

**No. 87356**

---

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Oct 05 2023 04:40 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

---

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 APPENDIX  
VOL. 2**

---

Kent R. Robison, Esq. – Nevada Bar No. 1167  
Hannah E. Winston, Esq. – Nevada Bar No. 14520  
Robison, Sharp, Sullivan & Brust  
71 Washington Street  
Reno Nevada 89503  
krobison@rssblaw.com / hwinston@rssblaw.com  
Telephone: (775) 329-3151

**IN ASSOCIATION WITH:**

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

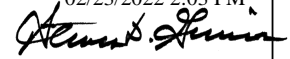
*Attorneys for Real Parties in Interest*

**APPENDIX – CHRONOLOGICAL TABLE OF CONTENTS**

<b>DOCUMENT</b>	<b>DATE FILED or ADMITTED</b>	<b>VOLUME NO.</b>	<b>PAGE NO.</b>
Defendants' Notice of Removal to Federal Court	2020-10-02	Vol. 1	CSI0001- CSI0162
Order Granting Motion to Remand	2021-09-28	Vol. 1	CSI0163- CSI0167
Defendants' Motion to Dismiss Second Amended Complaint	2021-12-20	Vol. 1	CSI0168- CSI0191
Plaintiffs' Opposition to Defendants' Motion to Dismiss Second Amended Complaint	2022-01-18	Vol. 1	CSI0192- CSI0219
Defendants' Reply to Opposition to Motion to Dismiss Second Amended Complaint	2022-01-24	Vol. 1	CSI0220- CSI0240
Order Denying Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint	2022-02-23	Vol. 2	CSI0241- CSI0256
Defendants' Answer to Second Amended Complaint	2022-03-10	Vol. 2	CSI0257- CSI0268
Stipulation and Order to Amend Scheduling Order	2022-10-31	Vol. 2	CSI0269- CSI0277
Stipulation and Order to Extend Discovery Deadlines and Continue Trial [Second Request]	2023-04-19	Vol. 2	CSI0278- CSI0289

<b>DOCUMENT</b>	<b>DATE FILED or ADMITTED</b>	<b>VOLUME NO.</b>	<b>PAGE NO.</b>
Plaintiffs' Opposition to Defendants' Motion to Stay Proceedings Pending Nevada Supreme Court's Resolution of Related Matter	2023-09-05	Vol. 2	CSI0290- CSI0307
Plaintiffs' Appendix of Exhibits to Opposition to Defendants' Motion to Stay Proceedings Pending Nevada Supreme Court's Resolution of Related Matter	2023-09-05	Vol. 2	CSI0308- CSI0481
Plaintiffs' Errata to Opposition to Defendants' Motion to Stay Proceedings Pending Nevada Supreme Court's Resolution of Related Matter	2023-09-08	Vol. 2	CSI0482- CSI0488
Email chain by/between Hannah Winston and Casey Quinn re: Motion to Stay	2023-09-18	Vol. 2	CSI0489- CSI0497
Plaintiffs' Reply in Support of Motion for Leave to File Third Amended Complaint	2023-09-20	Vol. 3	CSI0498- CSI0505
Email from H. Winston to C. Quinn and J. Whelan re: Depositions	2023-09-21	Vol. 3	CSI0506- CSI0507
State Engineer's Amended Notice of Depositions	2023-09-25	Vol. 3	CSI0508- CSI0510

<b>DOCUMENT</b>	<b>DATE FILED or ADMITTED</b>	<b>VOLUME NO.</b>	<b>PAGE NO.</b>
Order Granting Plaintiffs' Motion for Leave to File Third Amended Complaint	2023-10-03	Vol. 3	CSI0511- CSI0519

  
CLERK OF THE COURT

1 **ORDD**

2 William L. Coulthard, Esq.  
3 Nevada Bar No. #3927  
4 COULTHARD LAW PLLC  
5 840 South Rancho Drive #4-627  
6 Las Vegas, Nevada 89106  
7 (702) 898-9944  
8 [wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)

9 *Attorneys for Plaintiffs CS-Entities*

10 **DISTRICT COURT**

11 **CLARK COUNTY NEVADA**

12 COYOTE SPRINGS INVESTMENT, LLC, a  
13 Nevada Limited Liability Company;  
14 COYOTE SPRINGS NEVADA, LLC, a  
15 Nevada limited liability company; and  
16 COYOTE SPRINGS NURSERY, LLC, a  
17 Nevada limited liability company,

18 Plaintiffs,

19 vs.

20 STATE OF NEVADA, on relation to its  
21 Division of Water Resources;  
22 DEPARTMENT OF CONSERVATION and  
23 NATURAL RESOURCES; ADAM  
24 SULLIVAN, Nevada State Engineer;  
25 CLARK COUNTY-COYOTE SPRINGS  
26 WATER RESOURCES GENERAL  
27 IMPROVEMENT DISTRICT, a political  
28 subdivision of the State of Nevada; and Does  
I through X.

Defendants.

Case No.: A-20-820384-B  
Dept. No.: 13

**ORDER DENYING DEFENDANTS'  
MOTION TO DISMISS PLAINTIFFS'  
SECOND AMENDED COMPLAINT**

**Hearing Date: January 31, 2022**  
**Hearing Time: 9:00 AM**

This matter came before the Court on January 31, 2022, upon the Motion to Dismiss Plaintiffs' Second Amended Complaint (the "Motion to Dismiss") filed by Defendant State of Nevada and its Department of Conservation and Natural Resources ("Defendant" and/or the "State") in the above-entitled action. Plaintiffs were represented by William L. Coulthard, Esq. of Coulthard Law, and the State was represented by Akke Levin, Esq. of the Office of the

1 Attorney General of the State of Nevada. Having carefully considered the Motion to Dismiss,  
2 Plaintiffs' Opposition, Defendants' Reply, the parties' oral argument, taking the matter under  
3 advisement, and being fully informed with good cause appearing with no just reason for delay,  
4 this Court hereby concludes as follows.

5 **I.**

6 **FINDINGS**

7 **A. Standard of Review.**

8 These findings are made and based upon the Motion to Dismiss standard wherein the  
9 Plaintiffs' allegations in the operative Second Amended Complaint ("SAC")<sup>1</sup>, are presumed  
10 true. These findings are not intended to, and do not work to, confirm or establish the facts as  
11 alleged by Plaintiffs. Rather, these findings are made to support the Court's decision herein  
12 where the allegations are presumed as true as applied to applicable law.

13 A motion to dismiss for failure to state a claim upon which relief can be granted tests the  
14 legal sufficiency of the claims set out against the moving party, but it should not be granted  
15 unless it appears beyond a doubt that plaintiff is entitled to no relief under any set of facts that  
16 could be proved in support of the claim(s). *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev.  
17 224, 181 P.3d 670 (2008); *Stockmeier v. Nevada Dep't of Corr.*, 124 Nev. 313, 316, 183 P.3d  
18 133, 135 (2008). In *Buzz Stew*, the Nevada Supreme Court held that the appropriate standard  
19 for a motion to dismiss based upon a failure to state a claim is "beyond a doubt." 124 Nev. at  
20 228 n.6, 181 P.3d at 672 n.6. For purposes of a Rule 12(b)(5) motion, a court must accept all of  
21 the allegations in the complaint as true and draw all inferences in favor of the non-moving  
22 party. *Id.* at 228, 181 P.3d at 672. The test to determine whether the allegations in the  
23 complaint are sufficient to assert a claim is "whether the allegations give fair notice of the  
24 nature and basis of a legally sufficient claim and the relief requested." *Ravera v. City of Reno*,  
25 100 Nev. 68, 70 (1984).

---

26  
27  
28 <sup>1</sup> Plaintiffs' operative Second Amended Complaint was filed post Remand with this State Court  
on November 12, 2021.

1           Importantly, a Rule 12(b)(5) motion to dismiss challenges only the legal sufficiency of  
2 the complaint, not the strength of the plaintiff's proof of evidence. *Buss v. Consolidated Casino*  
3 *Corp.*, 82 Nev 355, 357, 418 P.2d 815, 816 (1966).

4       **B.       Plaintiffs' Allegations support that the Takings Claims Are Ripe for Decision.**

5           Defendant has asserted that Plaintiffs' claims included within the operative Second  
6 Amended Complaint ("SAC") are premature and not ripe for adjudication because (1) Plaintiffs  
7 filed a separate and pending Judicial Review proceeding challenging State's Order 1309; (2)  
8 Order 1309 on which the Takings Claims are based takes no final position on the amount of  
9 groundwater CSI may use; and (3) the State's disapproval of a master-planned project for 57  
10 residential units is not a final decision on how Order 1309 would apply to a project of a lesser  
11 scope under *Palazzolo v. Rhode Island*, 533 U.S. 606, 620, (2001). The Court, however, finds  
12 that Plaintiffs' allegations support that this action is ripe for adjudication. In 2019 and again in  
13 2021, the U.S. Supreme Court clarified that takings claims are ripe at the time of the  
14 government's action, and there is no requirement that plaintiffs must first exhaust administrative  
15 remedies or seek judicial review in state court prior to bringing their actions. *See Pakdel v. City*  
16 *& Cty. of San Francisco*, 141 S. Ct. 2226, 2230-31 (2021); *Knick v. Township of Scott*, 139 S.  
17 Ct. 2162, 2170 (2019). Takings claims are ripe when the government entity charged with  
18 implementing the regulations has reached a final decision regarding the application of  
19 regulations to the property at issue. *Williamson Cty. Regional Planning Comm. v. Hamilton*  
20 *Bank of Johnson City*, 473 U.S. 172, 186, (1981). While a landowner must give a land-use  
21 authority an opportunity to exercise its discretion, once it becomes clear the agency lacks the  
22 discretion to permit any development, or the permissible uses of the property are known to a  
23 reasonable degree of certainty, a takings claim is likely to have ripened. *Palazzolo v. Rhode*  
24 *Island*, 533 U.S. 606, 620, (2001). Essentially, once the government is committed to a position  
25 regarding a landowner's development rights, the dispute is ripe for judicial resolution. *Pakdel*,  
26 141 S.Ct. at 2230

27           Plaintiffs sufficiently allege that the State reached a final decision when issuing Order  
28 1309 and denying Plaintiffs' ability to use their permitted and valid water rights and



1 development entitlements. Through Order 1309, Plaintiffs have alleged that the State has  
2 reallocated Plaintiffs' Coyote Spring Valley water rights into the LWRFS super-basin and  
3 reallocated and reprioritized their senior usable water rights into junior non-usable water rights.  
4 Plaintiffs have further alleged that within days of issuing Order 1309, the State applied Order  
5 1309 to Plaintiffs' property directly by denying CS-Entities' long pending and conditionally  
6 approved subdivision maps for Village A of its fully entitled and partially constructed Master  
7 Planned Community.

8 If a governmental entity "takes private property without paying for it, that government  
9 has violated the Fifth Amendment - just as the Takings Clause says - without regard to  
10 subsequent state court proceedings." *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162,  
11 2170, (2019). Likewise, the Nevada Constitution provides that "[p]rivate property shall not be  
12 taken for public use without just compensation having been first made...". Nev. Const. art. 1,  
13 §8(6).

14 The ripeness of Plaintiffs' claims are supported by the factual allegations in the SAC.  
15 Plaintiffs allege, in part, that despite having their Approved Major Project entitlements and  
16 approval from Clark County for its 6500-acre Major Project Master Planned Community (SAC  
17 ¶¶ 8-9), Plaintiff CS-Entities have been precluded from subdividing their lands and building  
18 their long-planned and approved residential homes within their Master Plan Community.  
19 Accepting these allegations as true, which this Court must do under the NRCP 12(b)(5)  
20 standard, the alleged facts demonstrate that Plaintiffs' regulatory takings claims are ripe for  
21 adjudication, as the Plaintiffs' received a final, definitive decision from the State on how the  
22 regulations apply to Plaintiffs' water rights and further development of its Master Planned  
23 Community.

24 **C. Plaintiffs' Complaint States a Claim for a Per Se Taking under Lucas.**

25 Plaintiffs' SAC alleges a cognizable *Lucas* taking. *Lucas v. S.C. Coastal Council*, 505  
26 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992). *Lucas* takings are referred to as *per se* or  
27 categorical takings, as the government's total taking of a property's value, in-and-of itself,  
28 proves the taking claim. *Id.* at 1019.

1           1.     *The Complaint Sufficiently Alleges that Defendants' Actions Took All*  
2                 *Economically Beneficial Use of Plaintiffs' Property.*

3           The SAC provides sufficient factual allegations supporting Plaintiffs' claim that the  
4 Defendants' actions took all economically beneficial use of its property. This is especially so  
5 when considering all reasonable inferences that may be drawn from the Complaints' allegations  
6 in a light most favorable to the Plaintiffs. Specifically, the SAC alleges:

- 7           • The Defendants' actions took Plaintiffs' certificated, permitted, and valid  
8 groundwater water rights in Order 1309. That Defendants have taken at least  
9 3640 and possibly all 4140 afa of CS-Entities' water rights, thereby making the  
10 property undevelopable, leaving it without any economically beneficial uses,  
11 and. SAC ¶¶ 2, 3, 48-54.
- 12           • The Plaintiffs' investment in its Master Planned Community infrastructure and  
13 community amenities were constructed specifically with the understanding,  
14 based upon longstanding Nevada Law, that the CS-Entities would be able to use  
15 its State-approved and valid groundwater rights in support of its Clark County  
16 Approved Major Project. Without these rights, these improvements have no  
17 purpose, and the underlying land and improvements have now lost all  
18 economically viable use. SAC ¶¶ 8; 17; 18.
- 19           • The Plaintiffs' numerous, valuable land use entitlements, which culminated in  
20 comprehensive Development Agreements in both Clark and Lincoln counties to  
21 construct its Master Planned Community was "taken" and rendered valueless due  
22 to the Defendants' Order 1309. Order 1309 has left the property with no  
23 economically beneficial use. SAC ¶¶ 48-54.

24           These allegations are sufficient at the pleading stage to assert a viable *Lucas* takings claim.

25           2.     *The SAC Sufficiently States that Plaintiffs' Actionable Property Rights were*  
26                 *Taken by the Defendants' Interim Order 1303, Order 1309, and Final Decisions*  
27                 *Based on these Policies.*

28           The SAC alleges that Plaintiffs' permitted ground water rights and prior development  
approvals are actionable property rights for purposes of takings claims. *See Application of*  
*Filippini*, 202 P.2d 535, 537 (Nev. 1949) (holding that, in Nevada, a water right is “a right  
which is regarded and protected as property”). Water rights are protected property that cannot  
be taken without the payment of just compensation under the United States and Nevada  
Constitutions. *Carson City vs. Estate of Lompa*, 501 P.2d 662 (Nev. 1972). Courts have  
explained that “[a] priority in a water right is property in itself”; therefore, “to deprive a person  
of his priority is to deprive him of a most valuable property right.” *Colorado Water*  
*Conservation Bd. v. City of Cent.*, 125 P.3d 424, 434 (Colo. 2005) (internal quotation marks  
omitted). The Nevada Supreme Court has likewise confirmed that “a loss of priority that

renders rights useless ‘certainly affects the rights’ value’ and ‘can amount to a de facto loss of rights.’” *Wilson v. Happy Creek, Inc.*, 135 Nev. 301, 313, 448 P.3d 1106, 1115 (2019) (quoting *Andersen Family Assocs. v. State Eng’r.* 124 Nev. 182, 190, 191, 179 P.3d 1201 (2008); see also Gregory J. Hobbs, Jr., Priority: The Most Misunderstood Stick in the Bundle, 32 *Envtl. L.* 37, 43 (2002) (“The priority of a water right is ... its most important ... feature.”).

In the SAC Plaintiffs have alleged that the State’s Order 1309 wrongfully reallocates CS-Entities' existing rights by combining 6+ previously separate basins, into a single Lower White River Flow System (“LWRFS”) super-basin, and then limiting the "maximum quantity of groundwater that may be pumped from the LWRFS on an average annual basis . . . cannot exceed 8,000 afa and may be less." Order 1309 pg. 65. As alleged in the SAC, "[t]he State Engineer’s Order 1309, in creating a new single super basin, for these 6+ previously stand-alone hydrological basins, with its limitation on the maximum quantity of groundwater that may be pumped from the LWRFS on an average annual basis that 'cannot exceed 8000 afa and may be less' effectuates a ‘take’ of the CS-Entities Water Rights and its Master Planned Approved Major Project development rights.” SAC ¶ 49. Accepting these allegations as true, which the Court must do in the NRCP 12(b)(5) context, demonstrates a properly plead and sustainable regulatory taking claim against the State.

**D. Plaintiffs' Complaint States a Claim for a Regulatory Taking Under the *Penn Central* Balancing Test.**

The Court further finds that Plaintiffs have also properly plead a *Penn Central* taking claim against the State. The elements of *Penn Central* are viewed in their aggregate to determine whether the regulation goes "too far" and takes the Plaintiffs' property. The U.S. Supreme Court has eschewed “any ‘set formula’ for determining when ‘justice and fairness’ require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons.” *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124, 98 S. Ct. 2646 (1978). The outcome instead “depends largely ‘upon the particular circumstances [in that] case.’” *Id.* at 124. Regulatory takings cases necessarily entail complex factual assessments of the purposes and economic effects of

1 government actions. *Penn Central* does not supply mathematically precise variables, but instead  
2 provides important guideposts that lead to the ultimate determination whether just compensation  
3 is required. *Yee v. Escondido*, 503 U.S. 519, 523, 112 S. Ct. 1522 (1992)

4 *Penn Central* identified several factors—including the regulation's economic impact on  
5 the claimant, the extent to which it interferes with distinct investment-backed expectations, and  
6 the character of the government action—that are particularly significant in determining whether  
7 a regulation effects a taking. *Lingle* at 528–29.

8 *1. Plaintiffs' Complaint Alleges Sufficient Economic Loss.*

9 The SAC asserts numerous factual allegations regarding the severity of economic loss  
10 suffered by Plaintiffs due to the State's actions. When considering the allegations in the  
11 Complaint as true, the extent and severity of Plaintiffs' economic loss weighs in favor of  
12 recognizing a taking under *Penn Central*.

13 *2. Plaintiffs' Complaint Alleges Sufficient Investment-Backed Expectations Losses.*

14 The investment-backed expectations prong requires an objective, fact-specific inquiry  
15 into what, under all the circumstances, the landowner should have reasonably anticipated when  
16 investing in the property. Plaintiffs allege they acquired the Coyote Springs land and 4600 afa  
17 of permitted ground water rights in the Coyote Spring Valley. Coyote Springs then sought and  
18 obtained multiple land use and development approvals that culminated in comprehensive  
19 written Development Agreements between Plaintiffs and Clark and Lincoln Counties for its  
20 Master Planned Development. SAC ¶¶ 1; 7-20. The Development Agreements authorized  
21 Plaintiffs to construct up to 49,600 residential units and 800+ acres of commercial development  
22 over the next 40 years in Clark County and up to 110,000 units in Lincoln County. As alleged in  
23 the SAC, the entirety of these development rights have been taken by the State through its  
24 issuance of Order 1309. Plaintiffs allege that these Development Agreements were each  
25 memorialized in recorded Ordinances in both Clark and Lincoln County, and are part of the  
26 Public Record in the State of Nevada. SAC ¶¶ 9-16.

27 Plaintiffs allege that CS Entities' significant investments in the Coyote Springs  
28 development were objectively reasonable and completed incrementally over time in reliance on

1 the numerous governmental approvals, representations, and the government's requests for  
2 exactions to mitigate environmental impacts of the development. SAC ¶¶ 17-18. Plaintiffs  
3 allege that CS-Entities' investment in the development and construction of infrastructure  
4 improvements added to the property's value and were completed in conjunction with multiple  
5 federal, state, and local government entities review, processing and approvals of permits, plans,  
6 and inspections of completed infrastructure. SAC ¶¶ 7-18. Plaintiffs further allege that at the  
7 time Plaintiffs were investing in and constructing their Master Plan infrastructure in reliance on  
8 the permits and representations from the State and local agencies, they could not have foreseen  
9 that the State would later wrongfully reconfigure the Coyote Spring Valley basin, create a  
10 super-basin with 6+ other basins, and reallocate and restrict water rights in a way that  
11 fundamentally changed the playing field and diminished all viable economic development  
12 potential of the property. SAC ¶¶ \_\_\_\_\_. Plaintiffs allege they made incremental investment of  
13 hundreds of millions of dollars in infrastructure and community amenities like the  
14 development's golf course, 325-acre flood control detention basin (which was built after the  
15 State issued a permit for the dam), groundwater treatment plant, deep carbonate culinary  
16 standard water wells, and two 1,000,000 gallon water storage tanks (with \$20,000,000 of  
17 enhancements to meet municipal well standards), wastewater treatment plant, multiple package  
18 plant for wastewater treatment (all permitted by the Defendant State and Nevada Department of  
19 Conservation and Natural Resources), and miles of associated roads, underground utilities, and  
20 electrical power facilities. SAC ¶¶ 17-18.

21 The Plaintiffs have alleged in the SAC that they invested in these large-scale  
22 infrastructure improvements in reliance on their State permitted, and valid groundwater and  
23 developments rights and pursuant to validly issued permits. Plaintiffs allege they had a  
24 reasonable expectation when investing in the property for decades based on these entitlements,  
25 permits and water rights that the Coyote Springs development would move forward and that it  
26 would have the opportunity to construct and market for sale its Master Planned Community.  
27 SAC ¶¶ 7-18 Plaintiffs have sufficiently plead their investment backed expectation losses within  
28 the SAC.

1           3.     *Plaintiffs sufficiently allege facts to support that the Character of the*  
2                 *Government's Action Prong.*

3           Plaintiff sufficiently alleges that Defendants' regulations are oppressive and unfairly  
4     single out Plaintiffs to bear a substantial burden and implicate fundamental principles of  
5     fairness underlying the Takings Clause. *See Maritrans Inc. v. United States*, 342 F.3d 1344,  
6     1356 (Fed. Cir. 2003); *Eastern Enters. v. Apfel*, 524 U.S. 498, 537 (1998).

7     **E.     The CS-Entities Have Properly Pleaded a Pre-Condemnation Claim for Relief.**

8           The State further moves to dismiss Plaintiffs' claim for pre-condemnation damages on  
9     the basis that the State's May 16, 2018 letter to LVVWD was not an official announcement of  
10    intent to condemn, and that there was not unreasonable delay by the State after issuance of its  
11    May 16, 2018 letter. In *Buzz Stew, LLC vs. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670  
12    (2008) the Nevada Supreme Court held:

13                   To support a claim for precondemnation damages, the landowner  
14                   must allege facts showing an official action by the would-be  
15                   condemnor amounting to an announcement of intent to condemn.  
16                   Second, the landowner must show that the public agency acted  
17                   improperly following the announcement of its intent to condemn.  
                    Unreasonable or extraordinary delay in moving forward with the  
                    condemnation proceeding can constitute improper action which  
                    causes damage to the landowner such as reduced market value of  
                    the property.

18    124 Nev. at 229. The CS-Entities properly alleged multiple facts supporting each of the above  
19    requisite elements in its SAC. First, the CS-Entities outline the State's efforts to wrongfully  
20    interfere with its water rights and development efforts in response to LVVWD November 16,  
21    2017 letter. SAC ¶¶ 27-31. Next, the CS-Entities outline the uncontested facts surrounding the  
22    State's issuance of its May 16, 2018 letter, asserting that through this correspondence "the State  
23    Engineer publicly announced that the amount of groundwater pumping that will be allowed in  
24    the five basin (also known as the "super-basin") will be limited," and further that "carbonate  
25    pumping will be limited to a fraction of the 40,300-acre feet already appropriated in the five  
26    basin area". SAC ¶¶ 33-34. CS-Entities alleged that the May 16, 2018 State letter, between 2  
27    public entities (the State and LVVWD) "commenced a take of CS-Entities property rights,  
28    worked as a public announcement of the States' intent to condemn and/or wrongfully take CS-

1 Entities Water Rights, and further worked to unreasonably delay CS-Entities continued  
2 development of the Approved Major Project development." *Id.* The Complaint further details  
3 the unreasonable delay and oppressive actions by the State of refusing to approve the  
4 conditionally approved Village A subdivision maps from the May 2018 to the issuance of State  
5 Order 1309 in June of 2020. SAC ¶¶ 45-47. Plaintiffs allege CSI's conditional subdivision  
6 maps were conditionally approved on September 7, 2018 and sat for nearly two years on the  
7 State Engineer's desk, until after issuance of Order 1309. Two days after issuance of Order  
8 1309, the conditionally approved subdivision maps were denied by the State. SAC ¶¶40, 50.  
9 Plaintiffs have alleged sufficient facts, which are accepted as true for purposes of this Motion  
10 to Dismiss, to establish that the State acted improperly following its May 18, 2018 public  
11 announcement and unreasonably delayed the processing of these subdivision maps.

12 The State next argues that the allegations of the SAC show that there was no  
13 extraordinary delay. Motion to Dismiss at 19. The *Buzz Stew* Court, however, opined that  
14 because the Nevada Legislature has not passed legislation "defining what qualifies as an  
15 extraordinary delay or oppressive conduct, we must reserve this question for the fact  
16 finder."124 Nev. at 229. The factual determination as to whether this was unreasonable or  
17 extraordinary delay is not appropriate in a NRCP 12(b)(5) proceeding. Plaintiffs allege that  
18 following the State's public announcement, both unreasonable delay and oppressive conduct  
19 occurred, all of which "resulted in Plaintiffs CS-Entities suffering pre-condemnation damages . .  
20 . due to the massive delays in processing Plaintiffs' pending, and conditionally approved,  
21 subdivision maps, thereby freezing continuing development of the Coyote Springs Master  
22 Planned Development." SAC ¶ 69. Plaintiffs' pre-condemnation damage claim properly  
23 withstands the State's NRCP 12(b)(5) challenge.

