SPRINGS INVESTMENT, LLC; COYOTE SPRINGS NEVADA, LLC; AND COYOTE SPRINGS NURSERY, LLC, Real Parties in Interest	**SUPREME COURT NO. 87356** District Court Case No. A-20-820384-B

REAL PARTIES IN INTERESTS' MOTION TO EXCEED WORD COUNT LIMITATION

Real Parties in Interest, COYOTE SPRINGS INVESTMENT, LLC; COYOTE SPRINGS NEVADA, LLC; AND COYOTE SPRINGS NURSERY, LLC, (collectively "CSI"), by and through the undersigned counsel of record, Kent R. Robison, Esq., and Hannah E. Winston, Esq., of the law firm Robison, Sharp, Sullivan & Brust, respectfully move this Court for permission to exceed the word-count limitation imposed by NRAP 21(d) for its Answer to Emergency Petition for Writ of Mandamus, which is filed contemporaneously herewith.

This Motion is supported by the following points and authorities and the Certificate of Hannah E. Winston. A copy of the Answer to Emergency Petition for Writ of Mandamus is attached hereto as Exhibit 1.

MEMORANDUM OF POINTS AND AUTHORITIES

NRAP 21(d) provides that an answer to a writ petition "shall not exceed 15 pages unless it contains no more than 7,000 words (or 650 lines of text in a monospaced typeface)". The Rule additionally states that "A motion to exceed the page or type-volume limit in this rule must comply with Rule 32(a)(7)(D)."

CSI respectfully requests leave to exceed the type-volume limit because the issues presented in the State's Writ require more pages than Rule 21(d) allows. This case involves the State's request to indefinitely stay the underlying case pending resolution of an appeal that is related to (though not dispositive of) the

underlying action. The Answer required a discussion of the underlying case, the appeal, and an analysis of the applicable law. Thus, CSI could not condense the discussion to just 7,000 words.

The Answer contains 7,932 words; thus, CSI seeks to exceed the type-volume by 932 words. Counsel for CSI worked diligently to present the Answer in a concise manner. The Answer addresses numerous of the State's arguments and analyzes applicable authority with detail and specificity. Accordingly, CSI believes good cause exists to exceed the type-volume by 932 words.

CONCLUSION

CSI respectfully submits that it has exercised diligence and demonstrated good cause to exceed the 7,000 word-volume limitation in NRAP 21(d) and requests permission to do so.

DATED this 5th day of October, 2023.

COYOTE SPRINGS INVESTMENT, LLC
ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

/s/ Hannah E. Winston
KENT R. ROBISON #1167
HANNAH E. WINSTON #14520

///

///

///

IN ASSOCIATION WITH:

WILLIAM L. COULTHARD #3927
COULTHARD LAW
840 South Ranch Drive, #4-627
Las Vegas, Nevada 89106

CERTIFICATE OF HANNAH E. WINSTON IN SUPPORT OF MOTION TO EXCEED WORD COUNT LIMITATION

I, Hannah E. Winston, do hereby swear under penalty of perjury that the assertions of this Certificate are true and correct.

1. I am over the age of 18 years. I have personal knowledge of the facts stated herein.

2. I am counsel of record for the Real Parties in Interest.

3. This Certificate is offered in support of Real Parties in Interests' Motion to Exceed Word Count Limitation.

4. CSI respectfully requests leave to exceed the type-volume limit because the issues presented in the State's Writ require more pages than Rule 21(d) allows. This case involves the State's request to indefinitely stay the underlying case pending resolution of an appeal that is related to (though not dispositive of) the underlying action. The Answer required a discussion of the underlying case, the appeal, and an analysis of the applicable law. Thus, CSI could not condense the discussion to just 7,000 words.

5. The Answer contains 7,932 words; thus, CSI seeks to exceed the type-volume by 932 words. I worked diligently to present the Answer in a concise manner. The Answer addresses numerous of the State's arguments and analyzes

applicable authority with detail and specificity. Accordingly, I believe good cause exists to exceed the type-volume by 932 words.

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

Dated this 5th day of October, 2023

/s/ Hannah E. Winston
HANNAH E. WINSTON #14520

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of the foregoing REAL PARTIES IN INTERESTS' MOTION TO EXCEED WORD COUNT LIMITATION on all parties to this action by the method(s) indicated below:

___ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

Heidi Parry Stern (Nevada Bar No. 8873)
Solicitor General
Jessica E. Whelan (Nevada Bar No. 14781)
Senior Deputy Attorney General
Casey J. Quinn (Nevada Bar No. 11248)
Senior Deputy Attorney General
Office of the Nevada Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
(702) 486-3594
hstern@ag.nv.gov
jwhelan@ag.nv.gov
cquinn@ag.nv.gov

__X__ by using the Court's CM/ECF Electronic Notification System addressed to:

hstern@ag.nv.gov
jwhelan@ag.nv.gov
cquinn@ag.nv.gov

___ by email addressed to:

DATED this 5th day of October, 2023.

/s/ *Celeste Hernandez*

EXHIBIT “1”

EXHIBIT “1”

No. 87356

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.

COYOTE SPRINGS INVESTMENT, LLC, COYOTE SPRINGS NEVADA, LLC, and COYOTE SPRINGS NURSERY, LLC ANSWER TO EMERGENCY PETITION FOR WRIT OF MANDAMUS

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Attorneys for Real Parties in Interest

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of the Court may evaluate possibly disqualifications or recusal.

Real party in interest Coyote Springs Investment, LLC is a Nevada limited liability company. Wingfield Nevada Group Holding Company, LLC is a parent company of Coyote Springs Investment, LLC, and no publicly traded company owns 10% or more of its stock.