24 **F. Plaintiffs' Complaint Sufficiently Alleges an Equal Protection Claim.**

25 The Plaintiffs have alleged in their SAC, that "the State, intentionally and without  
26 rational basis, treated CS-Entities differently than others, including the Moapa Valley Water  
27 District ("MVWD"), which holds water rights junior to the CS-Entities water rights. SAC ¶¶ 74-  
28 76. Plaintiffs further incorporate all of their factual allegations within in the SAC into their

1 Equal Protection Claim. Based upon NRCP 12(b)(6) standards, the Court finds that the equal  
2 protection claim has been properly plead and likewise withstands the present challenge.  
3 Moreover, the question of whether there was a rational basis underlying the State's actions  
4 involves disputed facts and is not proper to resolve on a NRCP 12(b)(5) motion.

5 **G. Plaintiff's Complaint Sufficiently Alleges Claims for Breach of Contract and**  
6 **Implied Covenant of Good Faith and Fair Dealing**

7 To state a claim for breach of contract, a plaintiff must allege that a contractual  
8 relationship existed between the plaintiff and the defendant, that the defendant materially  
9 breached a duty owed to the plaintiff under the contract, and damages resulting from such  
10 breach. *Richardson v. Jones*, 1 Nev. 405, 408 (1865); *see Bernard v. Rockhill Dev. Co.*, 103  
11 Nev. 132, 135, 734 P.2d 1238, 1240 (1987). Plaintiff's SAC sufficiently asserts each of these  
12 allegations required to state a claim for breach of contract. Specifically, the Complaint alleges:

- 13 • The existence of the Settlement Agreement between Plaintiffs and Defendant and  
14 also includes a copy of the contract attached as an exhibit to the SAC. *See* SAC  
¶¶ 3; 38; 80.
- 15 • That the Defendant breached its obligations under the contract, including by  
16 failing to process in good faith any and all maps or any other issues as requested  
by Plaintiffs in accordance with the State Engineer's ordinary course of business.  
*See* SAC ¶¶ 3; 38-47; 82.
- 17 • That Plaintiffs suffered damages due to Defendant's breach. *See* SAC ¶¶ 47-54;  
18 83-84.

19 Defendant's factual arguments to the contrary are not properly considered under the limited  
20 motion to dismiss standard.

21 Where the terms of a contract are literally complied with but one party to the contract  
22 deliberately contravenes the intention and spirit of the contract, that party can incur liability for  
23 breach of the implied covenant of good faith and fair dealing. *Hilton Hotels Corp. v. Butch*  
24 *Lewis Prods., Inc.*, 107 Nev. 226, 232–33, 808 P.2d 919, 922–23 (1991); *A.C. Shaw Constr. v.*  
25 *Washoe County*, 105 Nev. 913, 784 P.2d 9 (1989). Plaintiffs allege in the SAC that the State  
26 took actions in bad faith while processing their subdivision map applications, and that these bad  
27 faith actions themselves were used as a basis for denying Plaintiff's maps. *See* SAC ¶¶ 38-54;  
28



85-92. Accordingly, the SAC sufficiently alleges that the State breached its implied duty of good faith and fair dealing.

**H. Plaintiffs' Declaratory Relief Claim is Ripe.**

Declaratory relief is available when “(1) a justiciable controversy exists between persons with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the controversy, and (3) the issue is ripe for judicial determination.” *Cty. of Clark, ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev, 749, 752 (1998).

Plaintiffs in their Opposition stated that their declaratory relief claim is primarily focused on confirming that the CS-Entities hold a beneficial interest in the 2000 afa of ground water rights conveyed to the CS-GID for use in its Master Planned Development. Plaintiffs have alleged that the CS-GID holds these 2000 afa in trust, for the benefit and use by these CS-Entities. The State’s Motion argues that because the takings claims are not ripe, the declaratory relief claim is also not ripe. However, as discussed in this Order, *supra*, the Court finds that Plaintiff have sufficiently alleged that their takings claims are ripe under the prevailing U.S. Supreme Court case law, and therefore the Defendant's argument is rejected. *See Pakdel v. City & Cty. of San Francisco, California*, 141 S. Ct. 2226 (2021); *Knick*, 139 S. Ct. at 2170.

///

///

///

///

///

///

///

///

///

///

///

///

COULTHARD LAW, PLLC  
840 South Rancho Drive #4-627  
Las Vegas, Nevada 89106  
(702) 989-9944

III.

**ORDER**

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss is DENIED without prejudice to further development of the State's contentions by way of NRCP 56 or otherwise.  
Dated this 23rd day of February, 2022



DISTRICT COURT JUDGE

ABG

A49 DFC 04D8 2DD2

Mark R. Denton

District Court Judge

Approved as to form by:

AARON D. FORD

Attorney General

By: /s/ Steve Shevorski

Steve Shevorski (#8256)

Chief Litigation Counsel

*Attorney for Defendants*

Submitted by:

COULTHARD LAW PLLC

By: /s/ William L. Coulthard

William L. Coulthard, Esq. (#3927)

COULTHARD LAW, PLLC

840 South Rancho Drive #4-627

Las Vegas, Nevada 89106

*Attorney for Plaintiffs CS-Entities*

## treilly outsideparalegalsolutions.com

---

**From:** Steven G. Shevorsi <SShevorsi@ag.nv.gov>  
**Sent:** Wednesday, February 23, 2022 11:06 AM  
**To:** treilly outsideparalegalsolutions.com; Akke Levin  
**Cc:** 'William L. Coulthard (wlc@coulthardlaw.com)'; cdk@coulthardlaw.com  
**Subject:** RE: Coyote Springs Proposed Order

Works. Approved for the State.

Steve Shevorsi  
Chief Litigation Counsel  
Office of the Attorney General  
555 E. Washington Ave., Suite 3900  
Las Vegas, NV 89101  
702-486-3783

---

**From:** treilly outsideparalegalsolutions.com <treilly@outsideparalegalsolutions.com>  
**Sent:** Wednesday, February 23, 2022 11:05 AM  
**To:** Steven G. Shevorsi <SShevorsi@ag.nv.gov>; Akke Levin <ALevin@ag.nv.gov>  
**Cc:** 'William L. Coulthard (wlc@coulthardlaw.com)' <wlc@coulthardlaw.com>; cdk@coulthardlaw.com  
**Subject:** RE: Coyote Springs Proposed Order

**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thank you. Attached is the final version as will be submitted to the court. Please confirm your approval to affix your electronic signature to the proposed Order.

Tami J. Reilly  
Outside Paralegal Solutions, LLC  
1930 Village Center Circle, #3-171  
Las Vegas, Nevada 89134  
Telephone (702) 610-8264  
[www.outsideparalegalsolutions.com](http://www.outsideparalegalsolutions.com)

CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.

---

**From:** Steven G. Shevorsi <SShevorsi@ag.nv.gov>  
**Sent:** Wednesday, February 23, 2022 10:45 AM  
**To:** treilly [outsideparalegalsolutions.com](http://outsideparalegalsolutions.com) <treilly@outsideparalegalsolutions.com>; Akke Levin <ALevin@ag.nv.gov>  
**Cc:** 'William L. Coulthard ([wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com))' <[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>; [cdk@coulthardlaw.com](mailto:cdk@coulthardlaw.com)  
**Subject:** RE: Coyote Springs Proposed Order

Hi Tami,

This is fine. I sign my name as just Steve Shevorski without the honorific of "Esq." Please change my title to Chief Litigation Counsel rather than Senior Deputy Attorney General.

Best regards,

Steve

Steve Shevorski  
Chief Litigation Counsel  
Office of the Attorney General  
555 E. Washington Ave., Suite 3900  
Las Vegas, NV 89101  
702-486-3783

---

**From:** treilly [outsideparalegalsolutions.com](mailto:treilly@outsideparalegalsolutions.com) <[treilly@outsideparalegalsolutions.com](mailto:treilly@outsideparalegalsolutions.com)>  
**Sent:** Wednesday, February 23, 2022 10:39 AM  
**To:** Steven G. Shevorski <[SShevorski@ag.nv.gov](mailto:SShevorski@ag.nv.gov)>; Akke Levin <[ALevin@ag.nv.gov](mailto:ALevin@ag.nv.gov)>  
**Cc:** 'William L. Coulthard' ([wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com))' <[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>; [cdk@coulthardlaw.com](mailto:cdk@coulthardlaw.com)  
**Subject:** Coyote Springs Proposed Order

**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Mr. Shevorski: I am assisting attorney Bill Coulthard with this matter. Mr. Coulthard has asked that I send you the proposed Order Denying Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint. The attached draft accepts all of Ms. Levin's proposed changes and shows Mr. Coulthard's edits and comments in redline. Please let me know if you have further edits/revisions or if we may final and format the document for submittal to Dept. 13 for Judge Denton's signature. Per local rule, we are to submit the proposed order within 14 days of the judge's ruling, which is today. Thank you.

Tami J. Reilly  
Outside Paralegal Solutions, LLC  
1930 Village Center Circle, #3-171  
Las Vegas, Nevada 89134  
Telephone (702) 610-8264  
[www.outsideparalegalsolutions.com](http://www.outsideparalegalsolutions.com)

CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Coyote Springs Investment LLC,  
Plaintiff(s)

CASE NO: A-20-820384-B

7 vs.

DEPT. NO. Department 13

8  
9 State of Nevada, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 2/23/2022

15 Steven Shevorski

sshevorski@ag.nv.gov

16 Mary Pizzariello

mpizzariello@ag.nv.gov

17 Akke Levin

alevin@ag.nv.gov

18 Kiel Ireland

kireland@ag.nv.gov

19 Carla Coulthard

cdk@coulthardlaw.com

20 Tami Reilly

treilly@outsideparalegalsolutions.com

21 William Coulthard, Esq.

wlc@coulthardlaw.com

22 Emilia Cargill

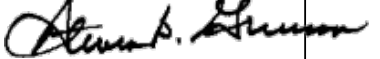
Emilia.Cargill@WingfieldNevadaGroup.com

23 Micheline Fairbank

mfairbank@water.nv.gov

24 Juanita Mordhorst

jmordhorst@water.nv.gov



1 **ANAC**  
AARON D. FORD  
2 Attorney General  
Steve Shevorski (Bar No. 8256)  
3 Chief Litigation Counsel  
Akke Levin (Bar No. 9102)  
4 Senior Deputy Attorney General  
Kiel B. Ireland (Bar No. 15368C)  
5 Deputy Attorney General  
Office of the Attorney General  
6 555 E. Washington Ave, Ste. 3900  
Las Vegas, NV 89101  
7 (702) 486-3420 (phone)  
(702) 486-3773 (fax)  
8 sshevorski@ag.nv.gov  
alevin@ag.nv.gov  
9 kireland@ag.nv.gov  
*Attorneys for Defendants*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 COYOTE SPRINGS INVESTMENT, LLC, a Case No. A-20-820384-B  
Nevada Limited Liability Company; Dept No. XIII  
14 COYOTE SPRINGS NEVADA, LLC, a  
Nevada Limited Liability Company; and  
15 COYOTE SPRINGS NURSERY, LLC, a  
Nevada Limited Liability Company,

16 Plaintiffs,

17 vs.

18 STATE OF NEVADA, on relation to its  
19 Division of Water Resources;  
20 DEPARTMENT OF CONSERVATION AND  
NATURAL RESOURCES, ADAM  
21 SULLIVAN, Nevada State Engineer;  
CLARK COUNTY-COYOTE SPRINGS  
22 WATER RESOURCES GENERAL  
IMPROVEMENT DISTRICT, a political  
23 subdivision of the State of Nevada; and  
DOES I through X,

24 Defendants.

25 **STATE OF NEVADA, ON RELATION TO ITS DIVISION OF WATER**  
26 **RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL**  
27 **RESOURCES AND ADAM SULLIVAN'S ANSWER TO SECOND AMENDED**  
28 **COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL**

1 Defendants STATE OF NEVADA, on relation to its Division of Water Resources,  
2 Department of Conservation and Natural Resources ("State") and ADAM SULLIVAN,  
3 Nevada State Engineer ("State Engineer"), by and through their attorneys of record,  
4 answer Plaintiff's Second Amended Complaint for Damages and Demand for Jury Trial as  
5 follows:

6 **I.**

7 **PARTIES AND JURISDICTION**

8 1. Answering paragraph 1 of the Second Amended Complaint, the State and  
9 State Engineer are without knowledge sufficient to form a belief as to the truth or veracity  
10 of the allegations contained therein, and therefore deny the same.

11 2. Answering paragraphs 2-3 of the Second Amended Complaint, the State and  
12 State Engineer deny the allegations contained therein.

13 3. Answering paragraphs 4-6 of the Second Amended Complaint, the State and  
14 State Engineer are without knowledge sufficient to form a belief as to the truth or veracity  
15 of the allegations contained therein, and therefore deny the same.

16 **II.**

17 **STATEMENT OF THE FACTS**

18 4. Answering paragraphs 7-18 of the Second Amended Complaint, the State and  
19 State Engineer are without knowledge sufficient to form a belief as to the truth or veracity  
20 of the allegations contained therein, and therefore deny the same.

21 5. Answering paragraph 19 of the Second Amended Complaint, the State and  
22 State Engineer admit the following facts: (1) Permit 70429 (Certificate 17035) is a  
23 certificated water right in which Plaintiff Coyote Springs Investment, LLC ("CSI") is the  
24 owner of record for 250 acre-feet annually ("afa") and Coyote Springs General Improvement  
25 District ("CSGID") is the record owner for 1,250 afa; (2) CSGID is the record owner of 750  
26 afa of Permit 74094 and that CSI is the record owner of the remaining 250 afa; (3) CSI  
27 relinquished a portion of 70430 in the amount of 460 afa for wildlife purposes; and (4) CSI  
28 is the record owner of 500 afa under Permit 74095. With respect to the remaining

1 allegations in this paragraph, the State and State Engineer are without knowledge  
2 sufficient to form a belief as to the truth or veracity of the allegations contained therein,  
3 and therefore deny the same.

4         6.     Answering paragraphs 20-21 of the Second Amended Complaint, the State  
5 and State Engineer are without knowledge sufficient to form a belief as to the truth or  
6 veracity of the allegations contained therein, and therefore deny the same.

7         7.     Answering paragraph 22 of the Second Amended Complaint, the State and  
8 State Engineer admit the allegations contained therein.

9         8.     Answering paragraph 23 of the Second Amended Complaint, the State and  
10 State Engineer admit the allegations as to Ruling 6255's contents. With respect to the  
11 remaining allegations in this paragraph, the State and State Engineer are without  
12 knowledge sufficient to form a belief as to the truth or veracity of the allegations contained  
13 therein, and therefore deny the same.

14         9.     Answering paragraphs 24-31 of the Second Amended Complaint, the State  
15 and State Engineer are without knowledge sufficient to form a belief as to the truth or  
16 veracity of the allegations contained therein, and therefore deny the same.

17         10.    Answering paragraph 32 of the Second Amended Complaint, the State and  
18 State Engineer admit the allegations contained therein.

19         11.    Answering paragraph 33 of the Second Amended Complaint, the State and  
20 State Engineer admit that the May 16, 2018 letter contains the statements alleged, except  
21 for the nickname "superbasin." With respect to the remaining allegations in this paragraph,  
22 the State and State Engineer are without knowledge sufficient to form a belief as to the  
23 truth or veracity of the allegations contained therein, and therefore deny the same.

24         12.    Answering paragraphs 34-35 of the Second Amended Complaint, the State  
25 and State Engineer are without knowledge sufficient to form a belief as to the truth or  
26 veracity of the allegations contained therein, and therefore deny the same.



1           13.     Answering paragraph 36 of the Second Amended Complaint, the State and  
2 State Engineer admit that the State Engineer stated that processing of CSI's maps had  
3 stopped and that the parties were in uncharted territory, and deny all other allegations.

4           14.     Answering paragraph 37 of the Second Amended Complaint, the State and  
5 State Engineer are without knowledge sufficient to form a belief as to the truth or veracity  
6 of the allegations contained therein, and therefore deny the same.

7           15.     Answering paragraph 38 of the Second Amended Complaint, the State and  
8 State Engineer admit the following facts: (1) CSI filed a petition for judicial review, (2) the  
9 petition for judicial review was resolved by way of a settlement agreement and (3) the  
10 settlement agreement provided (among other things) that the State Engineer would rescind  
11 the May 16, 2018 letter and process in good faith certain of CSI and related entities'  
12 submittals. The State and State Engineer deny the rest of the allegations.

13          16.     Answering paragraph 39 of the Second Amended Complaint, the State and  
14 State Engineer admit that the State Engineer held a public workshop with the Hydrologic  
15 Review Team on July 24, 2018 and August 23, 2018 and deny the rest of the allegations.

16          17.     Answering paragraph 40 of the Second Amended Complaint, the State and  
17 State Engineer admit that it issued two conditional approvals of subdivision maps  
18 submitted for review by CSI. With respect to the remaining allegations in this paragraph,  
19 the State and State Engineer are without knowledge sufficient to form a belief as to the  
20 truth or veracity of the allegations contained therein, and therefore deny the same.

21          18.     Answering paragraph 41 of the Second Amended Complaint, the State and  
22 State Engineer admit that the State Engineer held a public workshop and issued the draft  
23 order attached as Exhibit 2 to the Second Amended Complaint, and deny the rest of the  
24 allegations.

25          19.     Answering paragraph 42 of the Second Amended Complaint, the State and  
26 State Engineer admit that Plaintiffs submitted the comments alleged. With respect to the  
27 remaining allegations in this paragraph, the State and State Engineer are without  
28

1 knowledge sufficient to form a belief as to the truth or veracity of the allegations contained  
2 therein, and therefore deny the same.

3 20. Answering paragraph 43 of the Second Amended Complaint, the State and  
4 State Engineer admit that Plaintiffs submitted the additional comments alleged, and deny  
5 the rest of the allegations.

6 21. Answering paragraph 44 of the Second Amended Complaint, the State and  
7 State Engineer admit that the State Engineer issued Interim Order 1303 containing the  
8 terms stated, and deny the rest of the allegations.

9 22. Answering paragraph 45 of the Second Amended Complaint, the State and  
10 State Engineer admit that Plaintiffs have submitted certain Coyote Springs Village A  
11 development maps. With respect to the remaining allegations in this paragraph, the State  
12 and State Engineer are without knowledge sufficient to form a belief as to the truth or  
13 veracity of the allegations contained therein, and therefore deny the same.

14 23. Answering paragraphs 46-47 of the Second Amended Complaint, the State  
15 and State Engineer are without knowledge sufficient to form a belief as to the truth or  
16 veracity of the allegations contained therein, and therefore deny the same.

17 24. Answering paragraph 48 of the Second Amended Complaint, the State and  
18 State Engineer admit the allegations contained therein.

19 25. Answering paragraph 49 of the Second Amended Complaint, the State and  
20 State Engineer deny the allegations contained therein.

21 26. Answering paragraph 50 of the Second Amended Complaint, the State and  
22 State Engineer admit the allegations contained therein.

23 27. Answering paragraphs 51-54 of the Second Amended Complaint, the State  
24 and State Engineer are without knowledge sufficient to form a belief as to the truth or  
25 veracity of the allegations contained therein, and therefore deny the same.

26 ...

27 ...

28 ...

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**III.**

**CAUSES OF ACTION**

**FIRST CLAIM FOR RELIEF**

**(Inverse Condemnation Under Nevada Constitution – Lucas Regulatory Taking)**

28. Answering paragraphs 55-57 of the Second Amended Complaint, the State and State Engineer are without knowledge sufficient to form a belief as to the truth or veracity of the allegations contained therein, and therefore deny the same.

29. Answering 58-61 of the Second Amended Complaint, the State and State Engineer deny the allegations contained therein.

**SECOND CLAIM FOR RELIEF**

**(Inverse Condemnation Under Nevada Constitution –  
Penn Central Regulatory Taking)**

30. Answering paragraphs 62-63 of the Second Amended Complaint, the State and State Engineer are without knowledge sufficient to form a belief as to the truth or veracity of the allegations contained therein, and therefore deny the same.

31. Answering paragraphs 64-67 of the Second Amended Complaint, the State and State Engineer deny the allegations contained therein.

**THIRD CLAIM FOR RELIEF**

**(Pre-Condemnation Damages)**

32. Answering paragraphs 68-69 of the Second Amended Complaint, the State and State Engineer are without knowledge sufficient to form a belief as to the truth or veracity of the allegations contained therein, and therefore deny the same.

33. Answering paragraphs 70-72 of the Second Amended Complaint, the State and State Engineer deny the allegations contained therein.

...

...

...

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FOURTH CLAIM FOR RELIEF**

**(Equal Protection Violations Under Nevada Constitution)**

34. Answering paragraphs 73-75 of the Second Amended Complaint, the State and State Engineer are without knowledge sufficient to form a belief as to the truth or veracity of the allegations contained therein, and therefore deny the same.

35. Answering paragraphs 76-78 of the Second Amended Complaint, the State and State Engineer deny the allegations contained therein.

**FIFTH CLAIM FOR RELIEF**

**(Breach of Contract Claim)**

36. Answering paragraphs 79-81 of the Second Amended Complaint, the State and State Engineer are without knowledge sufficient to form a belief as to the truth or veracity of the allegation contained therein, and therefore deny the same.

37. Answering paragraphs 82-84 of the Second Amended Complaint, the State and State Engineer deny the allegations contained therein.

**SIXTH CLAIM FOR RELIEF**

**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

38. Answering paragraphs 85-88 of the Second Amended Complaint, the State and State Engineer are without knowledge sufficient to form a belief as to the truth or veracity of the allegation contained therein, and therefore deny the same.

39. Answering paragraphs 89-92 of the Second Amended Complaint, the State and State Engineer deny the allegations contained therein.

**SEVENTH CLAIM FOR RELIEF**

**(Declaratory Relief-Claimed Against CSGID and the State of Nevada)**

40. Answering paragraphs 93-94 of the Second Amended Complaint, the State and State Engineer are without knowledge sufficient to form a belief as to the truth or veracity of the allegation contained therein, and therefore deny the same.

41. Answering paragraph 95 of the Second Amended Complaint, the State and State Engineer admit that Plaintiffs seek such relief and deny all other allegations.

1           42.    Answering paragraph 96 of the Second Amended Complaint, the State and  
2 State Engineer deny the allegations contained therein.

3                                   **EIGHTH CLAIM FOR RELIEF**

4                                   **(Injunctive Relief)**

5           43.    Answering paragraph 97 of the Second Amended Complaint, the State and  
6 State Engineer are without knowledge sufficient to form a belief as to the truth or veracity  
7 of the allegation contained therein, and therefore deny the same.

8           44.    Answering paragraphs 98-102 of the Second Amended Complaint, the State  
9 and State Engineer deny the allegations contained therein.

10                                  **NINTH CLAIM FOR RELIEF**

11                                  **(Claim of Attorneys' Fees Incurred Herein)**

12           45.    Answering paragraphs 103 of the Second Amended Complaint, the State and  
13 State Engineer are without knowledge sufficient to form a belief as to the truth or veracity  
14 of the allegation contained therein, and therefore deny the same.

15           46.    Answering paragraphs 104 of the Second Amended Complaint, the State and  
16 State Engineer deny the allegations contained therein.

17           47.    The State and State Engineer deny Plaintiffs' prayer for relief, including each  
18 remedy requested in paragraphs 1 through 8 of the prayer for relief.

19           48.    The State and State Engineer deny each allegation of the Second Amended  
20 Complaint not specifically admitted.

21                                  **AFFIRMATIVE DEFENSES**

22           1.    Plaintiffs' Second Amended Complaint fails to state a claim upon which  
23 relief can be granted.

24           2.    Plaintiffs' inverse condemnation claims are barred under all applicable  
25 justiciability doctrines.

26           3.    *Res judicata* and/or collateral estoppel bar Plaintiffs' Second Amended  
27 Complaint and the claims made therein.

28    ...

1           4.     The State and State Engineer acted with due care and circumspection in the  
2 performance of all duties imposed on them by law.

3           5.     By their own actions, Plaintiffs have waived whatever rights they may have  
4 otherwise had to relief from the State and State Engineer.

5           6.     By virtue of their own conduct, Plaintiffs are and should be estopped from  
6 making any claim against the State and State Engineer.

7           7.     Any damages Plaintiffs may have incurred were proximately caused by the  
8 acts of persons other than the State and State Engineer, and therefore, Plaintiffs are not  
9 entitled to any relief from the State and State Engineer.

10          8.     Plaintiffs' damages, if any, resulted from the acts or omissions of third parties  
11 over whom the State and State Engineer have no control. The acts of such third parties  
12 constitute intervening or superseding causes of the harm, if any, suffered by Plaintiffs.

13          9.     Any damages Plaintiffs may have incurred were proximately caused by their  
14 own acts or acts of its agents, and therefore, Plaintiffs are not entitled to any relief from  
15 the State and State Engineer

16          10.    Plaintiffs have failed to take reasonable steps to mitigate their damages, if  
17 any, thus completely or partially barring its claims.

18          11.    Plaintiffs' claims are barred by the doctrines of *laches*, waiver and/or estoppel.

19          12.    Plaintiffs' claims are barred by the doctrine of unclean hands.

20          13.    The State and State Engineer acted in good faith and in compliance with  
21 applicable state and federal law.

22          14.    Any damages that Plaintiffs allege to have suffered from the matters alleged  
23 in their claims are too remote or speculative to allow for recovery.

24          15.    The State and State Engineer are immune from liability and/or their potential  
25 exposure to damages is limited by the provision set forth in NRS Chapter 41. The State  
26 and State Engineer are also entitled to all the provisions and safeguards contained within  
27 NRS Chapter 37.

28 . . .

1           16.    Plaintiffs cannot receive an award for any damages which are speculative in  
2 nature and/or for frustration of their business plan.

3           17.    The State and State Engineer's statements to and actions regarding Plaintiffs  
4 were justified.

5           18.    Plaintiffs' claims are not ripe for decision.

6           19.    Plaintiffs' claims are barred by laches and the statutes of limitation.

7           20.    Plaintiffs' claims are barred by release and accord and satisfaction.

8           21.    Plaintiffs' claims are barred by the public trust doctrine.

9           22.    Plaintiffs' claims are barred by discretionary and sovereign immunity.

10          23.    Plaintiffs' claims are premature because there is no final, definitive decision  
11 on the application of the Orders to Plaintiffs' alleged property.

12          24.    Plaintiffs' inverse condemnation claims are barred by the limitations that  
13 inhere in Nevada's water law.

14          25.    Plaintiffs' inverse condemnation claims are barred because Plaintiffs did not  
15 lose all economically beneficial use of their property.

16          26.    Plaintiffs' inverse condemnation claims are barred because Plaintiffs lacked  
17 investment-backed expectations and did not lose all value of their property.

18

19

20

21

22

23

24

25

26 ...

27 ...

28 ...

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PRAYER FOR RELIEF**

WHEREFORE, The State of Nevada and State Engineer respectfully request:

1. That Plaintiffs take nothing by way of their Second Amended Complaint;

2. That Plaintiffs' Second Amended Complaint be dismissed in its entirety with  
prejudice; and

3. For such other and further relief as this Court deems just and proper.

DATED this 10th day of March, 2022.

AARON D. FORD  
Attorney General

By: /s/ Steve Shevorski  
Steve Shevorski (Bar No. 8256)  
Chief Litigation Counsel  
Akke Levin (Bar No. 9102)  
Senior Deputy Attorney General  
Kiel B. Ireland (Bar No. 15368C)  
Deputy Attorney General  
*Attorneys for Defendants*

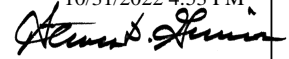


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 10th day of March 2022, and e-served the same on all parties listed on the Court's Master Service List.

/s/ Sunny Southworth  
Sunny Southworth, an employee of the  
Office of the Attorney General

  
CLERK OF THE COURT

1 SOA  
2 William L. Coulthard, Esq.  
3 Nevada Bar No. #3927  
4 Coulthard Law PLLC  
5 840 South Rancho Drive #4-627  
6 Las Vegas, Nevada 89106  
7 (702) 898-9944  
8 [wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)  
9  
10 *Attorneys for Plaintiffs CS-Entities*

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DISTRICT COURT**  
**CLARK COUNTY NEVADA**

COYOTE SPRINGS INVESTMENT, LLC, a  
Nevada Limited Liability Company;  
COYOTE SPRINGS NEVADA, LLC, a  
Nevada limited liability company; and  
COYOTE SPRINGS NURSERY, LLC, a  
Nevada limited liability company,

Plaintiffs,

vs.

STATE OF NEVADA, on relation to its  
Division of Water Resources;  
DEPARTMENT OF CONSERVATION and  
NATURAL RESOURCES; ADAM  
SULLIVAN, Nevada State Engineer;  
CLARK COUNTY-COYOTE SPRINGS  
WATER RESOURCES GENERAL  
IMPROVEMENT DISTRICT, a political  
subdivision of the State of Nevada; and Does  
I through X.

Defendants.

Case No.: A-20-820384-B  
Dept.: 13

**STIPULATION AND ~~[PROPOSED]~~**  
**ORDER TO AMEND SCHEDULING**  
**ORDER**

**[FIRST REQUEST]**

**Current Date: November 1, 2022**

It is hereby stipulated and agreed between the Parties that an Order Re Rule 16  
Conference, Setting Civil Jury Trial, Pre-Trial, Calendar Call and Deadline for Motion;  
Discovery Scheduling Order (the "Scheduling Order") entered on April 22, 2022 (including,  
without limitation, the November 1, 2022 deadline for the Parties to make initial expert  
disclosures) is hereby vacated..

1 It is further stipulated and agreed that the Parties will meet and confer regarding an  
2 amended Scheduling Order within two weeks following the Court's decision on the pending  
3 Clark County- Coyote Springs Water Resources General Improvement District's ("CSGID")  
4 Motion to Dismiss, or in the Alternative, Motion for Stay Proceedings Pending a Decision by  
5 the Nevada Supreme Court filed on September 28, 2022 ("Motion").

6 It is further stipulated and agreed in the event that the CSGID remains a party in this  
7 case following the Court's decision on the Motion, and further provided the case is not stayed  
8 by the Court, the Parties agree to hold a NRCP 16.1 Conference with the CSGID, and enter into  
9 an Amended Scheduling Order based thereon. Should the Parties be unable to reach an  
10 agreement on scheduling dates within the Amended Scheduling Order, the Parties reserve the  
11 right to seek Court intervention and assistance. Nothing herein shall work to prejudice  
12 CSGID's alternative Motion for Stay, and or the State's joinder thereto.

13 **IT IS SO STIPULATED.**

14 DATED this 31<sup>st</sup> day of October, 2022

15 **COULTHARD LAW, PLLC**

16 /s/ William L. Coulthard  
17 William L. Coulthard, Esq.  
18 Nevada Bar No. #3927  
19 840 South Rancho Drive #4-627  
20 Las Vegas, Nevada 89106  
21 (702) 989-9944  
22 Las Vegas, Nevada 89106  
23 wlc@coulthardlaw.com  
24 *Attorney for Plaintiffs*

25 DATED this 31<sup>st</sup> day of October, 2022

26 **SANTORO WHITMIRE**

27 /s/ Nicholas J. Santoro  
28 Nicholas J. Santoro  
Oliver J. Pancheri  
SANTORO WHITMIRE  
10100 W. Charleston Blvd., Suite 250  
Las Vegas, NV 89135  
nsantoro@santoronevada.com  
opancheri@santoronevada.com  
*Attorneys for Defendant CS-GID*

DATED this 31<sup>st</sup> day of October, 2022

**OFFICE OF THE ATTORNEY GENENERAL**

/s/ Kiel B. Ireland  
Aaron D. Ford, Attorney General  
Kiel B. Ireland (Bar No. 15368)  
Office of the Attorney General  
555 E. Washington Ave., Ste. 3900  
Las Vegas, NV 89101  
[kireland@ag.nv.gov](mailto:kireland@ag.nv.gov)  
*Attorneys for Defendants State of Nevada*

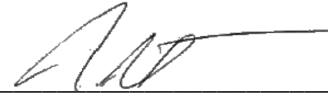
COULTHARD LAW, PLLC  
840 South Rancho Drive #4-627  
Las Vegas, Nevada 89106  
(702) 989-9944

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

IT IS SO ORDERED.

Dated this 31st day of October, 2022



Lt

**AF9 D79 CD29 58A2  
Mark R. Denton  
District Court Judge**

Respectfully submitted by:  
Coulthard Law PLLC

/s/ William L. Coulthard  
William L. Coulthard, Esq.  
Nevada Bar No. #3927  
840 South Rancho Drive #4-627  
Las Vegas, Nevada 89106  
(702) 898-9944  
wlc@coulthardlaw.com  
*Attorney for Plaintiffs*

COULTHARD LAW, PLLC  
840 South Rancho Drive #4-627  
Las Vegas, Nevada 89106  
(702) 989-9944

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_ day of October, 2022 the foregoing **STIPULATION AND [PROPOSED] ORDER TO AMEND SCHEDULING ORDER [FIRST REQUEST]** was served via electronic service and/or US Mail pursuant to NRCP 5, NEFCR 9 and EDCR 8.05 as follows:

Aaron D. Ford  
Kiel B. Ireland  
OFFICE OF THE ATTORNEY GENERAL  
555 E. Washington Ave., Ste. 3900  
kireland@ag.nv.gov  
*Attorneys for Defendant State of Nevada*

**VIA EMAIL SERVICE:**

Nicholas J. Santoro  
Oliver J. Pancheri  
SANTORO WHITMIRE  
10100 W. Charleston Blvd., Suite 250  
Las Vegas, NV 89135  
nsantoro@santoronevada.com  
opancheri@santoronevada.com  
*Attorneys for Defendant CS-GID*

/s/ Tami J. Reilly

Tami J. Reilly, a representative  
Of Coulthard Law, PLLC

**From:** [William L. Coulthard](mailto:William.L.Coulthard@treilly_outsideparalegalsolutions.com)  
**To:** [treilly\\_outsideparalegalsolutions.com](mailto:treilly_outsideparalegalsolutions.com)  
**Subject:** FW: Coyote Springs vs. State, CSGID - Stipulation to Vacate Scheduling Dates  
**Date:** Monday, October 31, 2022 9:46:54 AM

---

---

**From:** Nick Santoro <[nsantoro@santoronevada.com](mailto:nsantoro@santoronevada.com)>  
**Sent:** Monday, October 31, 2022 9:32 AM  
**To:** Kiel B. Ireland <[KIreland@ag.nv.gov](mailto:KIreland@ag.nv.gov)>; William L. Coulthard <[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>; Oliver Pancheri <[opancheri@santoronevada.com](mailto:opancheri@santoronevada.com)>; [paul@legaltnt.com](mailto:paul@legaltnt.com)  
**Cc:** [cdk@coulthardlaw.com](mailto:cdk@coulthardlaw.com)  
**Subject:** RE: Coyote Springs vs. State, CSGID - Stipulation to Vacate Scheduling Dates

Bill – You may affix my electronic signature to this stipulation. I am not sure we need Paul Taggart's firm to sign off since we represent the same client.

NICHOLAS J. SANTORO, ESQ.  
**SANTORO WHITMIRE**  
10100 W. CHARLESTON BLVD., SUITE 250  
LAS VEGAS, NV 89135  
P: 702.948.8771 | F: 702.948.8773 | Direct: 702.749.5583  
[nsantoro@santoronevada.com](mailto:nsantoro@santoronevada.com)  
[www.santoronevada.com](http://www.santoronevada.com)

NOTICE: This electronic mail transmission, and any attachments hereto, may contain an attorney-client communication that is privileged at law. It is not intended for transmission to, or receipt by, any unauthorized persons. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at 702.948.8771 and e-mail the sender that you have received this communication in error. Thank you.

**TAX OPINION DISCLAIMER**

To comply with IRS regulations, we advise that any discussion of Federal tax issues in this E-mail was not intended or written to be used, and cannot be used by you i) to avoid any penalties imposed under the Internal Revenue Code or, ii) to promote, market or recommend to another party any transaction or matter addressed herein.

---

**From:** Kiel B. Ireland <[KIreland@ag.nv.gov](mailto:KIreland@ag.nv.gov)>  
**Sent:** Monday, October 31, 2022 8:58 AM  
**To:** William L. Coulthard <[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>; Nick Santoro <[nsantoro@santoronevada.com](mailto:nsantoro@santoronevada.com)>; Oliver Pancheri <[opancheri@santoronevada.com](mailto:opancheri@santoronevada.com)>; [Paul@legaltnt.com](mailto:Paul@legaltnt.com)  
**Cc:** [cdk@coulthardlaw.com](mailto:cdk@coulthardlaw.com)  
**Subject:** RE: Coyote Springs vs. State, CSGID - Stipulation to Vacate Scheduling Dates

**CAUTION!**

This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and their email address. If you have any doubt to the legitimacy

**of the contents of this email, please contact your IT support.**

All —

Steve's name should be removed from the signature line as he no longer works at this office. With that minor change, you can add my /s/ signature to the clean version that Bill sent incorporating Nick's changes.

We have no issue postponing the MTD/stay hearing for a week to November 10.

Thank you,

Kiel B. Ireland  
Deputy Solicitor General  
Office of the Attorney General  
100 N. Carson St.  
Carson City, NV 89701  
775-684-1234

**From:** William L. Coulthard <[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>  
**Sent:** Monday, October 31, 2022 8:51 AM  
**To:** [nsantoro@santoronevada.com](mailto:nsantoro@santoronevada.com); [opancheri@santoronevada.com](mailto:opancheri@santoronevada.com); Kiel B. Ireland <[KIreland@ag.nv.gov](mailto:KIreland@ag.nv.gov)>; [paul@legalmt.com](mailto:paul@legalmt.com)  
**Cc:** [cdk@coulthardlaw.com](mailto:cdk@coulthardlaw.com)  
**Subject:** Coyote Springs vs. State, CSGID - Stipulation to Vacate Scheduling Dates  
**Importance:** High

**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

**Nick and Kiel: Re: Coyote Springs vs. State, CSGID – Stipulation to Amended Scheduling Order Agreement to Continue Hearing on CSGID’s Motion to Dismiss 1 week to Nov. 10, 2022.**

We have reviewed and approved all of Nick's requested revisions to the proposed Stipulation to Vacate and Amend the Scheduling Order he sent over Thursday afternoon in redline form. Attached hereto is the revised Stipulation which includes all of Nick's most recent changes. Please advise if this is acceptable to the State and CSGID. If so, please confirm we can affix your electronic signature and submit the Stipulation and proposed Order to the Court. We need to get this Stipulation approved and submitted to the Court today. Thank you.

Also, Plaintiffs are willing to kick the hearing on CSGID's Motion to Dismiss / Alternative Motion to Stay 1 week to November 10, 2022 as an accommodation to counsel for CSGID. If we can not hold the hearing next week then we need to maintain the present November 3, 2022 hearing date. Let us know.

Thank you. Bill

William L. Coulthard  
Attorney  
***Coulthard Law, PLLC***  
840 Rancho Drive, #4-627  
Las Vegas, Nevada 89106  
c: (702) 326-5971  
o: (702) 989-9944  
f: (702) 940-9685  
[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)

This email transimission, and any documents, files, or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is prohibited. If you have received this transmission in error, please immediately notify us by reply email, by forwarding this to sender, or by telephone at (702) 989-9944, and destroy the original transimission and its attachments without reading or saving them in any manner. Thank you.



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Coyote Springs Investment LLC,  
Plaintiff(s)

CASE NO: A-20-820384-B

7 vs.

DEPT. NO. Department 13

8  
9 State of Nevada, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/31/2022

15 Oliver Pancheri	opancheri@santoronevada.com
16 Nicholas Santoro	nsantoro@santoronevada.com
17 Steven Shevorski	sshevorski@ag.nv.gov
18 Kiel Ireland	kireland@ag.nv.gov
19 Emilia Cargill	Emilia.Cargill@WingfieldNevadaGroup.com
20 Micheline Fairbank	mfairbank@water.nv.gov
21 Juanita Mordhorst	jmordhorst@water.nv.gov
22 Carla Coulthard	cdk@coulthardlaw.com
23 Tami Reilly	treilly@outsideparalegalsolutions.com
24 William Coulthard, Esq.	wlc@coulthardlaw.com
25 Rachel Jenkins	rjenkins@santoronevada.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Sunny Southworth

ssouthworth@ag.nv.gov

Mary Pizzariello

MPizzariello@ag.nv.gov

**SOED**

William L. Coulthard, Esq.  
Nevada Bar No. #3927  
Coulthard Law PLLC  
840 South Rancho Drive #4-627  
Las Vegas, Nevada 89106  
(702) 898-9944  
[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)

Kent R. Robison, Esq.  
Nevada Bar No. #1167  
Hannah E. Winston, Esq.  
Nevada Bar No #14520  
71 Washington Street  
Reno, Nevada 89503  
[krobison@rssblaw.com](mailto:krobison@rssblaw.com)  
[hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)

*Attorneys for Plaintiffs CS-Entities*

**DISTRICT COURT  
CLARK COUNTY NEVADA**

COYOTE SPRINGS INVESTMENT, LLC, a  
Nevada Limited Liability Company; COYOTE  
SPRINGS NEVADA, LLC, a Nevada limited  
liability company; and COYOTE SPRINGS  
NURSERY, LLC, a Nevada limited liability  
company,

Plaintiffs,

vs.

STATE OF NEVADA, on relation to its  
Division of Water Resources; DEPARTMENT  
OF CONSERVATION and NATURAL  
RESOURCES; ADAM SULLIVAN, Nevada  
State Engineer; CLARK COUNTY-COYOTE  
SPRINGS WATER RESOURCES GENERAL  
IMPROVEMENT DISTRICT, a political  
subdivision of the State of Nevada; and Does I  
through X.

Defendants.

Case No.: A-20-820384-B  
Dept.: 13

**STIPULATION AND ORDER TO EXTEND  
DISCOVERY DEADLINES AND  
CONTINUE TRIAL**

**[SECOND REQUEST]**

**Current Trial Date: October 24, 2023**

Pursuant to Eighth Judicial District Court Rule (“EDCR”) 2.35, it is hereby stipulated and  
agreed between the Parties to extend the current discovery deadlines by six months and continue  
trial as follows.

1                   **I.       DISCOVERY THAT HAS BEEN COMPLETED**

2                   **A. Written Discovery**

3                   1. Plaintiffs' Written Discovery

4                   a. Coyote Springs Investment, LLC ("CSI")

5                   i. CSI Initial Disclosure, 5/11/2022

6                   ii. CSI's Second Supplemental Disclosures, 2/6/2023

7                   iii. CSI's Third Supplemental Disclosures, 2/10/2023

8                   iv. Plaintiffs' First Set of Requests for Production to Defendants,  
9                   5/25/2022

10                   1. Defendants' Responses to Plaintiffs' First Request for  
11                   Production of Documents to Defendants, 6/24/2022

12                   2. Defendants' First Supplemental Responses to Plaintiffs'  
13                   First Request for Production of Documents to  
14                   Defendants, 7/22/2022

15                   3. Defendants' Second Supplemental Responses to  
16                   Plaintiffs' First Request for Production of Documents to  
17                   Defendants, 9/14/2022

18                   4. Defendants' Third Supplemental Responses to  
19                   Plaintiffs' First Request for Production of Documents to  
20                   Defendants, 12/1/2022

21                   5. Defendants' Fourth Supplemental Responses to  
22                   Plaintiffs' First Request for Production of Documents to  
23                   Defendants, 12/28/2022

24                   6. Defendants' Fifth Supplemental Responses to Plaintiffs'  
25                   First Request for Production of Documents to  
26                   Defendants, 1/10/2023

27                   v. Plaintiffs' Second Set of Requests for Production to Defendants,  
28                   3/17/2023

1. Defendants' Responses to Plaintiffs' Second Set of  
Requests for Production of Documents to Defendants,

4/17/2023

b. Coyote Springs Nevada, LLC (“CS-Nevada”)

- i. CS-Nevada’s First Set of Interrogatories to Defendants,  
3/29/2023

c. Coyote Springs Nursery, LLC (“CS-Nursery”)

- i. CS-Nursery’s First Set of Interrogatories to Defendants,  
3/29/2023

2. The State’s Written Discovery

a. State’s Initial Disclosures, 5/10/2022

b. State’s Amended Initial Disclosures, 6/16/2022

c. State’s First Supplemental Disclosures, 7/6/2022

d. State’s Second Supplemental Disclosures, 8/8/2022

e. State’s Third Supplemental Disclosures, 9/29/2023

f. State’s Fourth Supplemental Disclosures, 12/1/2023

g. State’s Fifth Supplemental Disclosures, 12/28/2023

h. State’s Sixth Supplemental Disclosures, 1/10/2023

i. State’s Seventh Supplemental Disclosures, 4/17/2023

j. State’s First Set of Requests for Admissions, 11/23/2022

- i. CSI’s Response to State’s First Set of Requests for Admissions,  
12/30/2022

k. State’s First Set of Interrogatories to CSI, 6/3/2022

- i. CSI’s Response to State’s First Set of Interrogatories to CSI,  
7/18/2022

l. State’s First Set of Requests for Production to CSI, 6/3/2022

- i. CSI’s Response to State’s First Set of Requests for Production  
to CSI, 7/18/2022

- ii. CSI’s First Supplemental Response to State’s First Set of  
Requests for Production to CSI, 3/14/2023

m. State’s Second Set of Interrogatories to CSI, 4/6/2023

n. State’s Second Set of Requests for Production to CSI, 4/6/2023

1                   **B. Depositions**

- 2                   1. Micheline Fairbank, at 9:00 AM, at Sunshine Litigation Services, 151 Country
- 3                   Estates Circle, Reno, NV 89511
- 4                   2. Adam Sullivan, 2/14/2023, at 9:00 AM, at Sunshine Litigation Services, 151
- 5                   Country Estates Circle, Reno, NV 89511
- 6                   3. Tim Wilson, 2/15/2023, at 9:00 AM, at Sunshine Litigation Services, 151
- 7                   Country Estates Circle, Reno, NV 89511
- 8                   4. Jason King, 2/16/2023, at 9:00 AM, at Sunshine Litigation Services, 151
- 9                   Country Estates Circle, Reno, NV 89511

10                  **II. REMAINING DISCOVERY TO BE COMPLETED**

- 11                  A. Party depositions, including NRCP 30(b)(6) depositions;
- 12                  B. Depositions of additional witnesses;
- 13                  C. Initial Expert Disclosures
- 14                  D. Rebuttal Expert Disclosures
- 15                  E. Depositions of the parties' respective expert witnesses;
- 16                  F. Additional written discovery as needed.

17                  **III. REASONS WHY DISCOVERY WILL NOT BE COMPLETED WITHIN**

18                  **THE TIME LIMITS SET BY THE NEW DISCOVERY DEADLINES**

19                  Pursuant to EDCR 2.35, this Court is permitted to extend discovery deadlines where the

20                  parties have shown good cause for the same and where the parties' request is made at least twenty

21                  days before the discovery cut-off date. *See* EDCR 2.35(a).

22                  The parties stipulate and agree that good cause exists to extend the discovery deadlines and

23                  continue trial because recent discovery issues have arisen with certain third-party witnesses.

24                  Specifically, CSI noticed the NRCP 30(b)(6) depositions of third-parties Southern Nevada Water

25                  Authority, Clark County Comprehensive Planning Department, and Las Vegas Valley Water

26                  District. Each of these three entities has indicated that they intend to object and/or meet and confer

27                  about the scope of the topics for the depositions. While none of the entities have provided written

28                  objections as of today's date, motion practice is anticipated, which will likely delay the

                    depositions.

                    Moreover, the parties are currently coordinating the deposition schedules for several

witnesses, including the Defendants' 30(b)(6) representative and the Plaintiffs' representatives. Due to witness availability, these depositions may not be scheduled until June or July. The current deadlines are, therefore, impractical.

Further, the production of documents in this case has been substantial. The parties are meeting and conferring about the production, including the parties' respective privilege logs and written discovery responses. While the parties hope to resolve any issues without judicial intervention, motion practice may result if the parties are unable to agree. Therefore, the parties believe good cause exists to extend the discovery deadlines and continue trial to afford the parties' time to resolve all discovery disputes and complete discovery. This will require a continuance of the current October 24, 2023 trial setting.

#### **IV. CURRENT SCHEDULE FOR COMPLETING DISCOVERY**

<b>Deadline</b>	
Close of Discovery	June 30, 2023
Final Date to File Motions to Amend Pleadings or Add Parties	May 1, 2023
Final Date to File Expert Disclosure	May 1, 2023
Final Date to File Rebuttal Expert Disclosure	June 1, 2023
Final Date to File Dispositive Motions	July 31, 2023

#### **V. PROPOSED SCHEDULE FOR COMPLETING DISCOVERY**

<b>Deadline</b>	
Close of Discovery	January 1, 2024
Final Date to File Motions to Amend Pleadings or Add Parties	November 1, 2023
Final Date to File Expert Disclosure	November 1, 2023
Final Date to File Rebuttal Expert Disclosure	December 1, 2023
Final Date to File Dispositive Motions	January 31, 2024

#### **VI. CURRENT TRIAL DATE**

Trial in this matter has been set on a four-week stack to begin Tuesday, October 24, 2023.

The parties request that this trial date be vacated, and an Amended Trial Order issued which sets trial for March 2024 and corresponds to the new discovery schedule.

**AFFIRMATION:** The undersigned does hereby affirm that the preceding document and/or attachments do not contain the social security number of any person.

DATED this 19<sup>th</sup> day of April, 2023

DATED this 19<sup>th</sup> day of April, 2023

ROBISON, SHARP, SULLIVAN & BRUST

OFFICE OF THE ATTORNEY GENERAL

By: /s/ Kent R. Robison  
Kent R. Robison, Esq.  
Nevada Bar No. #1167  
Hannah E. Winston, Esq.  
Nevada Bar No. #14520  
71 Washington Street  
Reno, NV 89503

By: /s/ Kiel B. Ireland  
Aaron D. Ford  
Kiel B. Ireland  
555 E. Washington Ave., Ste. 3900  
[kireland@ag.nv.gov](mailto:kireland@ag.nv.gov)

*Attorneys for Defendant State of Nevada.*

*Attorneys for Plaintiffs*

COULTHARD LAW PLLC

By: /s/ William L. Coulthard  
William L. Coulthard, Esq.  
Nevada Bar No. #3927  
840 South Rancho Drive #4-627  
Las Vegas, Nevada 89106  
(702) 898-9944  
[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)  
*Attorney for Plaintiffs*

**ORDER TO EXTEND DISCOVERY AND CONTINUE TRIAL**

Pursuant to the stipulation of the parties, and good cause appearing therefore, IT IS  
HEREBY ORDERED that the discovery deadlines are extended as set forth herein, and the trial  
date vacated in accordance with this Stipulation. <sup>separate</sup> ~~An Amended~~ Trial Order will be issued.

IT IS SO ORDERED.

Dated this 19<sup>th</sup> day of April, 2023

  
DISTRICT COURT JUDGE

Lt

509 CE2 57BC 3240  
Mark R. Denton  
District Court Judge



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Respectfully submitted by:

ROBISON, SHARP, SULLIVAN & BRUST

By: /s/ Kent R. Robison  
Kent R. Robison, Esq.  
Nevada Bar No. #1167  
Hannah E. Winston, Esq.  
Nevada Bar No. #14520  
71 Washington Street  
Reno, NV 89503  
*Attorneys for Plaintiffs*

**From:** [Hannah Winston](#)  
**To:** [Kiel B. Ireland](#)  
**Cc:** [Kent Robison](#); "[wlc@coulthardlaw.com](#)"; [Emilia Cargill](#)  
**Subject:** RE: CSI v. State - Stip and Order to Extend Discovery and Continue Trial  
**Date:** Tuesday, April 18, 2023 4:28:00 PM

---

Awesome, thanks Kiel!