Real party in interest Coyote Springs Nevada, LLC, is a Nevada limited liability company. Wingfield Nevada Group Holding Company, LLC is a parent company of Coyote Springs Nevada, LLC, and no publicly traded company owns 10% or more of its stock.

Real party in interest Coyote Springs Nursery, LLC, is a Nevada limited liability company. Wingfield Nevada Group Holding Company, LLC is a parent company of Coyote Springs Nursery, LLC, and no publicly traded company owns 10% or more of its stock.

Collectively, the real parties in interest are referred to herein as "CSI". CSI is presently represented by Kent Robison and Hannah Winston of Robison, Sharp,

Sullivan & Brust; and William Coulthard of Coulthard Law.

Dated this 5th day of October, 2023.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

/s/ Hannah E. Winston
KENT R. ROBISON #1167
HANNAH E. WINSTON #14520

IN ASSOCIATION WITH:

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INTRODUCTION

The State seeks *emergency* writ relief to avoid having to prepare and travel for depositions *the State* scheduled. In mid-September 2023, the State asked CSI for dates on which it could take the depositions of CSI representatives. CSI cooperated. CSI offered October 12th and 13th as available dates for two of the depositions.

The State then noticed the two depositions for October 12th and 13th. After three years of litigation, these are the first depositions noticed by the State to proceed as scheduled. The depositions are still scheduled for October 12th and 13th.

Now, having cooperated with the State to schedule depositions it wants to take, the State argues that the depositions it wanted, it scheduled, it noticed, and it presumably wanted, are now the basis for *emergency* writ relief.

The State did not ask CSI to reschedule the depositions before filing for emergency writ relief. The State did not request to conduct the depositions by zoom. CSI would have agreed to either option. Rather, the State chose to schedule its first depositions in this case for October 12th and 13th and to seek emergency writ relief 15 days prior to the deposition dates to self-servingly create a pseudo-crisis. There is no emergency. The alleged emergency was disingenuously manufactured.

The 1309 Appeal[1] is not dispositive of any claims alleged in this case. This case involves allegations that the State's conduct, pronouncements, letters and orders constitute a taking of CSI's property interests for which just compensation has not been paid. It would be unfair and highly prejudicial to CSI to stay these proceedings at this late date. The State has seven months to prepare its defenses before trial commences in May 2024. The degree of prejudice to CSI caused by an indefinite stay of these proceedings is immeasurable.

The Order 1309 Appeal has been pending for nearly 18 months. Since filing the appeal, the State has *twice* agreed to extending discovery deadlines and has *twice* agreed a Spring 2024 trial date in this case. First, on April 19, 2023, the State agreed to a March 2024 trial date, but the District Court scheduled trial for May 21, 2024. Second, on September 20, 2023, the State confirmed the May 21, 2024 trial date when the parties stipulated to extending discovery deadlines. For the State to now claim there is an emergency speaks volumes to the credibility of the Emergency Writ Petition (the "Petition").

The State's Petition concerns the District Court's denial of the State's motion for an indefinite stay of proceedings pending the resolution of the Order 1309 Appeal, which will not be dispositive of any issue in this case. Given that the District Court did not abuse its discretion in denying the State's request, and

[1] Docket No. 84739.

because the State is not entitled to the extraordinary relief requested, CSI respectfully requests that this Court deny the Petition.

ROUTING STATEMENT

CSI disagrees with the State's Routing Statement as this case does not involve "as a principal issue a question of statewide public importance". This case involves a writ proceeding challenging the District Court's denial of a motion to indefinitely stay proceedings pending the resolution of an appeal in a different case. Thus, this case is more akin to a "[p]retrial writ proceeding[ ] challenging discovery orders", which would presumptively be assigned to the Court of Appeals. *See* NRAP 17(b)(13). Regardless, CSI does not take issue with the Supreme Court's retention of this matter because of its familiarity with the issues in the Order 1309 Appeal (Docket No. 84739).

ISSUES PRESENTED

1. Did the District Court abuse its discretion in denying the State's request for an indefinite stay pending a decision in the 1309 Appeal when the appellate decision will not be dispositive of any issue in this case.

STATEMENT OF THE CASE

The underlying case involves CSI's claims against the State for taking CSI's water rights and real property. CSI's takings claims are based on a May 16, 2018 letter, which declared that CSI's formerly senior groundwater rights were now

junior and that CSI could not use its groundwater rights for subdivision map applications, even though the groundwater rights are for municipal use only. Following the May 16, 2018 letter, the State Engineer issued a series of decisions that confirm the State Engineer has not and will not depart from the position stated in the May 16, 2018 letter. Thus, the May 16, 2018 letter effectuated a taking of CSI's water rights.

One of the State Engineer decisions that was issued following the May 16, 2018 letter, is Order 1309. While Order 1309 is further evidence and confirmation of the State Engineer's position concerning CSI's groundwater rights and development, CSI does not base its takings claims on Order 1309. As noted above, CSI's claims are based on the May 16, 2018 letter. Notwithstanding, the State relentlessly contends that CSI's case is dependent on Order 1309. Therefore, according to the State, this case must be stayed indefinitely pending a final decision regarding the validity of Order 1309.

The District Court exercised its discretion to deny the State's improper request for an indefinite stay. This emergency writ proceeding followed.

STATEMENT OF THE FACTS

I. FACTUAL BACKGROUND

1. On May 16, 2018, the State declared, for the first time, that (1) CSI was a "junior" water right holder in relation to water right holders in other basins,

and that (2) CSI could not use its groundwater rights to support its tentative subdivision map applications. 2 CSI 362-64.

2. CSI filed a petition for judicial review of the May 16, 2018, letter. 6 AG 980.

3. CSI and the State Engineer participated in a settlement conference with the Honorable David R. Gamble (Ret.) presiding. *Id*. at 997.

4. The parties entered a Settlement Agreement on August 29, 2018, wherein the State Engineer promised to process CSI's subdivision map applications in good faith in exchange for CSI withdrawing its petition for judicial review of the May 16, 2018 letter. *Id*.

5. The State Engineer's conduct and actions following execution of the Settlement Agreement demonstrate that the Settlement Agreement, although binding and enforceable, was a ruse intended to induce CSI into dismissing its petition for judicial review of the May 16, 2018 letter. *See id*.

6. Indeed, following the Settlement Agreement, the State issued a draft order, Interim Order 1303, and Order 1309—all of which, like the May 16, 2018 letter, were clearly designed to bar CSI's development from proceeding. *See* 2 CSI 381-97 (Interim Order 1303); 2 CSI 399-466 (Order 1309).

7. Thus, even though the State Engineer labeled the May 16, 2018 letter "rescinded", the State Engineer has made clear that the State has not and will not

depart from the substantive decision reflected in the May 16, 2018 letter. *See id.*; *see also* 2 CSI 366, 368.

8. The State Engineer's 30(b)(6) representative so confirmed in her deposition in this case:

> **9. Q. So the State Engineer really doesn't have**
> **10.a problem with us using 4,100 acre-feet for**
> **11.municipal purposes. The State Engineer has a**
> **12.problem with us using 4,100 acre-feet of water for**
> **13.subdivision?**
> 14.A. No.
> **15.Q. Well, you just said we can't use it for**
> **16.subdivisions.**
> 17.A. What the decision -- what the prior
> 18.rescinded decision was was that you couldn't use
> 19.those groundwater rights to support subdivisions.
> **20.Q. Right. And nothing has changed?**
> 21.A. I haven't seen a different decision.
> **22.Q. All right. Do you know what the State**
> **23.Engineer will permit us to use for subdivisions if**
> **24.1309 is declared invalid?**
> 25.MS. WHELAN: Objection. Incomplete
> 26.hypothetical.
> 27.THE WITNESS: No.

2 CSI 366, 368.

II. PROCEDURAL BACKGROUND

1. The State Engineer issued Order 1309 on June 15, 2020. 2 CSI 399-466.

2. CSI and several other parties filed petitions for judicial review of Order 1309 on July 9, 2020. *See* 1 AG 1-104.

3. The original complaint in this action was filed on August 28, 2020. *Id*. at 107-136.

4. The State removed the case to federal court on October 2, 2020, *see* 1 CSI 1-162, and the case was remanded on September 28, 2021, *see id*. at 163-67.

5. The Honorable Judge Bita Yeager declared Order 1309 void on April 19, 2022, and the State Engineer appealed Judge Yeager's Order on May 15, 2022. 3 AG 454-93; 4 AG 494-556.

6. At no point during the foregoing period did the State claim an emergency stay was warranted.

7. On April 19, 2023, the State agreed to a March 2024 trial date, but the District Court scheduled trial for May 21, 2024. 2 CSI 278-89.

8. On August 17, 2023, CSI's counsel sent the State's counsel a copy of the Proposed Third Amended Complaint. 2 CSI 496.

9. CSI has conducted substantial discovery in this case, including serving written discovery and taking multiple depositions. *See* 7 AG 1037-48.

10. The State has not conducted any depositions in this case. *See id*.

11. On September 15, 2023, the State's counsel emailed CSI's counsel, proposed new discovery deadlines, and asked, "Can you provide us with some deposition availability for the first part of October for Emilia Cargill, Al Seeno, Jr., and Al Seeno, III?" 2 CSI 490-91.

12. On September 20, 2023, at the State's request, CSI agreed to extend the discovery deadlines. 7 AG 1037-48. The State confirmed the May 21, 2024 trial date when the parties stipulated to extending discovery deadlines. *See id*.

13. On September 21, 2023, CSI's counsel informed the State's counsel that Emilia Cargill and Albert Seeno, Jr. would be available on October 12, 2023, and October 13, 2023, respectively, for their depositions. 3 CSI 506-07. CSI's counsel expressly stated, "Please let us know if these dates work for you."[2] *See id*.

14. Thereafter, on September 25, 2023, the State filed an Amended Notice of Depositions, scheduling the depositions for October 12, 2023, and October 13, 2023, in Reno. 3 CSI 508-10.

15. Two days later, on September 27, 2023, the State filed the instant Petition, wherein the State's lawyer declares, *under penalty of perjury*, that an emergency exists because, absent a stay, the State "must proceed with depositions [*noticed voluntarily at the State's request*] to comply with the current discovery deadlines ordered by the district court." *See* NRAP 27(e) Certificate, ¶¶2-3.

16. The State's counsel further attests that a stay is need by October 10, 2023, to "conserve the time and financial resources of the parties by allowing

[2] CSI notes that these emails were not filed with the District Court. However, CSI includes them in its Appendix as they are "essential to understand the matters set forth in the petition". *See* NRAP 21(a)(4). Specifically, the emails are essential to refuting the State's position that the depositions it noticed upon mutually agreed upon dates present an emergency requiring this Court's immediate attention.

counsel for Petitioner to avoid preparation time and travel costs from Las Vegas to Reno for these depositions [*which were scheduled at the State's request to occur on mutually agreed upon dates*]." *Id.* at ¶3. The gamesmanship is evident.

17. On September 28, 2023, the District Court granted CSI's request for leave to file the Third Amended Complaint.[3] *See* 3 CSI 511-19.

STANDARD OF REVIEW

District Court decisions regarding whether to stay proceedings are reviewed for an abuse of discretion. *See Maheu v. Eighth Jud. Dist. Ct.*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973) (citing *Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S.Ct. 163, 166, 81 L.Ed. 153 (1936)).