Hannah

**HANNAH E. WINSTON, Esq.**



Robison | Sharp | Sullivan | Brust

71 Washington Street

Reno, NV 89503

Phone - 775.329.3151

Fax - 775.329.7941

[www.rssblaw.com](http://www.rssblaw.com)

CONFIDENTIALITY: This email (including attachments) is intended solely for the use of the individual to whom it is addressed and may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, please do not read, copy, or re-transmit this communication. If you are the intended recipient, this communication may only be copied or transmitted with the consent of the sender. If you have received this email in error, please contact the sender immediately by return email and delete the original message and any attachments from your system. Thank you in advance for your cooperation and assistance.

IRS CIRCULAR 230 DISCLAIMER: Any tax advice contained in this email is not intended to be used, and cannot be used by any taxpayer, for the purpose of avoiding Federal tax penalties that may be imposed on the taxpayer. Further, to the extent any tax advice contained in this email may have been written to support the promotion or marketing of the transactions or matters discussed in this email, every taxpayer should seek advice based on such taxpayer's particular circumstances from an independent tax advisor.

---

**From:** Kiel B. Ireland <Klreland@ag.nv.gov>  
**Sent:** Tuesday, April 18, 2023 4:27 PM  
**To:** Hannah Winston <hwinston@rssblaw.com>  
**Cc:** Kent Robison <krobison@rssblaw.com>; 'wlc@coulthardlaw.com' <wlc@coulthardlaw.com>; Emilia Cargill <emilia.cargill@wingfieldnevadagroup.com>  
**Subject:** RE: CSI v. State - Stip and Order to Extend Discovery and Continue Trial

Thanks for preparing. You are authorized to add my /s/ signature and file.

Kiel B. Ireland  
Deputy Solicitor General  
Office of the Attorney General  
100 N. Carson St.  
Carson City, NV 89701  
775-684-1234

---

**From:** Hannah Winston <[hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)>  
**Sent:** Tuesday, April 18, 2023 4:23 PM  
**To:** Kiel B. Ireland <[KIreland@ag.nv.gov](mailto:KIreland@ag.nv.gov)>  
**Cc:** Kent Robison <[krobison@rssblaw.com](mailto:krobison@rssblaw.com)>; 'wlc@coulthardlaw.com' <[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>;  
Emilia Cargill <[emilia.cargill@wingfieldnevadagroup.com](mailto:emilia.cargill@wingfieldnevadagroup.com)>  
**Subject:** CSI v. State - Stip and Order to Extend Discovery and Continue Trial

**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Kiel,

Attached is a draft of the stipulation and order to extend discovery deadlines and continue trial. Please let me know if you approve or if you have changes.

Thank you!

Hannah

**HANNAH E. WINSTON, ESQ.**



Robison Sharp Sullivan Brust

71 Washington Street  
Reno, NV 89503  
Phone - 775.329.3151  
Fax - 775.329.7941  
[www.rssblaw.com](http://www.rssblaw.com)

CONFIDENTIALITY: This email (including attachments) is intended solely for the use of the individual to whom it is addressed and may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, please do not read, copy, or re-transmit this communication. If you are the intended recipient, this communication may only be copied or transmitted with the

consent of the sender. If you have received this email in error, please contact the sender immediately by return email and delete the original message and any attachments from your system. Thank you in advance for your cooperation and assistance.

IRS CIRCULAR 230 DISCLAIMER: Any tax advice contained in this email is not intended to be used, and cannot be used by any taxpayer, for the purpose of avoiding Federal tax penalties that may be imposed on the taxpayer. Further, to the extent any tax advice contained in this email may have been written to support the promotion or marketing of the transactions or matters discussed in this email, every taxpayer should seek advice based on such taxpayer's particular circumstances from an independent tax advisor.

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Coyote Springs Investment LLC,  
Plaintiff(s)

CASE NO: A-20-820384-B

7 vs.

DEPT. NO. Department 13

8  
9 State of Nevada, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

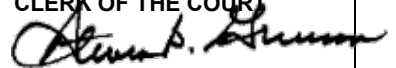
12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Stipulation and Order to Extend Discovery Deadlines was served via  
14 the court's electronic eFile system to all recipients registered for e-Service on the above  
entitled case as listed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

15 Service Date: 4/19/2023

16 Oliver Pancheri	opancheri@santoronevada.com
17 Nicholas Santoro	nsantoro@santoronevada.com
18 Dorene Wright	dwright@ag.nv.gov
19 James Bolotin	jbolotin@ag.nv.gov
20 Craig Newby	cnewby@ag.nv.gov
21 Emilia Cargill	Emilia.Cargill@WingfieldNevadaGroup.com
22 Micheline Fairbank	mfairbank@water.nv.gov
23 Juanita Mordhorst	jmordhorst@water.nv.gov
24 Kiel Ireland	kireland@ag.nv.gov
25 Kent Robison	krobison@rssblaw.com

26  
27  
28

1	Carla Coulthard	cdk@coulthardlaw.com
2	Tami Reilly	treilly@outsideparalegalsolutions.com
3	William Coulthard, Esq.	wlc@coulthardlaw.com
4	Hannah Winston, Esq.	hwinston@rssblaw.com
5	Sunny Southworth	ssouthworth@ag.nv.gov
6	Paul Taggart	paul@legaltnt.com
7	Thomas Duensing	Tom@legaltnt.com
8	Steven Anderson	Steven.Anderson@lvvwd.com
9	Mary Pizzariello	MPizzariello@ag.nv.gov
10	Karen Peterson	kpeterson@allisonmackenzie.com
11	Wayne Klomp	wayne@greatbasinlawyer.com
12	Dylan Frehner	dfrehner@lincolncountynv.gov
13	Cindy Shi	cshi@allisonmackenzie.com
14	Karen Peterson	kpeterson@allisonmackenzie.com
15	Dylan Frehner	dfrehner@lincolncountynv.gov
16	Wayne Klomp	wayne@greatbasinlawyer.com
17	Kent Robison	krobison@rssblaw.com
18	Hannah Winston	hwinston@rssblaw.com
19	Rachel Jenkins	rjenkins@nevadafirm.com
20	Marni Watkins	mkwatkins@ag.nv.gov
21		
22		
23		
24		
25		
26		
27		
28		



**OPPM**

William L. Coulthard, Esq.  
Nevada Bar No. #3927  
Coulthard Law PLLC  
840 South Rancho Drive #4-627  
Las Vegas, Nevada 89106  
(702) 898-9944  
[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)

Kent R. Robison, Esq.  
Nevada Bar No. #1167  
Hannah E. Winston, Esq.  
Nevada Bar No #14520  
71 Washington Street  
Reno, Nevada 89503  
[krobison@rssblaw.com](mailto:krobison@rssblaw.com)  
[hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)

*Attorneys for Plaintiffs CS-Entities*

**DISTRICT COURT  
CLARK COUNTY NEVADA**

COYOTE SPRINGS INVESTMENT, LLC, a  
Nevada Limited Liability Company; COYOTE  
SPRINGS NEVADA, LLC, a Nevada limited  
liability company; and COYOTE SPRINGS  
NURSERY, LLC, a Nevada limited liability  
company,

Plaintiffs,

vs.

STATE OF NEVADA, on relation to its  
Division of Water Resources;  
DEPARTMENT OF CONSERVATION and  
NATURAL RESOURCES; ADAM  
SULLIVAN, Nevada State Engineer; CLARK-  
COUNTY-COYOTE SPRINGS WATER  
RESOURCES GENERAL IMPROVEMENT  
DISTRICT, a political subdivision of the State  
of Nevada; and Does I through X.

Defendants.

Case No.: A-20-820384-B  
Dept.: 13

**OPPOSITION TO DEFENDANT'S  
MOTION TO STAY PROCEEDINGS  
PENDING NEVADA SUPREME  
COURT'S RESOLUTION OF RELATED  
MATTER**

Plaintiffs, by and through their counsel of record, oppose the Defendant's Motion  
to Stay Proceedings Pending Nevada Supreme Court's Resolution of Related Matter (the

1 “Motion”). This Opposition is made and based upon the following Memorandum of Points  
2 and Authorities, the exhibits attached hereto, and the papers and pleadings on file with this  
3 Court.

#### 4 MEMORANDUM OF POINTS AND AUTHORITIES

##### 5 **I. OVERVIEW.**

6 The State Engineer took the Plaintiffs’ water rights on May 16, 2018. The State  
7 Engineer’s June 15, 2020 Order 1309 is just one part of the State Engineer’s actions to  
8 take, condemn and prevent the exercise of Plaintiff Coyote Springs Investment, LLC’s  
9 (“CSI”) rights to use its permitted water and to develop its approved project. The validity  
10 of the State Engineer’s Order 1309 is presently before the Nevada Supreme Court. The  
11 appeal was argued on August 8, 2023. Whether the Supreme Court validates or  
12 invalidates Order 1309 is not dispositive of any issue in this matter.

13 While Order 1309 and the bizarre machinations implemented to create it are  
14 relevant, the Order itself, whether valid or otherwise, is but evidence of the obvious: The  
15 State Engineer will never allow CSI to use the water CSI has been officially permitted to  
16 use for subdivision purposes. The testimony of the State Engineers’ 30(b)(6) witness  
17 blatantly confirmed CSI’s position. **Exhibit 3**, 268:1-19. ***CSI cannot use its water for***  
18 ***subdivision development.*** See *id.* That concession was made under oath with ***no***  
19 reference to or reliance on Order 1309. See *id.*

20 Indeed, Plaintiffs have been victimized by a series of State Engineer’s actions,  
21 letters, denials of subdivision maps, draft orders, work shops, and interim orders.  
22 However, what can be easily established in this action is that the State Engineer has  
23 determined to never allow the Plaintiffs to use their permitted water rights for subdivision  
24 development regardless of Order 1309’s ultimate fate. The Plaintiffs’ senior groundwater  
25 rights were reprioritized and appropriated to others beginning on May 16, 2018, without  
26 just compensation. The taking occurred long before Order 1309 was issued.

27 Through various orders, letters, denials, and actions, the State Engineer has  
28



1 imposed a permanent ban on CSI's construction and subdivision development. Order  
2 1309 is just another road sign on a long highway to the Plaintiffs' permanent loss of water,  
3 seniority, real property, and otherwise valuable entitlements.

4 Imposing an indefinite stay in this case to await a decision from the Nevada  
5 Supreme Court that will have no direct or conclusive bearing on any issue in this case is  
6 illogical and does not serve judicial economy. Accordingly, the Plaintiffs respectfully  
7 request that this Court deny the Motion.

8 **II. THE STATE CANNOT ESTABLISH HARDSHIP OR INEQUITY TO OBTAIN A**  
9 **STAY OF THIS CASE.**

10 The State fails to cite any caselaw or statute to support its argument that this Court  
11 should stay this case indefinitely pending resolution of a separate lawsuit. In fact, relevant  
12 caselaw requires denying the Motion as the State's only allegation of harm is that it will  
13 have to pay "financial costs incurred to continue litigating". Motion, 23:8-14. Those costs  
14 will be incurred regardless of whether these proceedings are postponed indefinitely.

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

20 As the State concedes, "financial costs incurred to continue litigating are generally  
21 not seen as 'irreparable harm.'" Motion, 23:8-14. Likewise, "being required to defend a  
22 suit, without more, does not constitute a "clear case of hardship or inequity" within the  
23 meaning of *Landis*." *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005). Thus,  
24 the State has completely failed to make out a "clear case of hardship or inequity in being  
25 required to go forward", which is required to obtain a stay of this case.

26 Notably, Order 1309 was already on appeal when the State agreed to the May  
27 2024 trial date in this case. The State cannot now claim that an emergency stay is  
28 warranted given that the same facts existed at the time the State agreed to the May 2024

1 trial date.

2 Moreover, there is certainly “a fair possibility” that a stay would cause harm to  
3 Plaintiffs. Primarily, the principals (owners) of the Plaintiff entities are over 70 years old.  
4 Declaration of Albert D. Seenno, Jr. (filed contemporaneously herewith). They deserve to  
5 go to trial in May 2024 as scheduled and should not have to wait for an indefinite time to  
6 finally resolve these claims. See, e.g., NRS 16.025.

7 Further, Plaintiffs’ development of their master planned community has been  
8 halted since the State Engineer issued his May 16, 2018 letter. Plaintiffs have not been  
9 able to use their groundwater rights for their master planned community since the State  
10 Engineer issued his May 16, 2018 letter. Plaintiffs have not been able to continue to  
11 develop their land since the State Engineer issued his May 16, 2018 letter.

12 This complete bar to, and interference with, Plaintiffs being able to use and develop  
13 their property unquestionably presents a fair possibility of harm that worsens every single  
14 day this case is not resolved. See *Varsames v. Palazzolo*, 96 F. Supp. 2d 361, 367  
15 (S.D.N.Y. 2000) (“Deprivation of an interest in real property constitutes irreparable harm.”)  
16 (citing *Carpenter Technology Corp. v. City of Bridgeport*, 180 F.3d 93, 97 (2d Cir.1999)  
17 (condemnation of plaintiff’s real property constitutes irreparable injury); *The Southland*  
18 *Corp. v. Froelich*, 41 F.Supp.2d 227, 242 (E.D.N.Y.1999) (irreparable harm stems from  
19 inability to make productive use of and exercise control over property); *Persaud v. Exxon*  
20 *Corp.*, 867 F.Supp. 128, 141 (E.D.N.Y.1994) (irreparable harm “flows from the owner’s  
21 inability to make better use of the site, or the owner’s lack of control”)).

22 While the State has characterized the May 16, 2018 letter as “rescinded”, the  
23 State’s substantive decision reflected in the letter, to block CSI’s access to its water to  
24 support its master planned community, has never changed. CSI cannot use its  
25 groundwater rights for its subdivision and has not been able to do so since May 16, 2018.  
26 The State has steadfastly adhered to the underlying position stated in the May 16, 2018  
27 letter, regardless of the “recission”. **Exhibit 3**, 268:1-19. Just as calling a dog a duck  
28 does not render the dog a duck, simply announcing that the May 16, 2018 letter

1 “rescinded” does not make it so. Rather, the “recission” was a tactical ruse designed to  
2 secure a litigation advantage; not a substantive change in the State’s determination that  
3 CSI will not be permitted to use its water rights. Accordingly, the State has failed to carry  
4 its burden of seeking a stay, and the Motion should be denied.

5 **III. THE STATE’S REQUEST FOR AN INDEFINITE, LENGTHY STAY MUST BE**  
6 **DENIED.**

7 The State seeks an indefinite, lengthy stay pending a decision by the Nevada  
8 Supreme Court in the appeal of the Honorable Judge Yeager’s Order declaring Order  
9 1309 void. As the State concedes, “in recent water law cases, the Nevada Supreme  
10 Court has taken upwards of a year or longer from the date of oral argument to render its  
11 decisions.” Motion, 16. The State further neglects to mention that the Nevada Supreme  
12 Court’s decision, even if rendered in a year or 18 months, may only result in further  
13 appellate proceedings.

14 The Ninth Circuit has explained that “[i]f a stay is especially long or its term is  
15 indefinite, [courts should] require a greater showing to justify it.” *Yong v. I.N.S.*, 208 F.3d  
16 1116, 1119 (9th Cir. 2000). *Yong* is especially instructive in this case as it also involved  
17 a stay ordered by the lower court that would have terminated upon resolution of an appeal  
18 addressing related issues. See *id.* at 1117. In *Yong*, “[t]he district court’s primary  
19 justification for the stay was that it would conserve judicial resources.” *Id.* at 1119. In  
20 reversing the district court, the Ninth Circuit explained:

21 We acknowledge that the district court was in an unenviable position. It was  
22 faced with a number of petitions in an evolving area of law and knew that,  
23 however it ruled, it might be required to revisit its decision if its reasoning  
24 did not comport with our ruling in [the related appeal]. ***The stay it crafted,***  
25 ***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.***

26 *Id.* at 1120-21 (emphasis added).

27 The State seeks the same type of indefinite, lengthy stay in this case.

28 There are three primary potential outcomes in the pending case before the Nevada

Supreme Court:

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.<sup>1</sup>

Under either Option 2 or Option 3, the stay in the case could last for several years. For example, if the Supreme 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

---

<sup>1</sup> The issues presented to Judge Yeager included whether (1) there was statutory authority for Order 1309; (2) it was issued with due process; and (3) it was supported by substantial evidence. Judge Yeager only reached the first two legal questions and, as a result, declined to decide the third question. If the Nevada Supreme Court reverses Judge Yeager on the legal questions, the case must be remanded for Judge Yeager to decide the substantial evidence question.

1 questioned that Judge Yeager's decision would be appealed by one side or the other.  
2 This process would result in several additional years until an ultimate decision is reached  
3 by the Nevada Supreme Court.

4 An indefinite stay that could last for several years and span multiple district court  
5 and appellate proceedings would be patently improper. See *Yong*, 208 F.3d at 1119  
6 (explaining that "although the stay has lasted only five months, its term is indefinite.  
7 Moreover, because the stay terminates upon the "resolution of the [related] appeal," if the  
8 Supreme Court should grant certiorari to review this court's decision in [the related  
9 appeal], the stay could remain in effect for a lengthy period of time, perhaps for years if  
10 our decision in [the related appeal] is reversed and the case is remanded for further  
11 proceedings."); *Dependable Highway Exp., Inc.*, 498 F.3d at 1066 ("Generally, stays  
12 should not be indefinite in nature."); *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d  
13 857, 864 (9th Cir. 1979) ("A stay should not be granted unless it appears likely the other  
14 proceedings will be concluded within a reasonable time in relation to the urgency of the  
15 claims presented to the court.").

16 It is self-evident that the State Engineer understands the likelihood of extended  
17 and complex future proceedings. By seeking an indefinite stay, the State effectively  
18 seeks to implement and perpetuate the taking of CSI's valuable water, seniority, and  
19 property. Accordingly, the request for an indefinite, lengthy stay should be rejected. The  
20 Motion should be denied.

21 **IV. THE NEVADA SUPREME COURT'S DECISION ON THE VALIDITY OF ORDER**  
22 **1309 IS NOT DISPOSITIVE OF ANY ISSUE IN THIS CASE.**

23 The State devotes substantial argument to the fact that Plaintiffs have based their  
24 takings claims, in part, on Order 1309 and that they have conducted substantial discovery  
25 into the propriety of Order 1309. However, the Plaintiffs have conducted substantial  
26 discovery into numerous different aspects of the case. Discovery conducted by the  
27 Plaintiffs has revealed and confirmed that May 16, 2018 is the date of the taking, and  
28 everything that occurred afterward, including Order 1309, simply implemented and

1 confirmed the take.

2 As the Fifth Circuit has explained, “[a] stay pending adjudication in another tribunal  
3 should not be granted unless that tribunal has the power to render an effective judgment  
4 on issues that are necessary to the disposition of the stayed action.” *Intel Corp. v. M/S*  
5 *Victoria U (Ex Pishtaz Iran)*, 710 F.2d 199, 203 (5th Cir. 1983). Importantly, the Nevada  
6 Supreme Court’s decision will not be dispositive of any issue in this case.

7 The State does not even contend that the Nevada Supreme Court’s decision in the  
8 appeal is necessary to the disposition of this case. Instead, the State makes broad,  
9 unsupported allegations that “Nevada water law . . . is currently in a state of flux”; that the  
10 Supreme Court’s decision “will undoubtedly impact these proceedings” and that it will  
11 “clarify the issues before this Court significantly”. See, e.g., Motion, 18-19. These vague  
12 assertions are insufficient to justify a stay when viewed in the context of the claims before  
13 this Court.

14 **1. Plaintiffs’ Claims Do Not Rely on the Validity or Invalidity of Order 1309.**

15 The State contends that the Nevada Supreme Court’s decision may have *res*  
16 *judicata* effect in this action. However, a simple review of the claims in the Proposed  
17 Third Amended Complaint demonstrates that none of the issues involved in this case will  
18 be decided by the Nevada Supreme Court.

19 In the Proposed Third Amended Complaint, the Plaintiffs have asserted claims for  
20 various types of takings, including an appropriation *per se* taking and alternative claims  
21 for *Lucas* or *Penn Central* takings. See **Exhibit 1** (Proposed Third Amended Complaint)  
22 (excluding exhibits), 29-33. The Supreme Court’s decision in the challenge to the validity  
23 of Order 1309 will not address the merits of any of these takings claims.

24 First, it is undisputed that the Nevada Supreme Court will not decide as part of the  
25 appeal whether Order 1309 constituted a taking of the Plaintiffs’ water rights. Second,  
26 regardless of the validity or invalidity of Order 1309, the State has clearly taken Plaintiffs’  
27 water rights. Because this Court does not have to decide whether Order 1309 was issued  
28 with statutory authority or due process in order to resolve the takings claims, the Nevada

1 Supreme Court's resolution of the challenge to Order 1309 will have no bearing on this  
2 case.

3 As set forth in the Proposed Third Amended Complaint, Plaintiffs have been barred  
4 from using their groundwater rights and moving forward with their master planned  
5 community since the State Engineer issued his May 16, 2018 letter, which not only  
6 characterized CSI's senior groundwater rights as junior to water right holders in other  
7 basins and allowed junior water right holders in other basins to continue to pump while  
8 prohibiting CSI from using its more senior permitted water rights, but also prohibited CSI  
9 from using its groundwater rights for "any subdivision development maps". **Exhibit 2**  
10 (State Engineer's May 16, 2018 letter).

11 The State Engineer made these determinations (1) before even reviewing any of  
12 the Plaintiffs' subdivision development maps, and (2) with the understanding that the  
13 perennial yield of Coyote Spring Valley Hydrographic Basin was 18,000 afa and that the  
14 five basins referenced in the May 16, 2018, letter had a combined perennial yield of  
15 50,000 afa. **Exhibit 3** (Excerpts of Deposition Transcript of the State's 30(b)(6)  
16 representative), p. 144:11-21).

17 Nothing has changed since the State Engineer issued the May 16, 2018 letter.  
18 The State Engineer's 30(b)(6) representative so confirmed:

19 **1 Q. So the State Engineer really doesn't have**  
20 **2 a problem with us using 4,100 acre-feet for**  
21 **3 municipal purposes. The State Engineer has a**  
22 **4 problem with us using 4,100 acre-feet of water for**  
23 **5 subdivision?**

24 **6 A. No.**

25 **7 Q. Well, you just said we can't use it for**  
26 **8 subdivisions.**

27 **9 A. What the decision -- what the prior**  
28 **10 rescinded decision was was that you couldn't use**  
29 **11 those groundwater rights to support subdivisions.**

30 **12 Q. Right. And nothing has changed?**

31 **13 A. I haven't seen a different decision.**

32 **14 Q. All right. Do you know what the State**  
33 **15 Engineer will permit us to use for subdivisions if**  
34 **16 1309 is declared invalid?**

1           17     MS. WHELAN: Objection. Incomplete  
2           18     hypothetical.  
3           19     THE WITNESS: No.

4           **Exhibit 3**, 268. Indeed, the State Engineer has only continued issuing orders and  
5 taking other actions that perpetuate the findings and decisions in the May 16, 2018 letter.  
6 Indeed, the State Engineer later issued Interim Order 1303, which imposed a moratorium  
7 on “any final subdivision or other submission concerning development and construction  
8 submitted to the State Engineer for review”. **Exhibit 5** (Interim Order 1303), 14. Next,  
9 the State Engineer issued Order 1309, which combined seven previously separate  
10 hydrographic basins into one (as compared to the five combined in the May 16, 2018  
11 letter) and applied an 8,000 afa pump cap across the new consolidated basin. **Exhibit 6**  
12 (Order 1309), 65. Relying on Order 1309, the State Engineer then denied CSI’s  
13 subdivision map application, concluding that CSI’s “junior” groundwater rights cannot  
14 support its application. **Exhibit 7** (State Engineer’s June 17, 2020 letter).

15           After Judge Yeager declared Order 1309 void, CSI again tried to submit its map to  
16 the State Engineer. The State Engineer’s office informed CSI that CSI could “drop off the  
17 map but we [will] not be able to sign it at this time.” **Exhibit 8** (May 2, 2022 email from  
18 Christi Cooper, Water Commissioner for the Nevada Division of Water Resources).

19           Discovery in this case has established that the State Engineer has appropriated  
20 CSI’s groundwater rights for use by other water right holders. See **Exhibit 5, Exhibit 7,**  
21 **Exhibit 8, Exhibit 4** (Excerpts of Deposition Transcript of Jason King), p. 144-145:3-10  
22 (Jason King explaining that in the combined basin, “[t]he priority dates stay the same  
23 completely, but now, instead of 50-whatever rights in one basin, those 50 rights are  
24 thrown in with 200 other rights, and they fall in place with their priority” and that this  
25 process has never been done in the State of Nevada).

26           Thus, whether Order 1309 is valid is not an element of Plaintiffs’ takings claims.  
27 Therefore, this Court need not decide these issues when analyzing Plaintiffs’ takings  
28 claims.



1                   **2. Plaintiffs' Takings Claims are Ripe Regardless of Whether Order 1309 is**  
2                   **Valid or Not.**

3                   The State contends that the Supreme Court's decision "could potentially narrow  
4 the issues before the Court significantly" because (1) the Court may reverse the district  
5 court, which, according to the State would cause "CSI's claims of inverse condemnation  
6 [to] fall by the wayside", or (2) the Court may determine that Order 1309 "is purely fact-  
7 finding, as opposed to managerial, and does not affect any party's rights," which would  
8 mean the takings claims are not ripe. Motion, 18-19. Both of these arguments lack merit  
9 and are based on a fundamental misunderstanding of the law.

10                  First, the State presents no authority for its assertion that Order 1309 being valid  
11 would cause CSI's takings claims to "fall by the wayside". This assertion is incorrect.  
12 Contrary to the State's position, liability for the taking in this case would not be affected  
13 by how the Supreme Court rules in the pending challenge to Order 1309. The State  
14 implicitly (Motion, at 5, 19) and correctly concedes that CSI can proceed with its taking  
15 claim if the Supreme Court affirms the District Court ruling declaring Order 1309 contrary  
16 to Nevada statute. *See Del Rio Drilling Programs, Inc. v. United States*, 146 F.3d 1358,  
17 1362-63 (Fed. Cir. 1998) (an illegal action may support a taking claim for just  
18 compensation); *Harris County v. Flood Control District*, 56 SW3d 665, 668 (Tex. 2001)  
19 ("[W]e interpret the Texas Constitution to protect citizens against takings by the State"  
20 regardless of whether the government "exceeded its statutory authority").