SUMMARY OF THE ARGUMENT

The District Court did not abuse its discretion in denying the State's motion for stay. The State failed to carry its burden to demonstrate that an indefinite stay of this case was warranted pending the Court's decision in the Order 1309 Appeal. The Court's decision in the Order 1309 appeal will not be dispositive of any issue or claim in this case. Moreover, the Stated failed to establish that it would suffer inequity or hardship absent a stay.

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[3] Contrary to the State's representation to this Court, the Third Amended Complaint did not add four new claims for relief. It added an appropriation per se taking claim and an alternative temporary taking claim. *See* 6 AG 961, 988-93. In the Second Amended Complaint, CSI combined the *Lucas* and *Penn Central* takings claims for both CSI's land and water rights. *See* 3 AG 278, 302-05. In the Third Amended Complaint, CSI simply separated out the claims for clarity.

Finally, the State manufactured the purported emergency that it relies upon to invoke this Court's extraordinary intervention on an expedited basis. However, the Order 1309 Appeal has been pending for nearly 18 months, and the May 2024 trial date has been scheduled since April 2023. Thus, no emergency exists. Further, the State has not met its burden to demonstrate that writ relief is warranted. Accordingly, the Petition should be denied.

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE STATE'S REQUEST FOR AN INDEFINITE STAY

As set forth herein, the District Court did not abuse its discretion as (1) an indefinite, lengthy stay of the case is inappropriate, (2) the State failed to address applicable legal authority and failed to establish hardship or inequity requiring a stay, and (3) this Court's decision in the 1309 Appeal is not dispositive of any issue in this takings case.

1. The District Court Properly Concluded that An Indefinite, Lengthy Stay of the Case is Inappropriate.

A. The State Conceded that the Requested Stay is Indefinite and Lengthy.

The State argued to the District Court that "**[i]t is unknown when the Nevada Supreme Court will render a decision**" and that "in recent water law

cases, the Nevada Supreme Court has taken upwards of a year or longer from the date of oral argument to render its decisions." 6 AG 951:17-23 (emphasis added).

To support this contention, the State cited the following cases with the accompanying parentheticals: *Diamond Natural Resources Protection & Conservation Assoc. v. Diamond Valley Ranch, LLC*, 138 Nev. Ad. Op. 43, 511 P.3d 1003 (Nev. 2022) (oral argument held June 2, 2021; opinion filed June 16, 2022); *Wilson v. Pahrump Fair Water, LLC*, 137 Nev. 10, 481 P.3d 853 (2021) (oral argument held November 5, 2019; opinion filed February 25, 2021)). *Id*.

During oral argument, the District Court expressly questioned the State's counsel about these representations, and the State's counsel reaffirmed them.[4] Now, the State argues that it "has never asked for an indefinite stay." Petition, 16. A stay of proceedings pending a future, unknown date is the definition of an indefinite stay.

To be sure, the State contends that the District Court "asked for a stay tied to a specific, discrete event", which the State identifies as "this Court's filing an

[4] The State contends that the District Court denied the stay motion "arbitrarily and capriciously, with no analysis beyond simply stating that the motion was 'not ripe.'" Petition, 1. However, this is not true. Not only does the Order state that an indefinite stay is not warranted, but the District Court expressly said the same at the hearing. CSI was not able to get a transcript from the hearing given the expedited briefing schedule, but its omission from the State's Appendix is telling. *See Univ. & Cmty. Coll Sys. of Nev.,* 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (providing that this Court will presume that missing portions of the record support the district court's decision).

opinion in a case that has already been argued." *Id*. Given that the State still cannot predict when that decision will be rendered, the District Court was correct in concluding that the State is requesting an indefinite stay of the case.

Absent from the State's Petition is the fact that even when the Nevada Supreme Court renders an opinion in the 1309 Appeal, there is a likelihood that further proceedings will occur. Judge Yeager declared Order 1309 void based on the conclusion that the State Engineer lacked statutory authority to issue Order 1309 and that it was issued without due process. Given these legal conclusions, Judge Yeager declined to decide whether Order 1309 was supported by substantial evidence. Thus, in the Order 1309 Appeal, this Court limited the briefing and joint appendix only to the two legal issues decided by Judge Yeager: statutory authority and due process. As a result, the substantial evidence question will not be decided as part of the Order 1309 Appeal.[5]

Given this procedural posture, there are three primary potential outcomes in the Order 1309 Appeal:

[5] At the hearing on the State's motion to stay, the State's attorney represented to the District Court that the Nevada Supreme Court has in the joint appendix the entire record on substantial evidence and may decide that issue in the Order 1309 Appeal. This is false. This Court held an NRAP 33 conference wherein it expressly rejected the Appellants' attempt to file the entire administrative record of proceedings as an appendix in the Order 1309 Appeal. At that NRAP 33 conference, all parties (*including the State*) agreed that the only issues to be briefed were statutory authority and due process. *See* 2 CSI 477-81.

1. **Option 1:** Judge Yeager's Order is affirmed in its entirety, and Order 1309 is determined to have been entered without legal authority and in violation of the petitioners' due process rights.
2. **Option 2:** Judge Yeager's Order is affirmed in part and reversed in part; the Supreme Court rules that there is statutory authority for Order 1309, but the State Engineer did not afford the petitioners due process. Under this option, the case is remanded so that the State Engineer can conduct the evidentiary hearing again and adequately provide notice and opportunity to be heard. The substantial evidence issue would likely be addressed after the evidentiary hearing occurred.
3. **Option 3:** Judge Yeager's Order is reversed in its entirety, and the Nevada Supreme concludes that there is statutory authority for Order 1309 and that it was issued with due process. The case is remanded so that Judge Yeager can assess whether Order 1309 was supported by substantial evidence.

Under either Option 2 or Option 3, the State's proposed stay could last for several years. For example, if the Court remands the case under Option 2, a full-blown evidentiary hearing would have to be conducted again. When that hearing would take place is unknown. Moreover, following that hearing, it is almost certain that more petitions for judicial review would be filed. It could be years

before those petitions are resolved in the district court, and it would be several years before another Nevada Supreme Court opinion is issued.

Similarly, under Option 3, the parties would have to wait for Judge Yeager to issue an order determining whether substantial evidence supports Order 1309. It cannot be questioned that Judge Yeager's decision would be appealed by one side or the other. This process would result in several additional years until an ultimate decision is reached by the Nevada Supreme Court.

The State is dismissive of these concerns and referred to them in the District Court as "speculation and hyperbole to paint a worst-case scenario". 6 AG 1022, 1024. The only argument the State put forth is that this Court "could decide to bypass a remand all together and determine the substantial evidence question itself." *Id*. at 1027. But the substantial evidence question has not even been briefed, argued, or discussed in the 1309 Appeal. The State's position that this Court might decide an issue that the parties have not even had the opportunity to address is entirely speculative and unsupported.

At the hearing, the State informed the District Court that the Justices' questions during oral argument in the 1309 Appeal demonstrated that they may decide broader issues than originally contemplated. However, none of the Justices informed the parties that any issue other than the two defined issues would be decided. Any inference drawn by the State from the Justices' questions is, again,

pure speculation and does not render the requested stay any less indefinite or lengthy. The Petition should be denied.

B. Indefinite, Lengthy Stays are Highly Disfavored.

The District Court appropriately concluded that an indefinite stay is not warranted. *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) ("Generally, stays should not be indefinite in nature.").

The Ninth Circuit has explained that "[i]f a stay is especially long or its term is indefinite, [courts should] require a greater showing to justify it." *Yong v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000). *Yong* is especially instructive in this case as it also involved a stay ordered by the lower court that would have terminated upon resolution of an appeal addressing related issues. *See id*. at 1117. In *Yong*, "[t]he district court's primary justification for the stay was that it would conserve judicial resources." *Id*. at 1119. In reversing the district court, the Ninth Circuit explained:

> We acknowledge that the district court was in an unenviable position. It was faced with a number of petitions in an evolving area of law and knew that, however it ruled, it might be required to revisit its decision if its reasoning did not comport with our ruling in [the related appeal]. ***The stay it crafted, however, placed a significant burden on Yong by delaying, potentially for years, any progress on his petition. Consequently, although considerations of judicial economy are appropriate, they cannot justify the indefinite, and potentially lengthy, stay imposed here.***

Id. at 1120-21 (emphasis added).

The State seeks the same type of indefinite, lengthy stay in this case. If the District Court had ordered an indefinite stay that could last for several years and span multiple district court and appellate proceedings, it would have been an abuse of discretion. *See Yong*, 208 F.3d at 1119 (explaining that "although the stay has lasted only five months, its term is indefinite. Moreover, because the stay terminates upon the "resolution of the [related] appeal," if the Supreme Court should grant certiorari to review this court's decision in [the related appeal], the stay could remain in effect for a lengthy period of time, perhaps for years if our decision in [the related appeal] is reversed and the case is remanded for further proceedings.").

Accordingly, the District Court did not abuse its discretion, and the Petition should be denied.

2. The State Has Failed to Present Cogent Argument or Relevant Authority Supporting Its Request to Indefinitely Stay this Case.

As it did in the District Court, the State fails to present this Court with applicable legal authority, analysis, and factual support for the type of stay the State seeks. Therefore, this Court should deny the Petition on this ground alone. *See Edwards v. Emperor's Garden Rest.,* 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (observing that it is appellant's responsibility to present cogent argument supported by salient authority).

The State cites one case, an unpublished federal district court order from the District of Nevada, to contend that "[s]taying district court proceedings pending

related appellate court proceedings is not unprecedented, particularly in cases where the state of the law is in flux."[6] Petition, 11 (citing *Nationstar Mortgage, LLC v. RAM LLC*, No. 2:15-cv-01776-KJD-CWH, 2017 WL 1752933, at *2 (D. Nev. May 4, 2017)). However, the State ignores the actual analysis and relevant authority cited in *Nationstar*.

As CSI explained in its Opposition in the District Court (2 CSI 290, 292), and as the federal court noted in *Nationstar*, a stay pending resolution of another case is often called a "*Landis* stay", which stems from the United States Supreme Court's decision in *Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S.Ct. 163, 166, 81 L.Ed. 153 (1936)).

In *Landis*, the Supreme Court explained that to obtain a discretionary stay of litigation, the moving party "must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which [the movant] prays will work damage to someone else." *Landis v. N. Am. Co.*, 299 U.S. 248, 255, 57 S. Ct. 163, 166 (1936); *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007). The State has utterly

[6] Simply because a question of the State Engineer's statutory authority is at issue in the 1309 Appeal, does not mean "the law is in flux". Certainly, takings jurisprudence is well established and not in flux. And the State makes no effort to explain why the issues in the appeal need to be addressed under a takings analysis in this case.

failed to carry its burden to demonstrate to the District Court or this Court that it faces "a clear case of hardship or inequity in being required to go forward". *See id*.

Despite being made aware of the *Landis* analysis, the State does not even address *Landis* in the Petition. Worse, the State does not even mention the factor analysis conducted by the federal court in *Nationstar*—likely because the federal court's analysis demonstrates why the relief sought here is distinguishable from that requested in *Nationstar*.