21                  But the State is mistaken in contending (Motion, at 19) that CSI's taking claim will  
22 necessarily fail if the Supreme Court upholds Order 1309. A government action  
23 effectuates a taking if the elements of a taking can be demonstrated under any of the  
24 established tests, regardless of whether the action is otherwise lawful and legitimate. *See*  
25 *McCarran Intern. Airport v. Sisolak*, 122 Nev 645 (2006) (affirming District Court ruling  
26 that adoption of an ordinance restricting building heights adjacent to public airport  
27 constituted a *per se* taking without raising any question about the legal validity of the  
28 ordinance).

1 Second, it is extremely unlikely that the Nevada Supreme Court will issue an  
2 opinion determining that Order 1309 was “fact finding” and “did not affect any party’s  
3 rights”. The Supreme Court expressly identified the issues in the appeal as (1) whether  
4 there is statutory authority to “delineate” the seven separate hydrographic basins into one,  
5 and (2) whether Order 1309 was issued with due process. See **Exhibit 9** (Order  
6 Modifying Caption and Setting Briefing Schedule), 3-4. While the State worked quite hard  
7 to distance itself from the plain language of Order 1309 in order to characterize it as  
8 merely fact-finding, it is highly unlikely that the Supreme Court would be persuaded by  
9 such a tactic.

10 Furthermore, even if the Nevada Supreme Court ruled that Order 1309 was merely  
11 an exercise in “fact finding” that did not affect any party’s rights, such a ruling would not  
12 alter the fact that Plaintiffs have a ripe claim based on the State Engineer’s definitive  
13 decision reflected in the May 16, 2018 letter and reinforced by subsequent orders and  
14 other actions, to appropriate and block CSI’s use of its water rights. While the State  
15 contends that Plaintiffs will not be able to show finality of government action, Motion, 19-  
16 20, the State’s own conduct demonstrates that it will never approve Plaintiffs’ subdivision  
17 map applications or use of their groundwater rights in support thereof, regardless of Order  
18 1309’s validity.

19 The United States Supreme Court has explained that “[t]he rationales for the  
20 finality requirement underscore that nothing more than *de facto* finality is necessary.”  
21 *Pakdel v. City & Cnty. of San Francisco, California*, 141 S. Ct. 2226, 2230 (2021). “This  
22 requirement ensures that a plaintiff has actually ‘been injured by the Government’s action’  
23 and is not prematurely suing over a hypothetical harm.” *Id.* (citing *Horne v. Department*  
24 *of Agriculture*, 569 U.S. 513, 525, 133 S.Ct. 2053, 186 L.Ed.2d 69 (2013)).

25 “Along the same lines, because a plaintiff who asserts a regulatory taking must  
26 prove that the government ‘regulation has gone ‘too far,’ the court must first ‘kno[w] how  
27 far the regulation goes.’” *Id.* (citing *MacDonald, Sommer & Frates v. Yolo County*, 477  
28 U.S. 340, 348, 106 S.Ct. 2561 (1986)). “Once the government is committed to a position,

1 however, these potential ambiguities evaporate and the dispute is ripe for judicial  
2 resolution.” *Id.*

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

9 The State’s 30(b)(6) representative confirmed that CSI’s maps will not be  
10 approved. When asked “What’s changed that would allow the State Engineer to approve  
11 our subdivision maps . . .?”, the State Engineer’s representative stated, “I never said that  
12 they would be approved.” See **Exhibit 3**, 269-270. When CSI’s counsel stated, “In fact,  
13 you said they would not”, the State’s representative responded, “Right”. *Id.* at 270.  
14 Moreover, while the State Engineer continues to argue that Order 1309 does not impact  
15 any water right holder’s rights, the State Engineer’s own witness, Jason King,  
16 unequivocally confirmed that by combining multiple hydrographic basins into one, CSI’s  
17 groundwater rights have been negatively impacted. See **Exhibit 4**, 155-157 (when asked  
18 whether CSI’s water rights have been “negatively impacted in that 57 water right holders  
19 are now placed above [CSI’s] priority date”, Jason King responded, “In this new single  
20 basin, that is correct.”).

21 Thus, the State has already made clear that CSI cannot use its water for a  
22 subdivision map under Order 1309. See **Exhibit 7**. And the State Engineer refused to  
23 sign CSI’s subdivision map even during the time that Order 1309 was declared void. See  
24 **Exhibit 8**. Thus, the State Engineer has made its position clear that CSI will never be  
25 able to use its groundwater rights, regardless of whether Order 1309 is valid or not.

26 It is universally understood that “[g]overnment authorities . . . may not burden  
27 property by imposition of repetitive or unfair land-use procedures in order to avoid a final  
28 decision.” *Palazzolo v. Rhode Island*, 533 U.S. 606, 621, 121 S. Ct. 2448, 2459 (2001).

1 Therefore, the State cannot avoid a final decision through delay, including refusal to  
2 consider CSI's maps, and by making unsupported assertions that Order 1309 does not  
3 impact anyone's water rights. The Motion should be denied.

4 **V. THE SUPREME COURT'S DECISION REGARDING THE VALIDITY OF ORDER**  
5 **1309 WILL NOT ALTER THE SCOPE OF DISCOVERY IN THIS CASE.**

6 The State contends that staying this case pending resolution of the Order 1309  
7 appeal would narrow the scope of remaining discovery in this case. Motion, 20. But the  
8 State admits that Plaintiffs have already conducted substantial discovery in this case.  
9 While the State focuses on the discovery into the validity of Order 1309, Plaintiffs have  
10 also sought discovery regarding the May 16, 2018 letter, the September 2018 Draft Order,  
11 and Interim Order 1303. See Exhibits F, H, I, J, K (the Plaintiffs' written discovery  
12 propounded in this case) (included in the State's Appendix filed in support of the Motion).  
13 The Plaintiffs' discovery efforts have been appropriate and informative. Obviously, the  
14 Supreme Court's decision cannot change the discovery already completed.

15 The State's primary concern is apparently how to prepare its expert witnesses.  
16 The State argues that it does not know if it needs to prepare an expert witness on the  
17 soundness of the scientific basis for Order 1309 or on the damages under the three  
18 takings theories in the case. Motion, 21-22. First, the issue of whether substantial  
19 scientific evidence supports Order 1309 is not even before the Nevada Supreme Court  
20 right now. There may not be a decision on that issue for years, if at all. Second, the  
21 State, like any other litigant, must use its judgment to determine which experts it should  
22 retain and for what purpose. As the State concedes, it is routine for plaintiffs to include  
23 alternative theories of relief. Thus, litigants routinely must prepare experts for alternative  
24 theories. This is not inequity or hardship that warrants a stay.

25 The Nevada Supreme Court's decision, as explained above, is not going to render  
26 any of Plaintiffs' claims moot because the Court is not going to decide whether (or what  
27 kind of) a taking occurred. The Court's decision will not be dispositive of any issue in this  
28 case. Therefore, the State's request is based on speculative, uncertain future events that

are unlikely to occur. The Motion should be denied.

**VI. THE NRAP 8 STAY FACTORS ARE INAPPLICABLE TO THE STAY REQUESTED BY THE STATE.**

Though the State admits that the NRAP 8 stay factors are inapplicable to this case, the State nevertheless provides an analysis thereunder. The State's analysis is illogical given that the considerations under NRAP 8 apply when an appeal is taken of a district court order in the same case. Even if the factors could apply here, the State's arguments, which are largely repetitive of those already addressed above, are not persuasive.

The only new argument the State raises is that it has presented a substantial case on the merits in the appeal, which the State contends favors a stay. The only supporting evidence the State references is the fact that the Supreme Court stayed Judge Yeager's Order declaring Order 1309 void. However, the Supreme Court did not comment on the merits of the appeal in staying Judge Yeager's Order. Moreover, the more "compelling evidence" of the merits of the State's position in the appeal comes from the State's witness Jason King, who unequivocally confirmed that there is no statutory authority to "take six previously stand-alone basins and lump them together into a new Lower White River [Flow System] Basin." **Exhibit 4**, 156:18-22-157:2-5.

Finally, and as thoroughly discussed above, the validity of Order 1309 is not dispositive of any issue in this case. If Order 1309 is determined to be valid, it is a further State decision that implements the taking of CSI's water rights. If Order 1309 is determined to be invalid, it is a further State decision that implements the taking of CSI's water rights. The Motion should be denied.

**VII. CONCLUSION**

An indefinite, years-long stay of this case would be manifestly unjust. The Plaintiffs have diligently conducted discovery and prosecuted this case. The State's request for an indefinite stay is solely aimed at delaying the work the State has to do to prepare its experts. However, even that improper goal is based on speculation that the Supreme Court will decide issues (such as whether a taking occurred) that are not before it.

The Plaintiffs' claims are ripe and should proceed as scheduled. Accordingly, the Plaintiffs respectfully request that this Court deny the Motion.

DATED this 5<sup>th</sup> day of September, 2023.

ROBISON, SULLIVAN, &amp; BRUST

/s/ Kent R. Robison

Kent R. Robison, Esq. (#1167)  
Hannah E. Winston, Esq. (#14520)  
Robison, Sharp, Sullivan & Brust  
71 Washington Street  
Reno, Nevada 89503

**IN ASSOCIATION WITH:**

COULTHARD LAW, PLLC

/s/ William L. Coulthard

William L. Coulthard, Esq. (#3927)  
Coulthard Law PLLC  
840 South Rancho Drive #4-627  
Las Vegas, Nevada 89106

*Attorneys for Plaintiffs CS-Entities*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Robison, Sharp, Sullivan & Brust, and that I  
3 served, or caused to be served, a true and correct copy of the foregoing OPPOSITION  
4 TO DEFENDANT'S MOTION TO STAY PROCEEDINGS PENDING NEVADA  
5 SUPREME COURT'S RESOLUTION OF RELATED MATTER on all parties to this action  
6 by:

7 \_\_\_\_\_ placing an original or true copy of the foregoing in a sealed, postage prepaid,  
8 envelope in the United States mail at Reno, Nevada, addressed to:

9 \_\_\_\_\_ by emailing a true copy of the foregoing to:

10   X   by electronically serving a true copy of the foregoing through Odyssey eFileNV,  
11 this Court's e-file and serve platform, to all the participants registered to receive  
12 notice of documents filed and/or served in this case, as follows:

13 **State of Nevada:**

14 Mary Pizzariello ([mpizzariello@ag.nv.gov](mailto:mpizzariello@ag.nv.gov))  
15 Jessica Whelan ([jwhelan@ag.nv.gov](mailto:jwhelan@ag.nv.gov))  
16 Jennifer Beesley ([jbeesley@ag.nv.gov](mailto:jbeesley@ag.nv.gov))  
17 Leslie Reynolds ([lreynolds@ag.nv.gov](mailto:lreynolds@ag.nv.gov))  
18 Micheline Fairbank ([mfairbank@water.nv.gov](mailto:mfairbank@water.nv.gov))  
19 Juanita Mordhorst ([jmordhorst@water.nv.gov](mailto:jmordhorst@water.nv.gov))  
20 Dorene Wright ([dwright@ag.nv.gov](mailto:dwright@ag.nv.gov))  
21 James Bolotin ([jbolotin@ag.nv.gov](mailto:jbolotin@ag.nv.gov))  
22 Craig Newby ([cnewby@ag.nv.gov](mailto:cnewby@ag.nv.gov))  
23 Kiel Ireland ([kireland@ag.nv.gov](mailto:kireland@ag.nv.gov))  
24 Marni Watkins ([mkwatkins@ag.nv.gov](mailto:mkwatkins@ag.nv.gov))  
25 Casey Quinn ([cquinn@ag.nv.gov](mailto:cquinn@ag.nv.gov))

26 **Clark County-Coyote Springs Water Resources General Improvement**  
27 **District:**

28 Paul Taggart ([paul@legaltnt.com](mailto:paul@legaltnt.com))  
Thomas Duensing ([Tom@legaltnt.com](mailto:Tom@legaltnt.com))  
Oliver Pancheri ([opancheri@santoronevada.com](mailto:opancheri@santoronevada.com))  
Nicholas Santoro ([nsantoro@santoronevada.com](mailto:nsantoro@santoronevada.com))

**Las Vegas Valley Water District:**

Oliver Pancheri ([opancheri@nevadafirm.com](mailto:opancheri@nevadafirm.com))  
Michelle Adams ([madams@nevadafirm.com](mailto:madams@nevadafirm.com))  
Nicholas Santoro ([nsantoro@nevadafirm.com](mailto:nsantoro@nevadafirm.com))  
Jana Chaffee ([jchaffee@nevadafirm.com](mailto:jchaffee@nevadafirm.com))

**Southern Nevada Water Authority:**

Oliver Pancheri ([opancheri@nevadafirm.com](mailto:opancheri@nevadafirm.com))  
Nicholas Santoro ([nsantoro@nevadafirm.com](mailto:nsantoro@nevadafirm.com))

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Other Service Contacts not associated with a party on the case:**

Steven Anderson ([Steven.Anderson@lvvwd.com](mailto:Steven.Anderson@lvvwd.com))  
Robert Warhola ([robert.warhola@clarkcountyda.com](mailto:robert.warhola@clarkcountyda.com))  
Karen Peterson ([kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com))  
Wayne Klomp ([wayne@greatbasinlawyer.com](mailto:wayne@greatbasinlawyer.com))  
Dylan Frehner ([dfrehner@lincolncountynv.gov](mailto:dfrehner@lincolncountynv.gov))  
Cindy Shi ([cshi@allisonmackenzie.com](mailto:cshi@allisonmackenzie.com))

**Vidler Water Company:**

Karen Peterson ([kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com))

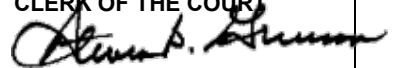
**Lincoln County Water District:**

Dylan Frehner ([dfrehner@lincolncountynv.gov](mailto:dfrehner@lincolncountynv.gov))  
Wayne Klomp ([wayne@greatbasinlawyer.com](mailto:wayne@greatbasinlawyer.com))

DATED this 5<sup>th</sup> day of September 2023.

/s/ Christine O'Brien  
Employee of Robison, Sharp, Sullivan & Brust





**APEN**

William L. Coulthard, Esq.  
Nevada Bar No. #3927  
Coulthard Law PLLC  
840 South Rancho Drive #4-627  
Las Vegas, Nevada 89106  
(702) 898-9944  
[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)

Kent R. Robison, Esq.  
Nevada Bar No. #1167  
Hannah E. Winston, Esq.  
Nevada Bar No #14520  
71 Washington Street  
Reno, Nevada 89503  
[krobison@rssblaw.com](mailto:krobison@rssblaw.com)  
[hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)

*Attorneys for Plaintiffs CS-Entities*

**DISTRICT COURT  
CLARK COUNTY NEVADA**

COYOTE SPRINGS INVESTMENT, LLC, a  
Nevada Limited Liability Company;  
COYOTE SPRINGS NEVADA, LLC, a  
Nevada limited liability company; and  
COYOTE SPRINGS NURSERY, LLC, a  
Nevada limited liability company,

Plaintiffs,

vs.

STATE OF NEVADA, on relation to its  
Division of Water Resources;  
DEPARTMENT OF CONSERVATION and  
NATURAL RESOURCES; ADAM  
SULLIVAN, Nevada State Engineer;  
CLARK-COUNTY-COYOTE SPRINGS  
WATER RESOURCES GENERAL  
IMPROVEMENT DISTRICT, a political  
subdivision of the State of Nevada; and  
Does I through X.

Defendants.

Case No.: A-20-820384-B  
Dept.: 13

**APPENDIX OF EXHIBITS TO  
OPPOSITION TO DEFENDANT'S  
MOTION TO STAY PROCEEDINGS  
PENDING NEVADA SUPREME  
COURT'S RESOLUTION OF RELATED  
MATTER**

Plaintiffs Coyote Springs Investment, LLC, Coyote Springs Nevada, LLC and  
Coyote Springs Nursery, LLC ("CS-Entities") hereby file this Appendix of Exhibits to

Opposition to Defendant's Motion to Stay Proceeding Pending Nevada Supreme Court's Resolution of Related Matter.

**EXHIBIT INDEX**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>	<b><u>Pages</u></b>
1	Proposed Third Amended Complaint (excluding exhibits)	47
2	May 16, 2018, Letter from State Engineer	3
3	Excerpts of Deposition Transcript of State's 30(b)(6)	6
4	Excerpts of Deposition Transcript of Jason King	7
5	Interim Order 1309	17
6	Order 1309	68
7	June 17, 2020 Letter from State Engineer	3
8	May 2, 2022 email from Christi Cooper, Water Commissioner for the Nevada Division of Water Resources	2
9	Order Modifying Caption and Setting Briefing Schedule	7

**AFFIRMATION:** Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

DATED this 5<sup>th</sup> day of September, 2023.

ROBISON, SULLIVAN, & BRUST

/s/ Kent R. Robison

Kent R. Robison, Esq. (#1167)  
Hannah E. Winston, Esq. (#14520)  
Robison, Sharp, Sullivan & Brust  
71 Washington Street  
Reno, Nevada 89503

///

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN ASSOCIATION WITH:**

COULTHARD LAW, PLLC

/s/ William L. Coulthard  
William L. Coulthard, Esq. (#3927)  
Coulthard Law PLLC  
840 South Rancho Drive #4-627  
Las Vegas, Nevada 89106

*Attorneys for Plaintiffs CS-Entities*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Robison, Sharp, Sullivan & Brust, and that I  
3 served, or caused to be served, a true and correct copy of the foregoing **APPENDIX OF**  
4 **EXHIBITS TO OPPOSITION TO DEFENDANT'S MOTION TO STAY PROCEEDINGS**  
5 **PENDING NEVADA SUPREME COURT'S RESOLUTION OF RELATED MATTER**  
6 on all parties to this action by:

7 \_\_\_\_\_ placing an original or true copy of the foregoing in a sealed, postage prepaid,  
8 envelope in the United States mail at Reno, Nevada, addressed to:

9 \_\_\_\_\_ by emailing a true copy of the foregoing to:

10   X   by electronically serving a true copy of the foregoing through Odyssey eFileNV,  
11 this Court's e-file and serve platform, to all the participants registered to receive  
12 notice of documents filed and/or served in this case, as follows:

13 **State of Nevada:**

14 Mary Pizzariello ([mpizzariello@ag.nv.gov](mailto:mpizzariello@ag.nv.gov))  
15 Jessica Whelan ([jwhelan@ag.nv.gov](mailto:jwhelan@ag.nv.gov))  
16 Jennifer Beesley ([jbeesley@ag.nv.gov](mailto:jbeesley@ag.nv.gov))  
17 Leslie Reynolds ([lreynolds@ag.nv.gov](mailto:lreynolds@ag.nv.gov))  
18 Micheline Fairbank ([mfairbank@water.nv.gov](mailto:mfairbank@water.nv.gov))  
19 Juanita Mordhorst ([jmordhorst@water.nv.gov](mailto:jmordhorst@water.nv.gov))  
20 Dorene Wright ([dwright@ag.nv.gov](mailto:dwright@ag.nv.gov))  
21 James Bolotin ([jbolotin@ag.nv.gov](mailto:jbolotin@ag.nv.gov))  
22 Craig Newby ([cnewby@ag.nv.gov](mailto:cnewby@ag.nv.gov))  
23 Kiel Ireland ([kireland@ag.nv.gov](mailto:kireland@ag.nv.gov))  
24 Marni Watkins ([mkwatkins@ag.nv.gov](mailto:mkwatkins@ag.nv.gov))  
25 Casey Quinn ([cquinn@ag.nv.gov](mailto:cquinn@ag.nv.gov))

26 **Clark County-Coyote Springs Water Resources General Improvement**  
27 **District:**

28 Paul Taggart ([paul@legaltnt.com](mailto:paul@legaltnt.com))  
Thomas Duensing ([Tom@legaltnt.com](mailto:Tom@legaltnt.com))  
Oliver Pancheri ([opancheri@santoronevada.com](mailto:opancheri@santoronevada.com))  
Nicholas Santoro ([nsantoro@santoronevada.com](mailto:nsantoro@santoronevada.com))

29 **Las Vegas Valley Water District:**

30 Oliver Pancheri ([opancheri@nevadafirm.com](mailto:opancheri@nevadafirm.com))  
31 Michelle Adams ([madams@nevadafirm.com](mailto:madams@nevadafirm.com))  
32 Nicholas Santoro ([nsantoro@nevadafirm.com](mailto:nsantoro@nevadafirm.com))  
33 Jana Chaffee ([jchaffee@nevadafirm.com](mailto:jchaffee@nevadafirm.com))

34 **Southern Nevada Water Authority:**

35 Oliver Pancheri ([opancheri@nevadafirm.com](mailto:opancheri@nevadafirm.com))  
36 Nicholas Santoro ([nsantoro@nevadafirm.com](mailto:nsantoro@nevadafirm.com))

**Other Service Contacts not associated with a party on the case:**

Steven Anderson ([Steven.Anderson@lvvwd.com](mailto:Steven.Anderson@lvvwd.com))  
Robert Warhola ([robert.warhola@clarkcountyda.com](mailto:robert.warhola@clarkcountyda.com))  
Karen Peterson ([kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com))  
Wayne Klomp ([wayne@greatbasinlawyer.com](mailto:wayne@greatbasinlawyer.com))  
Dylan Frehner ([dfrehner@lincolncountynv.gov](mailto:dfrehner@lincolncountynv.gov))  
Cindy Shi ([cshi@allisonmackenzie.com](mailto:cshi@allisonmackenzie.com))

**Vidler Water Company:**

Karen Peterson ([kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com))

**Lincoln County Water District:**

Dylan Frehner ([dfrehner@lincolncountynv.gov](mailto:dfrehner@lincolncountynv.gov))  
Wayne Klomp ([wayne@greatbasinlawyer.com](mailto:wayne@greatbasinlawyer.com))

DATED this 5<sup>th</sup> day of September, 2023.

/s/ Christine O'Brien

Employee of Robison, Sharp, Sullivan & Brust

# **EXHIBIT 1**

# **EXHIBIT 1**

**TAC**

William L. Coulthard, Esq.  
Nevada Bar No. #3927  
wlc@coulthardlaw.com  
COULTHARD LAW PLLC  
840 South Rancho Drive #4-627  
Las Vegas, Nevada 89106  
(702) 898-9944

Kent R. Robison, Esq.  
Nevada Bar No. #1167  
krobison@rssblaw.com  
Hannah E. Winston, Esq.  
Nevada Bar No. #14520  
hwinston@rssblaw.com  
ROBISON, SHARP, SULLIVAN & BRUST  
71 Washington Street  
Reno, NV 89503  
(775) 329-3151  
*Attorneys for Plaintiffs CS-Entities*

**DISTRICT COURT**

**CLARK COUNTY NEVADA**

COYOTE SPRINGS INVESTMENT, LLC,  
a Nevada Limited Liability Company;  
COYOTE SPRINGS NEVADA, LLC, a  
Nevada limited liability company; and  
COYOTE SPRINGS NURSERY, LLC, a  
Nevada limited liability company,

Plaintiffs,  
vs.

STATE OF NEVADA, on relation to its  
Division of Water Resources;  
DEPARTMENT OF CONSERVATION  
and NATURAL RESOURCES; ADAM  
SULLIVAN, Nevada State Engineer; and  
Does I through X.

Defendants.

Case No.: A-20-820384-B  
Dept.: 13

**PLAINTIFFS' [PROPOSED] THIRD  
AMENDED COMPLAINT FOR  
DAMAGES AND DEMAND FOR JURY  
TRIAL**

Plaintiffs COYOTE SPRINGS INVESTMENT LLC, a Nevada limited liability  
company; COYOTE SPRINGS NEVADA LLC, a Nevada limited liability company; and  
COYOTE SPRINGS NURSERY LLC, a Nevada limited liability company allege as

1 follows.

2  
3 I.

4 **OVERVIEW**

5 Starting early 2018, the Department of Conservation and Natural Resources  
6 (herein the “State Engineer”) initiated a plan to deprive the Plaintiffs of their right to use  
7 valuable water rights which in turn has resulted in Plaintiffs losing their valuable  
8 entitlements, valuable real property interests and seniority in their water rights.

9 Plaintiffs have justifiably relied on their water permits, former Orders and Rulings  
10 issued by the State Engineer and the Doctrine of Prior Appropriation to invest over  
11 \$300,000,000 in their ownership and development of their approved master planned  
12 community in Clark County, Nevada.

13 On May 16, 2018, the State Engineer condemned the Plaintiffs’ rights to use their  
14 permitted and certificated water rights, real property interests, entitlements, and senior  
15 water rights.

16 The State Engineer condemned Plaintiffs’ property rights in a continuation of  
17 orders since May 16, 2018, to further effectuate the taking of Plaintiffs’ property rights.

18 These acts of inverse condemnation by taking actions as further described below  
19 were accomplished without paying Plaintiffs just compensation for the property rights  
20 taken and appropriated to others.

21 The value of the property rights taken and appropriated to others exceed \$1.5  
22 billion.

23  
24 II.

25 **INTRODUCTION**

26 1. Nevada’s water law statutes are rooted in the doctrine of prior appropriation,  
27 or “first in time, first in right”. It is universally understood that the priority of a water right  
28 is its most valuable component. See Gregory J. Hobbs, Jr., *Priority: The Most*



1 *Misunderstood Stick in the Bundle*, 32 Env'tl. L. 37, 43 (2002) ("Priority determines the  
2 value of a water right").

3 2. In fact, courts have explained that "[a] priority in a water right is property in  
4 itself"; therefore, "to deprive a person of his priority is to deprive him of a most valuable  
5 property right." *Colorado Water Conservation Bd. v. City of Cent.*, 125 P.3d 424, 434  
6 (Colo. 2005) (internal quotation marks omitted).