The issue in *Nationstar* involved directly conflicting opinions from the Nevada Supreme Court and the Ninth Circuit Court of Appeals regarding whether "the Due Process Clause of the United States and Nevada Constitutions are . . . implicated in an HOA's nonjudicial foreclosure of a superpriority lien." *Nationstar*, at *1 (internal quotation marks omitted). The federal court explained that the parties in both the Nevada Supreme Court and Ninth Circuit cases "indicated they will file petitions for *certiorari* in the United States Supreme Court, leaving the constitutionality of portions of Nevada's non-judicial foreclosure statute in question." *Id*. Given that the complaint in the case claimed that Nevada's non-judicial foreclosure statute was facially unconstitutional, the federal court explained that the issues in the case were directly implicated in the Nevada Supreme Court and Ninth Circuit cases. *See id*.

The federal court further analyzed the propriety of the requested stay under the following factors:

> (1) the possible damage that may result from a stay, (2) any 'hardship or inequity' that a party may suffer if required to go forward, and (3) 'and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law' that a stay will engender.

Id. (citing *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005)).

The federal court found that a stay would promote the orderly course of justice because "the United States Supreme Court's consideration of petitions for certiorari in Bourne Valley and Saticoy Bay has the potential to be dispositive of this case or major discrete issues presented by it." *Id*. at *2. As discussed in more detail below, the same is not true in this case. The Nevada Supreme Court will not decide CSI's takings claims in the 1309 Appeal, nor will it decide any issue that is dispositive in this case. The State does not even contend as much.

Next, the federal court found that "[b]oth parties equally face hardship or inequity if the Court resolves the claims or issues before the petitions for certiorari have been decided." *Id*. at *2. Here, the State has never even claimed that it faces hardship or inequity absent a stay.

The federal court additionally concluded that "[i]t is not clear that a stay pending the Supreme Court's disposition of the petitions for certiorari will ultimately lengthen the life of this case." *Id*. The opposite is true in this case.

Absent a stay, this case will go to trial May 21, 2024. If a stay is granted, the trial could be postponed by several years.

Finally, the federal court concluded that the length of the stay would be reasonable *and not indefinite* because the disposition of the petitions for certiorari was "expected to be reasonably short". *Id*. Again, this is not true for the stay requested in this case. The State itself argued to the District Court that the length of the stay is unknown and would likely last "upwards of a year or longer from the date of oral argument" given this Court's recent timeframes for issuing opinions in water law cases. 6 AG 951:17-23. Thus, *Nationstar* demonstrates that the stay requested in this case is patently inappropriate and not warranted, which the District Court correctly concluded.

3. The State Has Failed to Establish a Clear Case of Inequity or Hardship that Would Warrant a Stay.

As noted above, *Landis* requires the moving party to "make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which [the movant] prays will work damage to someone else." *Landis v. N. Am. Co.*, 299 U.S. 248, 255, 57 S. Ct. 163, 166 (1936). The only "harm" identified by the State in the Petition is that the State will have to proceed with discovery, including the depositions the State noticed, and prepare its experts. Petition, 16; NRAP 27(e) Certificate.

As the State conceded in the District Court, "[a]dmittedly, financial costs incurred to continue litigating are generally not seen as 'irreparable harm.'" 6 AG 936, 958:8-14. Likewise, "being required to defend a suit, without more, does not constitute a "clear case of hardship or inequity" within the meaning of *Landis*." *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005). Thus, the State has completely failed to make out a "clear case of hardship or inequity in being required to go forward", which is required to obtain a stay of this case.

Given that the State raised the same arguments in the District Court, there was no abuse of discretion. While the State criticizes the District Court for not "grappl[ing] with any of those harms", the District Court clearly rejected the State's arguments, which was appropriate given that the State failed to identify any actual, concrete harm outside of general litigation expenses, which the State itself conceded do not constitute harm.

Notably, Order 1309 was already on appeal when the State twice agreed to the May 2024 trial date in this case. The State cannot now claim that an emergency stay is warranted given that the same facts existed at the time the State agreed to the May 2024 trial date.

Moreover, there is certainly "a fair possibility" that a stay would cause harm to Plaintiffs. Primarily, the principals (owners) of the CSI entities are over 70 years old. 2 CSI 487-88. They deserve to go to trial in May 2024 as scheduled and

should not have to wait for an indefinite time to finally resolve these claims. *See, e.g.*, NRS 16.025. Similarly, CSI has incurred substantial attorney fees to proceed with this case as efficiently and effectively as possible, through discovery and motion work, despite the State's best efforts to delay the case as much as possible. If this case is stayed indefinitely, and likely for years to come, CSI will incur substantially more fees for its lawyers to again refresh, get up to speed, and prepare for trial.

Further, CSI's development of its master planned community has been halted since the State Engineer issued his May 16, 2018 letter. CSI has not been able to use its groundwater rights for its master planned community since the State Engineer issued his May 16, 2018 letter. CSI has not been able to continue to develop its land since the State Engineer issued his May 16, 2018 letter.

This complete bar to, and interference with, CSI being able to use and develop its property unquestionably presents a fair possibility of harm that worsens every single day this case is not resolved. *See Varsames v. Palazzolo*, 96 F. Supp. 2d 361, 367 (S.D.N.Y. 2000) ("Deprivation of an interest in real property constitutes irreparable harm.") (citing *Carpenter Technology Corp. v. City of Bridgeport,* 180 F.3d 93, 97 (2d Cir.1999) (condemnation of plaintiff's real property constitutes irreparable injury); *The Southland Corp. v. Froelich,* 41 F.Supp.2d 227, 242 (E.D.N.Y.1999) (irreparable harm stems from inability to

make productive use of and exercise control over property); *Persaud v. Exxon Corp.,* 867 F.Supp. 128, 141 (E.D.N.Y.1994) (irreparable harm "flows from the owner's inability to make better use of the site, or the owner's lack of control")).