7 3. The Nevada Supreme Court agrees and has reiterated that "a loss of priority  
8 that renders rights useless 'certainly affects the rights' value' and 'can amount to a de  
9 facto loss of rights.'" *Wilson v. Happy Creek, Inc.*, 135 Nev. 301, 313, 448 P.3d 1106,  
10 1115 (2019) (quoting *Andersen Family Assocs. v. State Eng'r.* 124 Nev. 182, 190, 191,  
11 179 P.3d 1201 (2008)).

12 4. In the late 1960's, the Nevada State Engineer and the federal government  
13 identified 232 hydrographic basins in the State of Nevada. Since that time, and consistent  
14 with the mandates of Nevada's water law statutes, the State Engineer has managed water  
15 rights by the individual basin in which the water rights are appropriated.

16 5. Because water rights are granted in specific basins, they have also been  
17 managed based on the basin in which they are located. As a result, the priority rights of  
18 a water rights holder in a specific basin are managed in relation to and based on the dates  
19 of priority of the other water rights holders located in the same basin.

20 6. This concept is reflected in the Nevada water law statutes, which require,  
21 for example, curtailment based on the date of priority of a water right in a specific basin.  
22 See, e.g., NRS 534.110 (allowing under specific circumstances curtailment conforming  
23 to priority rights in a basin); NRS 534.090(3)(g) (referring to "[t]he date of priority of the  
24 water right as it relates to the potential curtailment of water use in the basin").

25 7. Finding adequate groundwater was available for appropriation in Coyote  
26 Spring Hydrographic Basin (Basin 210), the State Engineer's office issued Permit 46777  
27  
28

1 to Nevada Power Company, which was purchased by Coyote Springs Investment, LLC  
2 (“CSI”) as a senior groundwater right in Basin 210.

3 8. Relying on these senior groundwater rights, the Plaintiffs have invested  
4 millions of dollars into their master planned community located in Clark County, Nevada.

5 9. Additionally, the Plaintiffs entered contracts with Lincoln County Water  
6 District and Vidler Water Company (collectively referred to as “Lincoln Vidler”) to purchase  
7 an additional 1,000 afa of senior groundwater rights in Kane Spring Hydrographic Basin  
8 (Basin 206) to be used for the master planned community.

9 10. The taking of CSI’s water rights and other property arose from the State  
10 Engineer’s change in the basin-by-basin water management protocol through various  
11 orders and decisions, beginning with the May 16, 2018, letter and through the June 15,  
12 2020, Order 1309.

13 11. Rather than manage the Plaintiffs’ water rights in the individual basins in  
14 which they are held, the State Engineer has combined seven previously separate basins  
15 into a single consolidated basin.

16 12. In so doing, the State Engineer has taken Plaintiffs’ senior groundwater  
17 rights in the Coyote Spring Hydrographic Basin and appropriated them for use by other  
18 water right holders located in other groundwater basins.

19 13. Consequently, the State Engineer has rendered Plaintiffs’ land unusable  
20 and valueless because it cannot be developed without groundwater.

### 21 III.

### 22 **PARTIES AND JURISDICTION**

23 14. Plaintiff COYOTE SPRINGS INVESTMENT LLC is a Nevada limited liability  
24 company (“CSI”) doing business in Clark County, Nevada. It owns valuable water rights  
25 and land intended to be developed with those water rights. Based on having water rights,  
26 CSI received valuable property rights in the form of entitlements to develop.  
27  
28

1           15. COYOTE SPRINGS NEVADA LLC is a Nevada limited liability company  
2 ("CS-Nevada") doing business in Clark County, Nevada. It owns land in Clark County  
3 approved for development with the right to use water rights permitted and certificated to  
4 affiliate CSI. CS-Nevada is the entity intended to act as land developer for the master  
5 planned community.

6           16. COYOTE SPRINGS NURSERY LLC is a Nevada limited liability company  
7 ("CS-Nursery") doing business in Clark County, Nevada. CS-Nursery has the right to use  
8 water permitted and held by affiliate CSI.

9           17. When referred to together, CSI, CS-Nevada, and CS-Nursery shall be  
10 referred to as "Plaintiffs" or "CS-Entities".

11           18. The State Engineer's taking of CSI's water rights has caused CSI, CS-  
12 Nevada, and CS-Nursery to lose valuable land, entitlements, and senior water rights  
13 without compensation in violation of the Fifth Amendment of the United States  
14 Constitution and Nevada Constitution.

15           19. The State Engineer is a division of the State of Nevada Department of  
16 Conservation and Natural Resources. Adam Sullivan is the current Nevada STATE  
17 ENGINEER.

18           20. The State Engineer has taken the Plaintiffs' vested, senior water rights  
19 located in Coyote Spring Hydrographic Basin and Kane Springs Hydrographic Basin and  
20 as a result has destroyed and taken Plaintiff's right to develop 6,937.66 acres of Plaintiffs'  
21 land in Clark County, Nevada, for residential and commercial purposes.

22           21. This land has been planned, designed, mapped, approved, and partially  
23 constructed as a Major Project in Clark County, Nevada (the "Approved Major Project" or  
24 the "master planned community").

25           22. Venue and jurisdiction are appropriate in this Court as Plaintiffs allege that  
26 the Defendant STATE OF NEVADA, on relation to its Division of Water Resources,  
27 Department of Conservation and Natural Resources, and its State Engineers (hereinafter  
28

1 the "State" and/or the "State Engineer") have taken CSI's real property, including its water  
2 rights, in Clark County, Nevada.

3 23. The true names and capacities, whether individual, corporate, associates  
4 or otherwise, of Defendants herein designated as DOES I through X inclusive are  
5 unknown to the Plaintiffs CS-Entities at this time, who therefore sue said Defendants by  
6 such fictitious names. Plaintiffs are informed and believe and thereon allege that each of  
7 said DOES Defendants may have conspired with the State and/or participated in the  
8 wrongful events and happenings and proximately caused the injuries and damages herein  
9 alleged. Plaintiffs may, as allowed under NRCP 15, seek leave to amend this Complaint  
10 to allege their true names and capacities as they are ascertained.

11 24. This lawsuit was initially filed in the Eighth Judicial District Court, Clark  
12 County, Nevada, where venue is proper, as the Coyote Springs development, and its  
13 master planned community, processed and fully entitled under Clark County Code Title  
14 30, is located in Clark County, Nevada.

15 25. Many of the claims and the underlying facts arose, and the causes of action  
16 plead herein, relate to CS-Entities' real property rights, including but not limited to its  
17 approved Clark County Major Project development and land use entitlement rights, and  
18 the prohibited and wrongful delay and blocking of CS-Entities' use and enjoyment of its  
19 Clark County real property, including but not limited to, its certificated and permitted water  
20 rights in Clark and Lincoln Counties, Nevada.

21 26. Many of the witnesses in this case reside in Clark County, Nevada. On  
22 October 1, 2020, Defendants removed this case to United States District Court for the  
23 District of Nevada. On September 28, 2021, the United States District Court entered an  
24 Order remanding this action back to State Court.

25  
26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IV.

**STATEMENT OF FACTS**

**A. CS-Entities' Land and Senior Water Rights.**

27. In 1998, the CS-Entities acquired approximately 6,937.66 acres in Clark County for the master-planned community.

28. Specifically, Coyote Springs Investment, LLC acquired 3,933.51 acres; Coyote Springs Nevada, LLC later acquired 2,986.66 acres; and Coyote Springs Nursery, LLC later acquired 17.49 acres.

29. The CS-Entities have been working to develop their master planned community on the 6,937.66 acres in Clark County.

30. To develop the master planned community, Coyote Springs Investment, LLC has also acquired for its beneficial use 5,090 acre feet annually ("afa") of vested, senior water rights, which are held as follows:

a. **Permit No. 70429:** 1,250 afa certificated water rights held in Basin 210 with a priority date of March 31, 1983. 1,250 afa were conveyed to the Coyote Springs General Improvement District ("CSGID") to be held in trust for the CS-Entities to put to beneficial use for the master planned community.

b. **Permit No. 74094:** 750 afa permitted water rights held in Basin 210 with a priority date of March 31, 1983. 750 afa were conveyed to the CSGID to be held in trust for the CS-Entities to put to beneficial use for the master planned community.

c. **Permit No. 70430:** 1,600 afa permitted water rights held in Basin 210 with a priority date of March 31, 1983. CSI relinquished 460 afa back to the State in care of the State Engineer in accord with the U.S. Fish and Wildlife Service as CS-Entities' mitigation for any potential Muddy River instream water level flow decreases potentially associated with the CS-Entities' Approved Major Project for the purpose of furthering the survival and recovery of the endangered Moapa dace fish and its habitat. Thus, CSI holds 1,140 under Permit 70430.

d. **Permit No. 74095:** 500 afa permitted water rights held in Basin 210 with a priority date of March 31, 1983.

1 e. **Permit No. 91200:** 250 afa permitted water rights held in Basin 210  
2 with a priority date of March 31, 1983.

3 f. **Permit No. 91201:** 250 afa permitted water rights held in Basin 210  
4 with a priority date of March 31, 1983.

5 g. **Permit Nos. 72220, 72221, 82727, and 82728:** collectively, these  
6 permits, issued in Basin 206, allow for the use of 1,000 afa and have a priority date  
7 of February 14, 2005. CSI holds a joint, undivided ownership interest in 172.96  
8 afa, and the contractual right to acquire an additional 200.52 afa of permitted  
9 groundwater rights under Permit 72220. CSI holds a joint, undivided ownership  
10 interest in 74 afa, and the contractual right to acquire an additional 299.48 afa of  
11 permitted groundwater rights under Permit 72221. CSI holds a joint, undivided  
ownership interest in 500 afa, and the contractual right to acquire the entire  
ownership interest therein under groundwater rights Permit 82727. CSI holds  
contractual ownership interests and the contractual right to acquire 500 afa of  
permitted groundwater rights under Permit 82728 (collectively the "Kane Springs  
Water Rights").

12 h. Per the Memorandum of Agreement,<sup>1</sup> CSI must relinquish 5% of the  
13 1,000 afa of Kane Springs Water Rights, resulting in 950 afa in Kane Springs Water  
Rights.

14 31. In relation to the groundwater in Basin 210, NPC (CSI's predecessor in  
15 interest) spent over a million dollars on groundwater monitoring and inventory studies to  
16 better understand any hydrogeological connection between Coyote Springs Valley and  
17 the groundwater, springs, and river flow in the Muddy River Springs Area.

18 32. NPC further contracted with an engineering firm to conduct exploratory  
19 drilling at specific sites to establish realistic diversion points.

20 33. NPC additionally engaged the engineering firm to model the groundwater  
21 system in Coyote Springs Valley.

22 34. At the time the State Engineer granted NPC's application to appropriate  
23 groundwater in Basin 210 in Ruling 4542, the State Engineer found that the perennial  
24

25  
26  
27 <sup>1</sup> In 2006, CSI entered a memorandum of agreement (the "MOA") with Moapa Valley Water District  
28 ("MVWD"), United States Fish and Wildlife Service ("FWS"), Southern Nevada Water Authority ("SNWA"),  
and the Moapa Band of Paiutes (the "Paiutes"), which adopted mitigation policies to support the Moapa  
dace, a protected species, while CSI continued developing the Community.

1 yield of Basin 210 was at least 18,000 afa, which was more than adequate to grant the  
2 application for NPC's water rights later purchased by CSI.

3 35. The State Engineer confirmed that NPC's groundwater rights in Basin 210  
4 would not conflict with existing rights and would not be detrimental to the public interest.

5 36. CSI paid NPC approximately \$5,000,000 for the water rights held in Basin  
6 210, which are the second most senior water rights in Basin 210.

7 37. Thus, at the time CSI acquired its groundwater rights in Basin 210 from  
8 NPC, significant research, investigation, and study had been conducted, all of which  
9 confirmed that adequate groundwater was available in Basin 210 to support the  
10 groundwater permits CSI acquired from NPC.

11 38. CSI has paid more than \$8,500,00 for the water rights held in Basin 206  
12 and will have paid at least \$13,500,000 in total when the contract with Lincoln Vidler is  
13 fully performed. The 1,000 afa of groundwater rights in Basin 206 are the most senior  
14 groundwater rights in the basin.

15 39. At the time the State Engineer granted the application to appropriate the  
16 1,000 afa in Basin 206 in Ruling 5712, the State Engineer found that the 1,000 afa was  
17 available for appropriation, that such appropriation would not cause a conflict with existing  
18 rights, and that it would not be detrimental to the public interest to appropriate 1,000 afa  
19 in Basin 210.

20 40. In Ruling 5712, the State Engineer expressly recognized that the 1,000 afa  
21 of groundwater rights would be used for CSI's master planned community.

22 41. The Plaintiffs reasonably and justifiably relied on the State Engineer's  
23 findings, conclusions, and approvals in both Ruling 4542 and Ruling 5712 related to the  
24 adequate availability of groundwater to support CSI's groundwater rights in Basins 210  
25 and 206 in purchasing those water rights and thereafter, in investing substantial sums  
26 into developing those water rights and proceeding with the master planned community.

27  
28 ///

1                   **B. Relying on the State Engineer's Assurances of Available Groundwater,**  
2                   **the CS-Entities' Proceed with Developing the Master Planned**  
3                   **Community.**

4                   42.     The CS-Entities acquired the above-described land and senior water rights  
5                   for use in the master planned community.

6                   43.     Relying on the State Engineer's findings and conclusions that adequate  
7                   water was available to support CSI's groundwater rights in Basin 206 and Basin 210, for  
8                   the past 15+/- years, CS-Entities have completed, submitted, and processed land use  
9                   entitlements and zoning applications, permits and approvals for its Coyote Springs'  
10                  Approved Major Project in Clark County.

11                 44.     The CS-Entities have submitted and obtained multiple government and  
12                 regulatory approvals for infrastructure, maps and plans, including tentative maps,  
13                 submitted and recorded large parcel maps, parent final maps for the purpose of  
14                 subsequent residential subdivision maps and related property development and sales, all  
15                 in furtherance of its planned development of its master planned community.

16                 45.     These zoning, land use and construction applications and permits have  
17                 been submitted to numerous Federal, State and County agencies including the State, the  
18                 State Engineer, the CSGID, the Las Vegas Valley Water District ("LVVWD"), the Clark  
19                 County Water Reclamation District ("CCWRD") and Clark County, Nevada.

20                 46.     In further reliance on the State Engineer's findings, conclusions, and  
21                 representations that adequate groundwater was available to support CSI's groundwater  
22                 rights in Basin 210 and Basin 206, and as part of its ongoing efforts to develop the master  
23                 planned community, the CS-Entities submitted and obtained Clark County's approval of  
24                 Coyote Springs as a Major Project, pursuant to Clark County ("CC") Code 30.20.30, and  
25                 further submitted and obtained Clark County's approval of the following Major Project  
26                 development submittals:

- 27                         a.     Coyote Springs Concept Plan (MP-1424-01) approved on February  
28                         6, 2002.



1           b. Coyote Springs' Public Facilities Needs Assessment (PFNA) (MP-  
2 0540-02) approved on May 22, 2002.

3           c. Coyote Springs Specific Plan (MP-0853-02), first approved on  
4 August 7, 2002, and then later amended on August 2, 2006, and then again  
5 amended and approved on September 17, 2008 (MP-0760-08).

6           d. CSGID created by Ordinance by the Clark County Board of County  
7 Commissioners in October 2006, subject of Clark County Board of Commissioners  
8 Ordinance # 3456, Bill # 10-17-06-2, along with the initiating Service Plan and  
9 Operations Management Agreement among CSI, CSGID, LVVWD and CCWRD  
10 all for purposes of operating and providing water and wastewater facilities and  
11 services in the master planned community.

12           e. Coyote Springs' zone change request (ZC-1401-02) which included  
13 master development agreement (DA-1400-02) for the master planned community  
14 was approved on December 18, 2002 pursuant to Development Agreement  
15 Ordinance #2844 that was effective January 1, 2003, and later amended by that  
16 certain First Amendment and Restatement to Development Agreement dated  
17 August 4, 2004 and recorded September 16, 2004 in Clark County Official Records  
18 as Book 20040916-0004436.

19           f. In 2003, a use permit, UC-1493-03, was approved for a water  
20 pumping station, power substation, and other related ancillary utility structures, and  
21 another use permit, UC-0335-04 was approved for power transmission lines on  
22 April 8, 2004.

23           g. Approved 125-acre Tourist Commercial zoning that includes a 40-  
24 acre Gaming Enterprise District approved on December 17, 2008 (ZC-0947-08),  
25 and the conditions therein extended until December 2024, pursuant to ET 0184-  
26 16 which was approved on February 8, 2017.

27           47. CS-Entities' Approved Major Project status, memorialized by Clark County  
28 Ordinances, establishes and confirms a vested property interest authorizing the CS-  
Entities' development of its Approved Major Project, in Clark County, Nevada. CS-  
Entities' Approved Major Project has been designed and pursued in furtherance of the  
CS-Entities' investment backed development expectations when it acquired the Coyote  
Springs property and its Coyote Springs' groundwater rights.

          48. CS Entities' Approved Major Project in Clark County was memorialized  
through County Ordinances, recorded with the respective County Recorders, which

1 worked to place the public, as well as the State, on notice of the Plaintiffs' master planned  
2 community plans.

3 **C. The State Engineer Continued to Confirm and Protect CSI's Senior**  
4 **Groundwater Rights From 2000 to 2017.**

5 49. In 2001, several parties filed applications for new and additional  
6 groundwater rights in the Coyote Spring Valley Hydrographic Basin (Basin 210), Black  
7 Mountains Area Hydrographic Basin (Basin 215), Garnet Valley Hydrographic Basin  
8 (Basin 216), Hidden Valley (north) Hydrographic Basin (Basin 217), Muddy River Springs  
9 Area a.k.a. Upper Moapa Valley Hydrographic Basin (Basin 219), and Lower Moapa  
10 Valley Hydrographic Basin (Basin 220).

11 50. In response, the State Engineer issued Order 1169 on March 8, 2002,  
12 explaining that the applications would be "held in abeyance" due to insufficient information  
13 to determine if additional water was available for appropriation under these new  
14 applications.

15 51. In Order 1169, the State Engineer recognized that certain parties, including  
16 CSI, already had interests in water rights permitted from the carbonate aquifer system,  
17 thereby acknowledging the existence and validity of CSI's senior water rights.

18 52. The State Engineer further acknowledged significant research had already  
19 been done but explained that several complicated factors needed to be addressed to  
20 determine whether additional water was available for new appropriations in these basins.

21 53. Thus, the State Engineer ordered the applicants to conduct a study covering  
22 a five-year period of time during which at least 50% of the water rights then-permitted in  
23 CSV be pumped for at least two consecutive years. The applicants, which included CS-  
24 Entities, were to pay for the studies and were to file a report with the State Engineer within  
25 180 days of the end of the fifth consecutive year.

26 54. The State Engineer, in Ruling 5712, which granted the application to  
27 appropriate 1,000 afa in the Kane Springs Hydrographic Basin (Basin 206) expressly  
28

1 excluded water right holders in that basin from inclusion in the pump tests because there  
2 was a lack of evidence of hydrological connectivity.

3 55. Following the issuance of Order 1169, CSI engaged in the pump tests of  
4 the wells in the Coyote Spring Valley basin from 2010 to 2012. Other pump test  
5 participants and CSI filed their reports in 2013.

6 56. In January 2014, the State Engineer issued Ruling 6255 and 6254, both of  
7 which denied the pending applications for new and additional water rights in Coyote  
8 Spring Valley Hydrographic Basin.

9 57. Relying on the 1169 Pump Test results, the State Engineer found that  
10 granting **additional** water rights in Coyote Spring Valley basin could cause a decline in  
11 down gradient water levels that would conflict with senior water rights.

12 58. Importantly, Ruling 6255 worked to protect **existing** water rights, including  
13 CS-Entities' water rights, from any new appropriations by denying the pending new  
14 groundwater applications on the basis that existing water rights, such as CS-Entities'  
15 rights, must be protected.

16 59. Notably, Ruling 6255 acknowledged that the perennial yield for Basin 210  
17 was 18,000 afa, in accordance with Ruling 4542 issued in 1997. Ruling 6255 did not  
18 change the perennial yield of Basin 210 even after the pump tests were concluded.

19 60. Rulings 5712 and 6255 gave further reassurance to CSI that its senior  
20 groundwater rights in Basin 210 and Basin 206 were valid and being protected by the  
21 State Engineer.

22 61. The State Engineer has never conducted or ordered pump tests to be  
23 conducted exclusively in Basin 210 to determine whether pumping **only** in Basin 210  
24 would adversely affect the Muddy River Springs Area or the habitat of the Moapa dace.

25 ///

26 ///

27 ///

28 ///

1           **D. Relying on the State Engineer's Continued Confirmation and Protection**  
2           **of CSI's Senior Groundwater Rights in Basin 206 and Basin 210, CSI**  
3           **Reasonably Invests Tens of Millions of Dollars into the Master Planned**  
4           **Community.**

5           62. Based on their reasonable, investment backed expectations derived from  
6           the State Engineer's repeated assurances that adequate groundwater was available to  
7           support CSI's senior groundwater rights in Basin 210 and Basin 206, the CS-Entities  
8           continued to develop, construct, and sell commercial and residential property within the  
9           master planned community.

10          63. CS-Entities prepared, processed, and obtained permits, construction plans,  
11          permits, and numerous approvals for community infrastructure.

12          64. CSI further obtained four recorded large parcel maps for development of  
13          the master planned community with numerous agencies' approval, including the State  
14          Engineer, LVVWD, and Clark County.

15          65. Multiple permits, applications, improvements, maps and plans have been  
16          approved and the CS-Entities have designed, developed, and constructed significant  
17          infrastructure improvements to support the master planned community.

18          66. Specifically, CS-Entities constructed and are operating a \$40,000,000 Jack  
19          Nicklaus Signature designed golf course, which opened to the public since May 2008.<sup>2</sup>

20          67. CS-Entities designed and constructed as an amenity and to protect the  
21          master planned community, a 325-acre flood control detention basin.

22          68. The flood control detention basin is the subject of a dam safety permit  
23          issued by the State Engineer.

24          69. CS-Entities also designed, entitled, and constructed a groundwater  
25          treatment plant, which includes two 1,000,000-gallon water storage tanks.

---

26          <sup>2</sup> The Coyote Springs Golf Course operation was built as an amenity to serve the master planned  
27          community. The Golf Course has operated at a significant annual loss since its inception and is expected  
28          to continue to operate at a loss until the planned residential community is substantially built out with homes  
                within the master planned community.

1           70. CS-Entities also designed, entitled, and constructed a wastewater  
2 treatment plant and an initial package treatment plant.

3           71. CS-Entities, in conjunction with Lincoln County Power District, designed  
4 and constructed electrical power facilities, including a three-megawatt electrical  
5 substation and appurtenant equipment.

6           72. All of the above facilities and amenities have been considered and approved  
7 by the State and its Nevada Division of Water Resources and Nevada Division of  
8 Environmental Protection.

9           73. CS-Entities have also constructed four groundwater production wells (Well  
10 1, Well 2, Well 3, and Well 4), two of which, Well 1 and Well 4, are in full operational use  
11 at the present time and were constructed to culinary municipal well standards as required  
12 by the LVVWD as manager of the CSGID, all approved by the State and its State Engineer  
13 in 2013, with significant enhancements to make them compliant with municipal well  
14 standards at a cost in excess of \$20,000,000.

15           74. CSI dedicated 2,000 afa to the CSGID pursuant to a contract titled the  
16 Amended Multi-Party Agreement dated July 7, 2015, for CSI's beneficial use for the  
17 master planned community. The water dedicated to CSGID is for the sole use and benefit  
18 of the CS-Entities' right to develop the master planned community. By imposing a  
19 moratorium on CSI's subdivision maps and development efforts, the State Engineer has  
20 taken and condemned the water CSI dedicated to the CSGID for the benefit of the master  
21 planned community.

22           75. Moreover, and with the approvals of the various government agencies,  
23 including the State and subdivisions of the State, CS-Entities developed, permitted, and  
24 constructed roads and streets and installed miles of associated underground utilities,  
25 including water, treated water / wastewater, fiber-optic, electric lines and a 3-megawatt  
26 substation, in the Coyote Springs Development within Clark County.

1           76. This development, and its associated development costs, have all been  
2 incurred based upon the CS-Entities' reasonable investment backed expectations and  
3 assurances from the State Engineer that adequate groundwater existed to support CSI's  
4 groundwater rights in Basin 210 and Basin 206, in compliance with all submitted and  
5 approved plans, done in furtherance of its master planned community and Development  
6 Agreement related thereto, done in furtherance of its real property rights, and with  
7 assurance and reliance upon the State and the STATE ENGINEER's approval of the use  
8 and enjoyment of its certificated and permitted water rights the CS-Entities acquired in  
9 the Coyote Spring Valley as well as the Kane Springs Valley in support of the Coyote  
10 Springs planned development of its master planned community.  
11

12           77. When CS-Entities acquired the 6,937.66 acres and its certificated and  
13 permitted water rights to be used in its master planned community, it had reasonable  
14 investment backed expectations that it would be able to develop, construct, market, and  
15 sell its master planned community.

16           78. The State Engineer's appropriation of 1,000 afa of groundwater rights in  
17 Ruling 5712, was made with the explicit and expressed understanding that the water  
18 rights would be used for the master planned community, which provided further  
19 assurance to CS-Entities to proceed with the development.

20           79. Moreover, CS-Entities have relied upon and taken extensive action at the  
21 Coyote Springs Development based upon the approvals of the agencies listed above, but  
22 most particularly, those of the State and its State Engineer, to proceed with its master  
23 planned community.

24           80. CSI, in particular has relied on the approvals of the State, and its State  
25 Engineer, recognizing that CSI could use its certificated and permitted water rights,  
26 including its reuse water rights, in the master planned community in order to support  
27 operation of the golf course, all of its construction efforts, and ultimately to support the  
28

1 approved residential and commercial development planned for the master planned  
2 community.