While the State has characterized the May 16, 2018 letter as "rescinded", the State's substantive decision reflected in the letter, to block CSI's access to its water to support its master planned community, has never changed. CSI cannot use its groundwater rights for its subdivision and has not been able to do so since May 16, 2018. The State has steadfastly adhered to the underlying position stated in the May 16, 2018 letter, regardless of the "recission". 2 CSI 366, 368. The "recission" was a tactical ruse designed to secure a litigation advantage; not a substantive change in the State's determination that CSI will not be permitted to use its water rights.

The State should not be able to perpetuate this delay and continue avoiding its obligation to pay just compensation for what it has taken. Accordingly, the State has failed to carry its burden, and the Petition should be denied.

4. This Court's Decision in the 1309 Appeal is Not Dispositive of Any Issue in this Takings Case.

A. Whether Order 1309 is "Purely Fact Finding" is Irrelevant to the Relevant Takings Analyses.

As explained above, the State took CSI's water rights in May 2018. CSI has asserted this fact since the original complaint was filed. *See* 1 AG 107, 119, 120:1-

4 (alleging that "the State Engineer's May 16, 2018 letter commenced a "take of CS-Entities' property rights" and "worked as a public announcement of the States' intent to condemn and/or wrongfully take CS-Entities Water rights"). As discovery has proceeded in this case, it has become abundantly clear that the State will never allow CSI to use its water rights. Therefore, regardless of whether Order 1309 is upheld, the State took CSI's water rights, and CSI is ready to go to trial on its takings claims.

The State ignores CSI's actual claims so that it can perpetuate its argument that the 1309 Appeal "directly bears" on the same issues as this case. The simple truth is that the opinion in the 1309 Appeal will not be dispositive of any issue in this case. And indeed, the State fails to identify even one.

Instead, the State makes vague references without explanation that the Nevada Supreme Court's decision "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." Petition, 10.[7] The one example the State provides does not support this argument.

[7] The State also contends that the District Court's Order "forces the parties to continue massive discovery efforts and brief dispositive motions while knowing that *Suillivan* will render much of what they are doing moot, irrelevant, or wrong." Petition, 1. *What massive discovery?* Substantial discovery has already been completed in this case. There is not "massive discovery" remaining. Furthermore, the State fails to explain how the Supreme Court's decision in the appeal could render any of CSI's claims "moot, irrelevant or wrong". These broad

The State argues that "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". *Id*. Therefore, according to the State, if the District Court decides on summary judgment that Order 1309 was a taking and then the Nevada Supreme Court decides that Order 1309 was "purely fact finding" to inform future decisions, inconsistent results will occur. *See id*.

This contention is based on the State's version of CSI's takings claim—not what is actually set forth in the Third Amended Complaint. Specifically, CSI's takings claims are not based on Order 1309. Rather, CSI's takings claims arise from the State's May 16, 2018 letter. *See* 6 AG 961, 988-93. The State may dispute or disagree with CSI's position, but the Third Amended Complaint is the controlling, operative pleading in this matter. The State does not get to rewrite CSI's claims to put forth a false narrative to this Court in order to obtain a stay.

Accordingly, even if the Supreme Court determines that Order 1309 is "fact finding", such a finding would be irrelevant to CSI's claims for appropriation per se taking, *Lucas* taking, or *Penn Central* taking. The Petition should be denied.

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generalizations are inadequate to meet the State's burden to invoke this Court's extraordinary intervention.

B. CSI's Takings Claims are Ripe Regardless of the Validity of Order 1309.

Additionally, regardless of whether this Court ultimately determines that Order 1309 is valid, CSI's water rights have been taken and the State has made its position clear that CSI will never be able to use its water for its Master Planned Community. Indeed, a government action effectuates a taking if the elements of a taking can be demonstrated under any of the established tests, regardless of whether the action is otherwise lawful and legitimate. *See McCarran Intern. Airport v. Sisolak,* 122 Nev 645 (2006) (affirming District Court ruling that adoption of an ordinance restricting building heights adjacent to public airport constituted a *per se* taking without raising any question about the legal validity of the ordinance).

The State's explanation of CSI's "theory of the case" as set forth in the Petition is wrong. *See* Petition, 12 (asserting that if Order 1309 is invalid then CSI will claim a total taking but if Order 1309 is determined to be valid, then CSI will claim "a partial taking"). CSI's position is that regardless of Order 1309, the State Engineer has taken its property.

Further, the State attempts to recast every single one of CSI's claims as though each one is entirely based on Order 1309. *See* Petition, 12-13. However, only two of CSI's claims in the Third Amended Complaint even reference Order 1309—the Equal Protection claim and the breach of contract claim. *See* 6 AG 961,

988-1000. In both instances, Order 1309 is referenced amongst the multiple other decisions the State Engineer has issued regarding CSI's groundwater rights. *See id*. Not one claim in the Third Amended Complaint wholly rests on Order 1309. *See id*. The State does not get to dictate the basis of CSI's claims.

While the State cites ripeness concerns related to CSI's takings claims, ripeness is not an issue appropriately considered in conjunction with a motion to stay. Rather, to the extent the State believes CSI's takings claims are not ripe, there are other motions the State can file to make that argument.[8] In any event, CSI's takings claims are ripe regardless of what the Nevada Supreme Court decides in the 1309 Appeal as they are based on the May 16, 2018 letter, and the State has made clear that CSI will never be able to use its groundwater rights.

The United States Supreme Court has explained that "[t]he rationales for the finality requirement underscore that nothing more than *de facto* finality is necessary." *Pakdel v. City & Cnty. of San Francisco, California*, 141 S. Ct. 2226, 2230 (2021). "This requirement ensures that a plaintiff has actually 'been injured by the Government's action' and is not prematurely suing over a hypothetical

[8] And in fact, the State did move to dismiss CSI's Second Amended Complaint for, among other things, ripeness issues, which the District Court denied. *See* 1 CSI 268-191 (State's Motion to Dismiss Second Amended Complaint); *id*. at 192-219 (CSI's Opposition); and *id*. at 241-256 (District Court Order Denying Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint).

harm." *Id*. (citing *Horne v. Department of Agriculture*, 569 U.S. 513, 525, 133 S.Ct. 2053, 186 L.Ed.2d 69 (2013)).