3 81. Consistent with its reasonable investment backed expectations to develop  
4 its master planned community, and in further reliance on the State Engineer's Ruling 6255  
5 and Ruling 5712 protecting its certificated and permitted water rights, CS-Entities have  
6 pumped for beneficial use, and continued to pump between 1400- and 2000 afa annually  
7 from its wells in the Coyote Spring Valley Basin.

8 82. Currently, approximately 1,100 afa are being pumped to support the existing  
9 and operational golf course; however, CSI intends to put all of its water rights to beneficial  
10 use to support the master planned community, and then reuse wastewater for the golf  
11 course.

12 83. CS-Entities have adopted, and Clark County has approved via its Major  
13 Plan Approval and Development Agreement, an aggressive water conservation plan for  
14 the master planned community.

15 84. This plan includes significant reuse of water that is pumped from the  
16 groundwater, including use of recycled water on its golf courses, common areas, and  
17 public parks. CS-Entities' water conservation goals are aimed at a limitation on the use  
18 of water for each developed lot in its development to 0.36 acre feet per year or less. The  
19 water conservation goals continue to be lowered with advancement in water conservation  
20 technology.

21 85. With the CS-Entities' water rights, Kane Springs' Water Rights, and all of  
22 their Approved Major Project entitlements, CS-Entities intended to support thousands of  
23 residential and commercial units within the master planned community.

24 ///

25 ///

26 ///

27 ///

28 ///

1                   **E. After the CS-Entities Invest Substantial Sums into the Master Planned**  
2                   **Community, the State Engineer Takes CS-Entities Water Rights, and**  
3                   **Consequently, CSI's Land, and Master Planned Community.**

4                   86. After decades of confirming that available water existed to support CSI's  
5 senior groundwater rights in Basin 206 and Basin 210, and after substantial efforts were  
6 taken by the State Engineer to protect CSI's senior groundwater rights, the State Engineer  
7 took CSI's water rights.

8                   **i. LVVWD'S November 16, 2017 Letter to the State Engineer**

9                   87. In 2017, CSI began preparing to process a 575-unit tentative subdivision  
10 map application and large lot parcel map to move forward with constructing the first phase  
11 of the master planned community.

12                  88. On November 16, 2017, Las Vegas Valley Water District purportedly acting  
13 as the manager of the CSGID, sent an unsolicited letter dated November 16, 2017 to the  
14 State Engineer, which sought "to solicit [the STATE ENGINEER's] opinion whether  
15 Coyote Spring Valley groundwater can sustainably supply water for the Coyote Springs  
16 Master Plan project."

17                  89. Despite the fact that LVVWD's November 16, 2017, letter acknowledged  
18 that State Engineer's Ruling 6255 "did not invalidate any existing water rights, including  
19 those held by [Coyote Springs Water Resource General Improvement District] GID and  
20 [CSI] Developers" at Coyote Springs, LVVWD sought an opinion from the State Engineer  
21 as to whether the State Engineer's "office would be willing to execute subdivision maps  
22 for the [Coyote Springs] Project if such maps were predicated on the use of groundwater  
23 owned by the GID or [CSI] Developers in Coyote Spring Valley". *Id.*

24                   **ii. The State Engineer's May 16, 2018 Letter**

25                  90. In response, on May 16, 2018, the State Engineer, sent a letter to LVVWD  
26 regarding Coyote Spring Valley Basin Water Supply, with a copy to CS-Entities'  
27  
28



1 Representatives. A true and correct copy of the State Engineer's May 16, 2018, Letter  
2 is attached hereto as **Exhibit "1"**.

3 91. The May 16, 2018, letter constitutes a public condemnation order  
4 condemning CSI's water rights and asserting that the State Engineer would not approve  
5 CSI's 575-unit subdivision map or any subdivision maps presented by CSI.

6 92. The State Engineer's May 16, 2018, letter publicly announced that the  
7 amount of groundwater pumping that would be allowed in the five-basin area would be  
8 limited to the amount that the State Engineer believed, based on no actual research,  
9 would supposedly not conflict with the Muddy River Springs or the Muddy River, the most  
10 senior rights in the five-basin area described in the May 16, 2018 letter.

11 93. Without technical and scientific investigation, inquiry, or justification, the  
12 State Engineer further publicly announced that "carbonate pumping will have to be limited  
13 to a fraction of the 40,300-acre feet already appropriated in the five-basin area". *Id.* The  
14 State Engineer further stated:  
15

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

23 94. The May 16, 2018 letter took CSI's water rights. It also took CSI's priority  
24 by characterizing CSI's water rights as a "junior priority". That false statement is required  
25 by the fact that CSI's water rights were senior water rights in basin 210 and has never  
26 been characterized as being junior water rights to any other water right owner in basin  
27 210 that pumps from the carbon rock Aquifer.

28 95. The State Engineer has confirmed in discovery in this case that pursuant to  
the May 16, 2018 letter, the amount of water CSI could use of its senior groundwater  
rights to proceed with its subdivision map applications was zero (0) afa. Discovery has

1 revealed that the State Engineer inversely condemned and took CSI's senior groundwater  
2 rights by and through its May 16, 2018 letter.

3 96. The State Engineer's May 16, 2018 letter took CSI's water rights and  
4 appropriated them for senior water right holders in other hydrographic basins.

5 97. The State Engineer's May 16, 2018 letter abruptly halted CS-Entities'  
6 development.

7 98. Following the State Engineer's May 16, 2018 public announcement of its  
8 intent to appropriate and take the CS-Entities' water rights, the State Engineer, on May  
9 17, 2018, further announced that it "would not sign off on CSI's subdivision maps to allow  
10 their approval if they were based on the water rights CS-Entities owned or those  
11 previously dedicated to the Coyote Springs General Improvement District CSGID."

12 99. On May 18, 2018, in conversations with CS-Entities Representatives, the  
13 State Engineer advised CS-Entities "not to spend one dollar more on the Coyote Springs  
14 Development Project and that processing of CSI's maps had stopped".

15 100. The State Engineer announced that it would prepare a new draft order.

16 101. The State Engineer admitted that this is "unchartered territory and his [State  
17 Engineer] office has never granted rights and then just taken them away".

18 102. In an effort to best protect its water and development rights and its  
19 investment backed expectations, on June 8, 2018, CSI filed a Petition for Judicial Review  
20 of the State Engineer's May 16, 2018 letter in this Court, challenging the decision by the  
21 State Engineer to place a moratorium on the processing of CSI's subdivision maps  
22 preventing all construction in basin 210.

23 103. CSI's representative asked Jason King whether any water right holder had  
24 asserted a conflict caused by CSI's groundwater pumping, and Jason King confirmed:  
25 "No, no one has asserted a conflict or impairment by your current pumping or your water  
26 rights."  
27

28 ///

1                                   iii.     **The August 29, 2018 Settlement Agreement**

2             104. During a court-ordered settlement conference, CSI and the State, through  
3 then State Engineer Jason King, entered into a written Settlement Agreement dated  
4 August 29, 2018 (the "Settlement Agreement"). A true and correct copy of the Settlement  
5 Agreement is attached hereto as **Exhibit "7"**.

6             105. The Settlement Agreement established significant obligations upon both  
7 CSI and the State designed to allow CSI to move forward with its master planned  
8 community.

9             106. Further, the State Engineer accepted heightened "good faith" processing  
10 obligations for critical mapping and development application approvals necessary for  
11 Plaintiffs to move forward with the build-out and sales of lots within the master planned  
12 community.

13            107. The State Engineer agreed to "process in good faith any and all maps or  
14 other issue submittals as requested by CSI, and/or its agents or affiliates in accordance  
15 with the State Engineers' ordinary course of business."

16            108. The State Engineer entered the Settlement Agreement under false  
17 pretenses. It had already investigated a curtailment procedure in Basin 210. Knowing  
18 that it was going to curtail CSI's water through a series of map moratoriums and orders  
19 to defeat CSI's rights to its water, the State Engineer committed to process CSI's map  
20 applications in good faith only as a ruse to find other ways to deny CSI's map applications.

21            109. Despite the State Engineer's fraudulent concealment of its motive to take  
22 CSI's water, the contractual duty to accept and process CSI's map applications "in good  
23 faith" remained in full force and effect but has since been inexcusably breached.

24            110. Unfortunately, and as discussed further herein, the State breached its  
25 obligations owed to CSI "to process in good faith any and all maps or other issue  
26 submittals by CSI" pursuant to the Settlement Agreement.

27  
28     ///

1                                    **iv.     The September 2018 Draft Order**

2                    111. On September 7, 2018, the Office of the State Engineer issued two  
3 conditional approvals of CSI's subdivision maps.

4                    112. The first conditional approval was for the Large Lot Coyote Springs-Village  
5 A, consisting of eight lots, a common area, and rights of way totaling approximately 643  
6 acres in Clark County and requiring the statutory 2.0 afa per lot, for a total of 16 afa.

7                    113. The second conditional approval was for the Coyote Springs-Village A  
8 subdivision map, consisting of 575 lots, common areas and rights of way for  
9 approximately 142.71 acres in Clark County and requiring an estimate demand of 408.25  
10 afa of water annually based on .71 afa per residential unit.

11                   114. The two subdivision maps were conditionally approved by the State  
12 Engineer subject only to a will serve letter from CSGID and a final mylar map; the State  
13 Engineer confirmed that sufficient water existed to supply to these subdivisions without  
14 affecting senior water rights in the Muddy River and the Muddy River Springs.

15                   115. These "conditions" were known by the State Engineer to be unachievable  
16 and, as explained below, the State Engineer ultimately recommended disapproval of  
17 CSI's subdivision maps.

18                   116. On September 19, 2018, just 12 days after issuing a conditional approval  
19 ostensibly paving the way for the development to proceed, the State Engineer held a  
20 public workshop on the area he self-servingly refers to as the "LWRFS" and issued a Draft  
21 Order at the workshop for comment (the "Draft Order"). A true and correct copy of the  
22 September 19, 2018 Draft Order is attached as **Exhibit "2"**.

23                   117. The Draft Order contained a completely new determination that there were  
24 9,318 afa of water rights with a priority date of March 31, 1983, or earlier, that could be  
25 safely pumped from the five basins without affecting the flows in the Muddy River and  
26 without affecting the endangered Moapa dace fish.  
27  
28

1           118. The Draft Order also placed a moratorium on processing any and all  
2 subdivision maps unless there was a showing to the State Engineer's satisfaction that an  
3 adequate supply of water was available "in perpetuity" for the subdivision.

4           119. The Draft Order further evidenced the State Engineer's intent to take CSI's  
5 water rights.

6           120. On October 5, 2018, the CSI-Entities sent a series of comment letters  
7 regarding the Draft Order. CS-Entities challenged the findings in the Draft Order as they  
8 were not supported by scientific study or made in good faith, and therefore, were a breach  
9 of the Settlement Agreement.

10           121. Notwithstanding its obligations under the Settlement Agreement, the State  
11 Engineer continued to unreasonably delay<sup>3</sup> the final approval as to CS-Entities' two  
12 conditionally approval maps.

13                   **v. January 11, 2019, Interim Order 1303**

14           122. On January 11, 2019, four months after issuing his Draft Order, the State  
15 Engineer, Jason King, issued Interim Order 1303 (the "Interim Order").<sup>4</sup> A true and correct  
16 copy of the January 11, 2019 Interim Order 1303 is attached as **Exhibit "3"**.

17           123. In the Interim Order, the State Engineer again declared, consistent with the  
18 May 18, 2018 letter, that CSI could not move forward with its subdivision map  
19 applications.

20           124. In the Interim Order, the State Engineer explained that Coyote Spring  
21 Valley, Muddy River Springs Area, Hidden Valley, Garnet Valley, California Wash, and  
22 the northwestern part of the Black Mountains Area (now six basins rather than five) were  
23

24 \_\_\_\_\_  
25 <sup>3</sup> CS-Entities' representatives inquired as to the status of the maps submitted for processing several times,  
26 via telephone and electronic-mail between August 15, 2019 and early January 2020, to no avail, and the  
State Engineer would not meet or discuss any outstanding questions or concerns of their office regarding  
the submittal.

27 <sup>4</sup> Thereafter, also on January 11, 2019, the State Engineer resigned his State Engineer position effective  
28 immediately.

1 designated as a “joint administrative unit” for purposes of administration of water rights,  
2 known as the Lower White River Flow System or the Six-Basin Area.

3 125. Interim Order 1303 also declared a temporary moratorium on approvals  
4 regarding any final subdivision or other submissions concerning development and  
5 construction submitted to the State Engineer for review. Interim 1303 acknowledges that  
6 the State Engineer has insufficient scientific and technical data to determine water  
7 availability for CSI’s master planned community.

8 126. According to Interim Order 1303, any development submissions would be  
9 held in abeyance pending the conclusion of a public process to determine the total  
10 quantity of groundwater that may be developed within the “Lower White River Flow  
11 System”.

12 127. Interim Order 1303 further stated that the State Engineer would review and  
13 grant approval of a subdivision application if an applicant showed an adequate and  
14 sustainable supply of water to meet the anticipated “life of the subdivision.”

15 128. Interim Order 1303 represented further confirmation that the State Engineer  
16 had taken CSI’s water rights and completely halted the master planned community from  
17 being any further developed.

18 129. On September 12, 2018, LVVWD sent the State Engineer correspondence  
19 advising that LVVWD “*in its capacity as manager of the Coyote Springs Water Resources*  
20 *General Improvement District (GID), has reviewed the subject [Coyote Springs Village A]*  
21 *subdivision map*” and that based upon “*the facts described in the State Engineer’s letter*  
22 *dated May 16, 2018, concerning the viability of groundwater rights previously dedicated*  
23 *to the GID by the developer [CS-Entities], the uncertain resolution of the Lower White*  
24 *River Flow System (“LWRFS”) workshop process initiated by the Division of Water*  
25 *Resources . . . , and the [LVVWD]’s assessment of aquifer dynamics, potential conflicts*  
26 *with senior rights, and potential adverse impacts to endangered species, the District is*  
27

1        *unable to confirm the availability of water resources sufficient to support recordation of*  
2        *this map at this time”.*

3                130. Thereafter, the State failed to recommend final approval of these  
4        Conditionally Approved Village A Maps even though CSI presented a June 11, 2019,  
5        Technical Report 053119.0 issued by Stetson Engineering, Inc., which provided the  
6        necessary analysis to show that sufficient available water was present to support this  
7        proposed Coyote Springs Village A development.

8                        **vi.      June 15, 2020, Order 1309**

9                131. On June 15, 2020, the State Engineer issued Order 1309.

10              132. Pursuant to its Order 1309, the State Engineer ordered, in relevant part:

11                      a.        The Lower White River Flow System consisting of the Kane Springs  
12                      Valley, Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden  
13                      Valley, Garnet Valley, and the Norwest potion of the Black Mountains Area as  
14                      described in this Order, is hereby delineated as a single hydrographic basin.

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

19                      c.        The maximum quantity of water that may be pumped from the Lower  
20                      White River Flow System Hydrographic Basin may be reduced if it is determined  
21                      that pumping will adversely impact the endangered Moapa dace.

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

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

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

                    See State Engineer’s Order 1309, a true and correct copy of which is attached  
                    hereto as **Exhibit “4”**.

1           133. The State Engineer's Order 1309 combined seven previously distinct  
2 hydrographic basins into a single, consolidated hydrographic basin.

3           134. Order 1309 is an extension of the May 16, 2018 letter, which appropriated  
4 CSI's seniority rights and transferred this valuable seniority status to other water right  
5 holders.

6           135. In issuing Order 1309, the State Engineer further relegated CSI's senior  
7 water rights in Basin 210 and its senior Kane Springs Water Rights in Basin 206 to junior  
8 priority rights in relation to the water right holders in the six other basins.

9           136. Thus, Order 1309 further appropriated CSI's senior water rights in Basin  
10 210 and its senior Kane Springs Water Rights in Basin 206 for water right holders in the  
11 six other basins.

12           137. Specifically, in Basin 210, through Order 1309, the State Engineer  
13 appropriated CSI's senior water rights to over 55 other groundwater right holders in the  
14 Muddy River Springs Area, Garnet Valley, and California Wash.

15           138. Moreover, in Basin 206, through Order 1309, the State Engineer  
16 appropriated CSI's senior Kane Springs Water Rights to over 100 other groundwater right  
17 holders in the Muddy River Springs Area, Garnet Valley, California Wash, Black  
18 Mountains Area, Coyote Springs, and Hidden Valley.

19           139. The appropriation of CSI's water rights is illustrated by the fact that Order  
20 1309 relegated CSI's water rights in Basin 210 from the second most senior water rights  
21 to the 60<sup>th</sup> most senior in the seven-basin area.

22           140. Immediately after issuing Order 1309, the State Engineer sent  
23 correspondence dated June 17, 2020 to CS-Entities regarding its "Final Subdivision  
24 Review No. 13217-F" as to CS-Entities' conditionally approved Coyote Springs Village A  
25 subdivision maps, which provided for "eight large parcels intended for further subdivision".  
26 The State Engineer, relying upon Order 1309 and the newly created "LWRFS hydrologic  
27 basin", stated in part:  
28



1                   General:     Coyote Springs Investment, LLC groundwater permits have priority  
2                                   dates which may exceed the threshold of allowable pumping within  
3                                   the definition of this order [1309].

4           The State Engineer then took the following action:

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

9           A true and correct copy of the State Engineer's June 17, 2020 letter is attached  
10           hereto **as Exhibit "5"**.

11           141. Accordingly, the State Engineer clearly appropriated CSI's senior  
12           groundwater rights in Basin 206 and Basin 210 for use by the groundwater right holders  
13           in the Muddy River Springs Area, Garnet Valley, and California Wash.

14           142. Moreover, through this appropriation, and other State actions described  
15           herein, water right holders whose priority dates are junior to CS-Entities, including the  
16           Moapa Valley Water District and potentially others, have unfettered use and enjoyment  
17           of CS-Entities' appropriated water rights.

18           143. By appropriating CSI's senior groundwater rights (through the May 16, 2018  
19           letter, Interim Order 1303, and Order 1309) in Basin 206 and Basin 210 for use by other  
20           water right holders in other hydrographic basins, the State Engineer has denied the CS-  
21           Entities all economically viable use of their land, which is zoned only for residential and  
22           commercial purposes and cannot be developed as planned and zoned without water.

23           144. Moreover, the State Engineer has effectively destroyed CSI's master  
24           planned community as confirmed by the above-referenced orders and decisions and in  
25           discovery in this case, which demonstrate that the State Engineer has determined to block  
26           CSI from using its senior groundwater rights to support its master planned community.

27           ///

28           ///

          ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**V.**  
**CLAIMS FOR RELIEF**  
**FIRST CLAIM FOR RELIEF**  
**(Per Se Appropriation Taking of CSI's Water Rights)**

145. CS-Entities incorporate the preceding paragraphs as if fully set for the herein.

146. CSI owns or has the exclusive right to use 5,090 afa of senior groundwater rights in Basin 210 and Basin 206 for the development of its master planned community.

147. The State Engineer, through the May 16, 2018 letter, has taken and appropriated CSI's senior groundwater rights in Basin 210 for itself and/or for over 55 groundwater right holders in the Muddy River Springs Area, Garnet Valley, and the California Wash.

148. In so doing, the State Engineer further appropriated CSI's senior priority status in Basin 210 for over 55 groundwater right holders in the Muddy River Springs Area, Garnet Valley, and the California Wash.

149. Further, the State Engineer appropriated CSI's senior priority status in Basin 206 for over 100 groundwater right holders in the Muddy River Springs Area, Garnet Valley, and the California Wash, among others.

150. The State has not paid just compensation to the Plaintiffs for the appropriation and taking of their property.

151. The State's failure to pay just compensation to the Plaintiffs for the appropriation and taking of their property is a violation of the Nevada State Constitution, and Nevada Revised Statutes, which require the payment of just compensation when private property is appropriated or taken for a public use.

152. As a result of the State's conduct, Plaintiffs have been damaged in excess of \$15,000.

153. Plaintiffs' damages include the loss of value of their land due to the State Engineer's appropriation of Plaintiffs' water rights.

154. As a further result, Plaintiffs have been required to retain legal counsel to prosecute this action and are therefore entitled to recover their reasonable attorneys' fees and costs of suit incurred herein.

**SECOND CLAIM FOR RELIEF**  
**(Inverse Condemnation Under Nevada Constitution – Lucas Regulatory Taking –  
As to CSI's Water Rights)**

155. CS-Entities incorporate the preceding paragraphs as if fully set for the herein.

156. The State, through the regulatory actions described herein, beginning with the May 16, 2018 letter, committed a *per se* regulatory taking of CSI's water rights.

157. The State Engineer's May 16, 2018 letter, was a condemnation order that prevented CSI from using its water rights.

158. The State Engineer's May 16, 2018 letter and subsequent regulatory actions described above constitute a categorical taking of CSI's water rights as the State Engineer has taken all economic value associated with the water rights.

159. The State Engineer has deprived CSI of all economically beneficial use of its property and prevented CSI from putting its water rights to beneficial use.

160. The State's taking of CS-Entities' property by the public constitutes a taking by inverse condemnation which require compensation under Article I, Section 8 of the Nevada Constitution, requiring the State to pay full and just compensation to Plaintiff CS-Entities.

161. As a result of the State's wrongful conduct and actions as described herein, the CS-Entities have been damaged far in excess of \$15,000.

162. As a further result of Defendants' wrongful conduct, Plaintiffs have been required to retain legal counsel to prosecute this action and therefore Plaintiff CS-Entities

1 are entitled to recover their reasonable attorneys' fees and costs of suit incurred in this  
2 action.

3 **THIRD CLAIM FOR RELIEF**

4 **(*Penn Central* Regulatory Taking – As to CSI's Water Rights)**

5 163. CS-Entities incorporate the preceding paragraphs as if fully set for the  
6 herein.

7 164. The State, through the regulatory actions described herein, beginning with  
8 the May 16, 2018 letter, committed a *Penn Central* regulatory taking of CSI's water rights.

9 165. The State Engineer did so through regulatory actions that appropriated and  
10 took CSI's water rights and Kane Springs Water Rights, which deprives the CS-Entities  
11 nearly all, if not all, the economic viability in their water rights.

12 166. The economic impact of the May 16, 2018 letter on CSI's water rights is  
13 drastic and renders the water rights unusable for municipal purposes, which is the only  
14 allowable use under the permits for the water rights.

15 167. In reliance on studies performed by CSI's predecessor in interest to the  
16 groundwater rights in Basin 210, studies conducted by state and federal agencies  
17 concerning groundwater availability, and the confirmation and reassurance by the State  
18 Engineer that adequate groundwater existed to support CSI's senior groundwater rights  
19 in Basin 210, CSI had reasonable investment-backed expectations to be able to use its  
20 water rights to support residential and commercial development when it acquired the  
21 water rights.

22 168. The State Engineer's regulatory actions, beginning with the May 16, 2018  
23 letter, have substantially interfered with CSI's distinct, reasonable investment-backed  
24 expectations and effectively destroyed any chance of putting CSI's water rights to  
25 beneficial use.

1           169. Given the State Engineer's continued assurance and confirmation that  
2 groundwater existed to support CSI's senior groundwater permits, the State Engineer's  
3 appropriation of CSI's senior groundwater rights was unforeseeable.

4           170. The State Engineer's regulatory actions are akin to a physical invasion of  
5 the Plaintiffs' water rights given that the State Engineer has appropriated CSI's Water  
6 Rights for the benefit of water right holders in other basins.

7           171. Defendants' taking of the Plaintiffs' water rights by the public constitutes a  
8 taking by inverse condemnation which requires full and just compensation under Article  
9 I, Section 8 of the Nevada Constitution.

10           172. As a result of Defendants' wrongful conduct and actions, the CS-Entities  
11 have been damaged far in excess of \$15,000.

12           173. As a further result of Defendants' wrongful conduct, the CS-Entities have  
13 been required to retain legal counsel to prosecute this action and therefore are entitled to  
14 recover their reasonable attorneys' fees and costs of suit incurred in this matter.

15  
16                           **FOURTH CLAIM FOR RELIEF**

17           **(Inverse Condemnation Under Nevada Constitution – Lucas Regulatory Taking –**  
18           **As to the 6,937.66 Acres)**

19           174. CS-Entities incorporate the preceding paragraphs as if fully set for the  
20 herein.

21           175. The State, through the regulatory actions described herein, beginning with  
22 the May 16, 2018 letter, committed a *per se* regulatory taking of CSI's 6,937.66 acres of  
23 land in Clark County, Nevada.

24           176. Through the State Engineer's regulatory actions and by taking CSI's senior  
25 groundwater rights in Basin 210 and Basin 206, the State Engineer has deprived the CS-  
26 Entities all economically viable use of their 6,937.66 acres, which can only be developed  
27 for residential and commercial uses.

28           177. The CS-Entities' 6,937.66 is undevelopable and valueless without water.

1           178. The State Engineer has effectively destroyed the master planned  
2 community and taken all of the entitlements to develop the master planned community.

3           179. The State's taking of CS-Entities' property by the public constitutes a taking  
4 by inverse condemnation which require compensation under Article I, Section 8 of the  
5 Nevada Constitution, requiring the State to pay full and just compensation to Plaintiff CS-  
6 Entities.

7           180. As a result of the State's wrongful conduct and actions as described herein,  
8 the CS-Entities have been damaged far in excess of \$15,000.

9           181. As a further result of Defendants' wrongful conduct, Plaintiffs have been  
10 required to retain legal counsel to prosecute this action and therefore Plaintiff CS-Entities  
11 are entitled to recover their reasonable attorneys' fees and costs of suit incurred in this  
12 action.

13  
14                           **FIFTH CLAIM FOR RELIEF**  
15           **(Inverse Condemnation Under Nevada Constitution – Penn Central Regulatory**  
16           **Taking – As to the 6,937.66 Acres)**

17           182. CS-Entities incorporate the preceding paragraphs as if fully set forth the  
18 herein.

19           183. The State, through the regulatory actions described herein, beginning with  
20 the May 16, 2018 letter, committed a *Penn Central* regulatory taking of CSI's 6,937.66  
21 acres of land in Clark County, Nevada.