"Along the same lines, because a plaintiff who asserts a regulatory taking must prove that the government 'regulation has gone 'too far,' the court must first 'kno[w] how far the regulation goes.'" *Id*. (citing *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 348, 106 S.Ct. 2561 (1986)). "Once the government is committed to a position, however, these potential ambiguities evaporate and the dispute is ripe for judicial resolution." *Id*.

Here, it is clear how far the State's regulations go, and the State is plainly committed to the position asserted in the May 16, 2018 letter: (1) the State views CSI as a junior groundwater right holder in relation to water right holders in other basins, and (2) CSI cannot use its groundwater rights in Coyote Spring Valley Hydrographic Basin or Kane Springs Valley Hydrographic Basin to support its subdivision maps, which are necessary to move forward with its master planned community. *See* 2 CSI 362-64.

Thus, the State Engineer has made its position clear that CSI will never be able to use its groundwater rights, regardless of whether Order 1309 is valid or not.

It is universally understood that "[g]overnment authorities . . . may not burden property by imposition of repetitive or unfair land-use procedures in order to avoid a final decision." *Palazzolo v. Rhode Island*, 533 U.S. 606, 621, 121 S.

Ct. 2448, 2459 (2001). Therefore, the State cannot avoid a final decision through delay, including refusal to consider CSI's maps, and by making unsupported assertions that there exists some alternative use for CSI's water. The Petition should be denied.

C. An Indefinite Stay Would Not Further Judicial Economy

As noted above, the State's incorrect understanding of CSI's claims has resulted in the State's mistaken argument that one of CSI's alternative claims for taking will be "definitively eliminated following this Court's issuance of the *Sullivan* decision." Petition, 12. The decision in the 1309 Appeal will not be dispositive of any claim in the Third Amended Complaint. Thus, the State's contention that "judicial economy would be served by staying proceedings and waiting until the legal landscape on which CSI bases its claims is settled" is simply wrong.

CSI does not dispute that the Nevada Supreme Court's ultimate decision in the appeal, if issued prior to the May 2024 trial date, may be relevant to issues in this case. However, as the Fifth Circuit has explained, "[a] stay pending adjudication in another tribunal should not be granted unless that tribunal has the power to render an effective judgment on issues that are necessary to the disposition of the stayed action." *Itel Corp. v. M/S Victoria U (Ex Pishtaz Iran)*,

710 F.2d 199, 203 (5th Cir. 1983). Here, the Court's decision in the appeal will not be dispositive of any issue in this case.

The State argues that a stay should be issued so that it does not have to prepare its experts on alternative theories of relief. However, as the State admits, alternative theories are regularly asserted. Thus, litigants routinely must prepare experts for alternative theories. The desire to avoid preparing experts is not inequity or hardship that warrants a stay.

Moreover, the Court in the appeal will not decide whether or what kind of taking occurred. There is no possible outcome in the appeal that could render any of CSI's claims invalid. Thus, regardless of the outcome of Order 1309, both parties must prepare their respective experts to address the issues related to the claims in the Third Amended Complaint, whether stated in the alternative or not. Like any other litigant, the State must exercise its judgment to determine how to best prepare their experts. The State's feigned inability to do so because the 1309 Appeal has not yet been decided is not a reason to stay the case.

Likewise, the State's unsupported, broad representations that absent a stay, it "*may* need to be prepared with a water expert to opine on the hydrological connection in the Lower White River Flow System" are inadequate to meet the

State's burden to invoke this Court's extraordinary relief.[9] The Petition should be denied.

II. EMERGENCY WRIT RELIEF IS IMPROPER

"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." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court,* 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *see* NRS 34.160. A writ is an extraordinary remedy, and whether a petition for extraordinary relief will be considered is solely within this court's discretion. *Smith v. Eighth Judicial Dist. Court,* 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). The State as Petitioner bears the burden to show that extraordinary relief is warranted. *See Pan v. Eighth Judicial Dist. Court,*120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

This is not a case that warrants extraordinary writ relief. While orders denying stays are not generally appealable, the State has failed to carry its burden to show that extraordinary relief is warranted. The District Court properly exercised its discretion by denying the State's request for an indefinite stay. Notably, the District Court denied the State's motion without prejudice. Thus, the State can seek a stay again *if* the State actually faces harm or the issue becomes

[9] If, as the State contends, "such expert discovery is irrelevant and not proportional to the needs of the case," there are appropriate procedural mechanisms to address the State's belief with the District Court. However, a writ petition is not it.

ripe. However, at this point, the State's vague, unsupported references to harm, judicial economy, and "massive [undefined] discovery efforts" do not warrant this Court exercising extraordinary relief. Therefore, the Petition should be denied.

III. CONCLUSION

Contrary to the State's contentions, an indefinite stay is the antithesis of judicial economy. This is especially true in this case given that the stay could last years and will almost certainly result in an opinion that will have no impact on this case. The State cites no authority to support its request for a stay under these circumstances. Accordingly, CSI respectfully requests that this Court deny the Petition.

DATED this 5th day of October, 2023.

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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

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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:

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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 5th day of October, 2023.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of the foregoing COYOTE SPRINGS INVESTMENT, LLC, COYOTE SPRINGS NEVADA, LLC, and COYOTE SPRINGS NURSERY, LLC ANSWER TO EMERGENCY PETITION FOR WRIT OF MANDAMUS on all parties to this action by the method(s) indicated below:

___ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

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DATED this 5th day of October, 2023.

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