22           184. The State Engineer did so through regulatory actions that appropriated and  
23 took CSI's water rights and Kane Springs Water Rights, which in turn deprived the CS-  
24 Entities nearly all, if not all, the economic viability in the 6,937.66 acres.

25           185. The economic impact of the May 16, 2018 letter on the 6,937.66 is drastic  
26 and renders the land undevelopable for municipal, residential, and commercial purposes,  
27 which are the only allowable uses for the land under zoning, applicable ordinances, and  
28 the Development Agreement with Clark County.

1           186. In reliance on studies performed by CSI's predecessor in interest to the  
2 groundwater rights in Basin 210, studies conducted by state and federal agencies  
3 concerning groundwater availability, and the confirmation and reassurance by the State  
4 Engineer that adequate groundwater existed to support CSI's senior groundwater rights  
5 in Basin 210, CSI had reasonable investment-backed expectations to be able to use its  
6 water rights to support residential and commercial development when it acquired the  
7 water rights.

8           187. The State Engineer's regulatory actions, beginning with the May 16, 2018  
9 letter, have substantially interfered with CSI's distinct, reasonable investment-backed  
10 expectations and effectively destroyed the master planned community.

11           188. Given the State Engineer's continued assurance and confirmation that  
12 groundwater existed to support CSI's senior groundwater permits, the State Engineer's  
13 appropriation of CSI's senior groundwater rights was unforeseeable.

14           189. The State Engineer's regulatory actions are akin to a physical invasion of  
15 the Plaintiffs' land given that the State Engineer has appropriated CSI's water rights for  
16 the benefit of water right holders in other basins, thereby rendering the Plaintiffs' land  
17 undevelopable.

18           190. Defendants' taking of the CS-Entities' property by the public constitutes a  
19 taking by inverse condemnation which requires full and just compensation under Article  
20 I, Section 8 of the Nevada Constitution.

21           191. As a result of Defendants' wrongful conduct and actions, the CS-Entities  
22 have been damaged far in excess of \$15,000.

23           192. As a further result of Defendants' wrongful conduct, the CS-Entities have  
24 been required to retain legal counsel to prosecute this action and therefore are entitled to  
25 recover their reasonable attorneys' fees and costs of suit incurred in this matter.

26  
27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SIXTH CLAIM FOR RELIEF**  
**(Pre-Condemnation Damages)**

193. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

194. The May 16, 2018 letter was a public pronouncement of the State Engineer's decision to condemn the CS-Entities' water, land, priorities, and entitlements. The May 16, 2018 letter announces the State Engineer's taking of CSI's senior water rights by referring to them as having a "junior priority".

195. The State's acts and/or omissions have resulted in Plaintiff CS-Entities suffering pre-condemnation damages in an amount to be determined at trial, due to the massive delays in processing Plaintiffs' pending, and conditionally approved, subdivision maps, which has halted continuing development of the master planned community.

196. The pre-condemnation taking of Plaintiff's property by the public mandates compensation under Article I, Section 8 of the Nevada Constitution, requiring the State to pay full and just compensation to Plaintiffs CS-Entities in an amount to be determined.

197. As a result of the State's wrongful conduct and actions as described herein, the CS-Entities have damages far in excess of \$15,000.

198. As a further result of Defendants' wrongful conduct, the CS-Entities have been required to retain legal counsel to prosecute this action. Plaintiffs are therefore entitled to recover their reasonable attorney's fees and costs of suit incurred in this action.

**SEVENTH CLAIM FOR RELIEF**  
**(Equal Protection Violations Under Nevada Constitution)**

199. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

200. The State Engineer has violated CSI's rights to equal protection under the Nevada Constitution as the State Engineer has subjected CSI, but not others similarly



1 situated, to standards, requirements, and obligations through the May 16, 2018 letter, the  
2 Draft Order, and Interim 1303 Order.

3 201. Each of these regulatory actions imposed a construction and subdivision  
4 moratorium on CSI, alone. By failing to timely process and fairly adjudicate CS-Entities'  
5 pending maps and applications, including its Conditionally Approved Maps, the State has  
6 treated CS-Entities in a different, standardless and inconsistent manner than others  
7 similarly situated.

8 202. Furthermore, through these regulatory actions, the State Engineer has  
9 imposed requirements on CSI, including but not limited to requiring CSI to demonstrate a  
10 source of water "in perpetuity" or for the "life of the subdivision" when the State has not  
11 imposed such a standard on any other developer or subdivision map applicant.

12 203. The State, intentionally and without rational basis, treated CS-Entities  
13 differently than other similarly situated developers, subdivision map applicants, and water  
14 right holders, including the Moapa Valley Water District ("MVWD"), which holds water  
15 rights junior to the CS-Entities water rights.

16 204. CS-Entities are informed and believe MVWD has been allowed to use its  
17 water rights and conduct its business as a water utility using water rights junior to CS-  
18 Entities', including, without limitation, for new hookups and processing tentative or  
19 subdivision maps during the Orders 1303 and 1309 subdivision map moratoriums.

20 205. Moreover, the Defendants have not sought to curtail MVWD's use of any of  
21 its water rights which are junior to CS-Entities water rights, while at the same time  
22 precluding CS-Entities from use and enjoyment of its water rights and denying CS-Entities  
23 subdivision maps.

24 206. CS-Entities were treated differently from MVWD and potentially others  
25 subject to Orders 1303 and 1309, when Defendants refused to approve CS-Entities'  
26 master planned community submitted subdivision maps and Conditionally Approved  
27

1 Maps as described herein. The State and its State Engineer, have unfairly and in bad  
2 faith, targeted the CS-Entities.

3 207. The State and its State Engineer, without rational basis, treated the CS-  
4 Entities differently from other similarly situated, and accordingly violated the equal  
5 protection clause of the Nevada Constitution. *N. Pacifica LLC vs. City of Pacifica*, 526  
6 F.3d 478,486 (9<sup>th</sup> Cir. 2008).

7 208. Plaintiff CS-Entities are entitled to damages for these Equal Protection  
8 violations.

9 209. Defendant's conduct has required Plaintiffs to incur attorneys' fees and  
10 costs of suit to bring this action, and Plaintiffs are entitled to an award of attorneys' fees  
11 and costs incurred in this action.

12  
13 **EIGHTH CLAIM FOR RELIEF**  
14 **(Breach of Contract Claim)**

15 210. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth  
16 herein.

17 211. Plaintiffs challenged the May 16, 2018 letter as an arbitrary, capricious,  
18 unlawful, and improper order reducing the priority to which the CS-Entities were entitled  
19 regarding their groundwater rights.

20 212. The May 16, 2018 letter was determined to be an order with finality allowing  
21 the Plaintiffs to challenge the propriety of it.

22 213. The May 16, 2018 letter was in effect a curtailment of the water rights  
23 lawfully and properly held by CSI. The State Engineer provided no notice of the taking,  
24 no opportunity to be heard regarding the findings in the letter or the propriety of those  
25 findings.

26 214. Without notice or opportunity to be heard, and in the complete absence of  
27 technical or scientific justification, the May 16, 2018 letter reduced CSI's priority from  
28

1 being most senior carbonate rock aquifer groundwater right holder in Basin 210 to being  
2 junior for unexplained reasons.

3 215. Because of the strength and legitimacy of CSI's challenge to the legality and  
4 propriety of the May 16, 2018 letter, the State Engineer immediately attempted to initiate  
5 settlement discussions.

6 216. CSI and the State Engineer participated in a settlement conference with the  
7 Honorable David R. Gamble (Ret.) presiding.

8 217. The State Engineer participated in the settlement conference in bad faith.  
9 He did so knowing that he had considered curtailment procedures against CSI in Basin  
10 210 and that he had drafted proposed orders placing a moratorium on CSI's right to  
11 develop, construct, and submit subdivision maps for the State Engineer's approval.

12 218. The Settlement Agreement entered on or around August 29, 2018, is a  
13 valid, binding, and existing contract between Plaintiff CSI and the State. CSI entered into  
14 the Settlement Agreement in good faith, believing and anticipating that the State Engineer  
15 would honor the obligations and duties imposed upon it in the Settlement Agreement.  
16 CSI bargained for the State Engineer's good faith and fair dealing.

17 219. Plaintiff CSI has fully performed its obligations under the Settlement  
18 Agreement contract.

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

23 221. The State Engineer's conduct and actions following execution of the  
24 Settlement Agreement demonstrate that the State Engineer never intended to comply  
25 with its terms nor act in good faith when processing CSI's tentative subdivision maps and  
26 development submissions.  
27  
28

1           222. Rather, the State Engineer's conduct and actions have been targeted to  
2 destroy the water rights and the master planned community.

3           223. Immediately after the State Engineer agreed to process CSI's maps in good  
4 faith, the State Engineer circulated the Draft Order, without performing any investigations,  
5 studies, or gathering hydrologic data to support the findings therein.

6           224. The Draft Order suggested availability of 9,318 afa to be pumped from the  
7 six basins identified in the Draft Order but in clear violation of the State Engineer's duty  
8 of good faith and fair dealing, the Draft Order imposed an unlawful moratorium on  
9 subdivision map submissions to the State Engineer.

10           225. The Draft Order further stated that a subdivision map could be reviewed and  
11 granted "if a showing of an adequate supply of water in **perpetuity** can be made to the  
12 State Engineer's satisfaction." (emphasis added). The inclusion of the term "perpetuity"  
13 was intended to prevent the CS-Entities from being able to develop their real property,  
14 utilize its permitted water, and develop the master planned community. The State  
15 Engineer later conceded that the term "perpetuity" was inappropriate and vague.

16           226. CSI pointed out the flaws and lack of technical information supporting the  
17 Draft Order.

18           227. CSI demonstrated the flaws in the Draft Order and correctly presented  
19 technical information showing at least 11,400 afa were available for groundwater pumping  
20 in the illegally combined basins, and the State Engineer realized that CSI could proceed  
21 with its master planned community under a pump cap of 11,400 afa, the State Engineer  
22 then issued Interim Order 1303.

23           228. Order 1303 was the State Engineer's method to confirm and perpetuate the  
24 terms of its May 16, 2018 letter despite the terms of the Settlement Agreement.

25           229. No additional study, investigation, or hydrological data was collected or  
26 analyzed prior to the State Engineer issuing Interim Order 1303.  
27  
28

1           230. In Interim Order 1303, the State Engineer “designated as a joint  
2 administrative unit” the six previously separate hydrographic basins, including Coyote  
3 Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley,  
4 and [a] portion of the Black Mountains Area”.

5           231. There is no authority for the State Engineer to combine multiple  
6 hydrographic basins into one.

7           232. Interim Order 1303 again imposed a moratorium regarding any final  
8 subdivision or other submission concerning development and construction.

9           233. Interim Order 1303 again included an exception for any subdivision map  
10 submissions “if a showing of an adequate and sustainable supply of water to meet the  
11 anticipated life of the subdivision” were made.

12           234. Further contrary to Nevada law, the State Engineer ordered that the water  
13 rights in the new combined basin would “be administered based upon their respective  
14 date of priorities in relation to other rights within the regional groundwater unit.” See  
15 **Exhibit “6”** (the State Engineer’s list of priorities in this new consolidated basin).

16           235. Thus, the State Engineer relegated CSI to a junior water right holder among  
17 the water right holders in the six basins. Doing so is a breach of the Settlement  
18 Agreement.

19           236. There is no statutory authority for the directives contained in Interim Order  
20 1303.

21           237. Under Interim Order 1303, the State Engineer required the parties to  
22 participate in an administrative hearing to address, among other things, the amount of  
23 water that could sustainably be pumped from the six basins referenced in the Interim  
24 Order.

25           238. Rather than meaningfully consider or analyze the new evidence presented  
26 during the hearing, the State Engineer intentionally ignored the new evidence in favor of  
27 the decades old pump tests that were not conducted to address the issues at the hearing.  
28

1           239. When the State Engineer realized that CSI could use its Kane Springs  
2 Water Rights to support the master planned community, the State Engineer decided to  
3 include Kane Springs Valley Hydrographic Basin into the consolidated basin.

4           240. On June 15, 2020, the State Engineer issued Order 1309, which again  
5 created a consolidated hydrographic basin, this time including Kane Springs Valley  
6 Hydrographic Basin with the six other hydrographic basins, to further destroy Plaintiffs'  
7 chance at proceeding with their master planned community.

8           241. The State Engineer ordered that 8,000 afa was the maximum amount of  
9 groundwater that could be pumped from the seven-basin area.

10           242. Like the May 16, 2018 letter, Order 1309 relegated CSI to a junior water  
11 right holder with no ability to use any of its senior groundwater rights to support the master  
12 planned community.

13           243. Immediately after issuing Order 1309, the State Engineer sent CSI the June  
14 17, 2020 letter, wherein the State Engineer informed CSI that he was recommending  
15 disapproval of the conditionally approved Coyote Springs Village A subdivision map  
16 because CSI was out of priority under Order 1309.

17           244. The State Engineer inexcusably breached the Settlement Agreement by  
18 failing to act in good faith and by failing to timely and fairly process Plaintiffs' development  
19 maps in "good faith" as required under the contract.

20           245. As a direct consequence of the conduct of the State as described above,  
21 Plaintiffs have been damaged in an amount far in excess of \$15,000.00.

22           246. As a further result of the State's wrongful conduct, Plaintiffs have been  
23 required to retain legal counsel to prosecute this action; Plaintiffs are therefore entitled to  
24 recover their reasonable attorney's fees and costs of suit incurred herein.

25  
26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NINTH CLAIM FOR RELIEF**  
**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

247. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

248. Plaintiff CSI and Defendant State are parties to a valid and existing contract; namely the Settlement Agreement entered on or around August 29, 2018.

249. The covenant of good faith and fair dealing is inherent and implied in every contract and is implied in the Settlement Agreement contract.

250. Defendant State owed Plaintiff CSI a duty of good faith and fair dealing.

251. Defendant State breached its duty of good faith and fair dealing by committing the acts and/or omissions described herein in a manner that was unfaithful to the purpose of the Settlement Agreement.

252. Plaintiff CSI's justified expectations under the Settlement Agreement were thus denied.

253. As a direct consequence of the conduct of the State, as described above, Plaintiffs have been damaged in an amount far in excess of \$15,000.00.

254. As a further result of the State Engineer's wrongful conduct, Plaintiffs have been required to retain legal counsel to prosecute this action and are therefore entitled to recover their reasonable attorneys' fees and costs of suit herein.

**TENTH CLAIM FOR RELIEF**  
**(Temporary Taking Against the State of Nevada) (Alternatively)**

255. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

256. If there is a subsequent State action or a finding by a District Court or the Nevada Supreme Court, or otherwise, that the Plaintiffs may use their groundwater rights, have their subdivision maps approved, and develop their long planned and fully entitled

1 master planned community, then there still has been a temporary appropriation and/or  
2 taking of Plaintiffs' property rights for which just compensation is due and must be paid.

3 257. The State has refused to pay just compensation for this temporary  
4 appropriation and taking.

5 258. The State's failure to pay just compensation to the Plaintiffs for the  
6 temporary appropriation and taking of the water rights, priority dates of water rights, Clark  
7 County Approved Major Project development rights and Clark County land is a violation  
8 of the Nevada State Constitution, and the Nevada Revised Statutes, which require the  
9 payment of just compensation when private property is taken for a public use.

10 259. Plaintiff have been compelled to pursue this action for the temporary  
11 appropriation and taking of their property, including water rights, priority dates of water  
12 rights, Clark County Major Project development rights and Clark County land, to recover  
13 just compensation for the property temporarily taken by the State without payment of just  
14 compensation.

15 260. This claim for relief is in the alternative to the CS-Entities' claims set forth in  
16 its First through Sixth Claims for Relief. The temporary take was initiated by the State  
17 Engineer on May 16, 2018 and has lasted to and through the date hereof. Plaintiffs will  
18 present evidence if necessary on this claim in the discovery process for the damages  
19 caused by the temporary take.

20 261. As a further result, Plaintiffs have been required to retain legal counsel to  
21 prosecute this action and are therefore entitled to recover their reasonable attorneys' fees  
22 and costs of suit incurred herein.

23  
24 **ELEVENTH CLAIM FOR RELIEF**  
25 **(Declaratory Relief-Claimed Against the State of Nevada)**

26 262. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth  
27 herein.



1           263. A justiciable controversy exists between Plaintiffs and the State that  
2 requires this Court's attention and intervention. Specifically, and pursuant to the  
3 Amended Multi-Party Agreement dated July 7, 2015, Plaintiffs seek a declaration from  
4 the Court that the State's wrongful actions as described herein has precluded Plaintiffs  
5 from moving forward with its master planned community and caused Plaintiffs to  
6 "permanently cease development of the Clark County Development" and that Plaintiffs  
7 "have the right to receive back from the CSGID any and all water rights previously  
8 dedicated by the Developers to CSGID that are not committed and are not otherwise  
9 necessary to support existing development." Amended Multi-Party Agreement pg. 9 of  
10 25. Plaintiffs seek a declaration that they have an ownership and beneficial interest in  
11 the 2,000 afa presently held by the CSGID and that Plaintiffs have the right to seek just  
12 compensation damages for the wrongful taking by the State of those 2000 afa water  
13 rights.  
14

15           264. Plaintiffs seek a declaration that Plaintiffs have the right to seek just  
16 compensation and damages associated with the State's wrongful appropriation and take  
17 of the 2,000 afa previously dedicated to CSGID, for use at the master planned community.

18           265. As the action of the State, and its State Engineer, necessitated that Plaintiffs  
19 hire counsel and incur legal fees and costs to bring this action, Plaintiffs are also entitled  
20 to an award of attorneys' fees and costs of suit.

21                           **TWELFTH CLAIM FOR RELIEF**  
22                           **(Injunctive Relief Against State of Nevada)**

23           266. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth  
24 herein.

25           267. Plaintiffs are entitled to a preliminary and permanent injunction enjoining  
26 further arbitrary and capricious actions and unfair and unconstitutional appropriations  
27 and/or takings of Plaintiffs' water rights and development rights at its master planned  
28 community. Further, that State should be enjoined from any further violations of its

1 obligations under the Settlement Agreement and from taking any further wrongful and  
2 unlawful actions related to CS-Entities' water and development rights. The status quo as  
3 to CS-Entities' water and development rights should be maintained during the pendency  
4 of this action. Any Nevada Revised Statutory water forfeiture claims asserted by the State  
5 should be tolled/stayed during the pendency of this action in order to protect Plaintiffs  
6 from further wrongful actions by the State.

7  
8 268. Plaintiffs are further entitled to a preliminary and permanent mandatory  
9 injunction requiring processing and endorsement of subdivision maps as required by the  
10 Settlement Agreement and Nevada Law to allow Plaintiffs' Clark County Approved Major  
11 Project to proceed.

12 269. Plaintiffs have no plain, speedy or adequate remedy at law. Unless  
13 Defendants are enjoined, Plaintiffs will continue to suffer irreparable harm, including  
14 violations of its constitutional rights, lost business income, and injury to Plaintiffs' business  
15 goodwill and other business relationships. Monetary damages are inadequate to fully  
16 compensate Plaintiffs because of the difficulty in quantifying lost opportunity costs and  
17 harm to business goodwill and other relationships.

18 270. Plaintiffs have a reasonable probability of success on the merits of its claims  
19 and the public interest and relative hardships all weigh in favor of granting injunctive relief  
20 to Plaintiffs.

21 271. A preliminary and permanent injunction should therefore issue enjoining the  
22 State, and its State Engineer, from further arbitrary and capricious actions as alleged  
23 herein, and further enjoining the State from continuing to unreasonably delay CS-Entities'  
24 development efforts for its master planned community and requiring the State to properly,  
25 fairly, timely and in good faith process Plaintiffs' submittals in support of its master  
26 planned community. Further, any statutory forfeiture time frames applicable to the subject  
27 water rights should be tolled during this litigation.

1           272. As the action of the State, and its State Engineer, necessitated that Plaintiffs  
2 hire counsel and incur legal fees and costs to bring this action, Plaintiffs are also entitled  
3 to an award of attorneys' fees and costs of suit.  
4

5                           **THIRTEENTH CLAIM FOR RELIEF**  
6                           **(Claim of Attorneys' Fees Incurred Herein)**

7           273. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth  
8 herein.

9           274. CS-Entities asserts that the State's conduct has required Plaintiffs to incur  
10 attorneys' fees to bring this action and that Nevada Law provides for an award of  
11 attorneys' fees to prevailing parties in inverse condemnation actions. CS-Entities hereby  
12 provide notice to these Defendants that it intends to pursue its attorneys' fees incurred in  
13 this action as allowed by Nevada law. Accordingly, the CS-Entities reserve all rights to  
14 pursue an award of their attorney fees incurred in this matter as allowed.

15   **VI.**

16   **PRAYER FOR RELIEF**

17           WHEREFORE, Plaintiffs pray for the following relief:

- 18           1. For payment of full and just compensation as provided by law for the  
19           appropriation and/or taking of property, water rights, and development rights of  
20           the CS-Entities.  
21           2. For payment of full and just compensation as provided by law for the temporary  
22           taking of property, water rights, and development rights of the CS-Entities.  
23           3. For pre-condemnation damages in an amount to be proven at trial;  
24           4. For compensatory and special damages as set forth herein;  
25           5. For pre-judgment and post-judgment interest, as allowed by law;  
26           6. For declaratory relief as sought herein.  
27           7. For injunctive relief as sought herein.  
28

1 8. For all of the CS-Entities' incurred attorneys' fees and costs of suit as provided  
2 by law;

3 9. For all other remedies and relief that the Court deems just and appropriate.  
4

5 **DEMAND FOR JURY TRIAL**

6 Plaintiffs CS-Entities, hereby demand a jury trial for all issues so triable.

7 **AFFIRMATION:** The undersigned does hereby affirm that the preceding document  
8 and/or attachments do not contain the social security number of any person.

9 DATED this \_\_\_\_ day of \_\_\_\_\_, 2023.  
10

11 ROBISON, SHARP, SULLIVAN &  
12 BRUST

13 \_\_\_\_\_  
14 Kent R. Robison, Esq., #1167  
15 krobison@rssblaw.com  
16 Hannah E. Winston, Esq., #14520  
17 hwinston@rssblaw.com  
18 (775) 329-3151  
19 71 Washington Street  
20 Reno, NV 89503  
21 *Attorneys for Plaintiffs CS-Entities*

22 **IN ASSOCIATION WITH:**

23 COULTHARD LAW, PLLC

24 \_\_\_\_\_  
25 William L. Coulthard, Esq.  
26 840 South Rancho Drive #4-627  
27 Las Vegas, Nevada 89106  
28 *Attorney for Plaintiffs CS-Entities*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<b>INDEX OF EXHIBITS</b>	
<b>Exhibit No.</b>	<b>Description</b>
1.	May 16, 2018 State Engineer letter to Las Vegas Valley Water District
2.	Draft Order dated September 19, 2018
3.	Interim Order 1303
4.	Order 1309, dated June 15, 2020
5.	June 17, 2020 Letter from State Department of Conservation and Natural Resources to Coyote Springs Investment LLC
6.	State Engineer's Lower White River Flow System Priority Chart
7.	Settlement Agreement dated August 29, 2018

# **EXHIBIT 2**

# **EXHIBIT 2**

BRIAN SANDOVAL  
Governor

STATE OF NEVADA



BRADLEY CROWELL  
Director

JASON KING, P.E.  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

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

May 16, 2018

Gregory Walch, Esq.  
General Counsel  
Las Vegas Valley Water District  
1001 South Valley Blvd.  
Las Vegas, NV 89153

Re: Coyote Spring Valley Water Supply

Dear Mr. Walch:

The Nevada Division of Water Resources (NDWR) is in receipt of your letter dated November 16, 2017, on behalf of the Las Vegas Valley Water District (LVVWD). In that letter, you provided background on groundwater supply in the Coyote Spring Valley based on existing water rights and related hydrologic data from the NDWR, including Order 1169 pumping test results and the subsequent issuance of Ruling 6255. Your letter concluded by asking the State Engineer, as Administrator of the NDWR, for an opinion regarding the extent to which subdivision maps for the Coyote Springs Development Project (Project) "predicated on the use of groundwater owned by the Coyote Springs Water Resources General Improvement District (CSWRGID) or developers in Coyote Spring Valley" would be executed by the NDWR.<sup>1</sup>

As you are aware, the development of groundwater resources in Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley and Garnet Valley (*five-basin area*), are inextricably connected and can influence the flows in the Muddy River Springs and the Muddy River. Although your question is specific to the use of existing water rights

<sup>1</sup> Your letter identified the developers as Coyote Springs Land Development Corporation (CSLD), Coyote Springs Investment LLC (CSI), and Coyote Springs Nevada LLC (CSN), whom are developing the Coyote Springs development project.



SE 60065

CSI0362

RECEIVED

Re: Coyote Spring Valley Water Supply  
May 16, 2018  
Page 2

2018 JUN -7 PM 4:01

STATE ENGINEERS OFFICE

held by the CSWRGID or the Project developers, it is necessary to address your inquiry within the broader context of appropriately managing and developing groundwater resources within the larger *five-basin area*.

#### 1169 Pumping Test Background

During the Order 1169 pumping test conducted from November 2010 through December 2012, approximately 8,500 acre-feet per year of water was pumped from the carbonate aquifer, and 3,700 acre-feet per year was pumped from the alluvial aquifer within the larger *five-basin area*. Almost all of the alluvial pumping came from the Muddy River Springs Area. Results of the 2-year test clearly indicate that pumping at that level from the carbonate aquifer caused unprecedented declines in groundwater levels and flows in the high-altitude springs. These springs have a direct connection to the fully appropriated Muddy River and are part of the source of water for the endangered Moapa Dace, a fish federally listed as an endangered species since 1967, and the decreed senior rights of the Muddy River.

#### Post 1169 Pumping Test Considerations

Monitoring of pumpage and water levels has continued since the completion of the pumping test on December 31, 2012. This additional data provides NDWR a better understanding of the amount of groundwater pumping that may be sustainable in the *five-basin area* carbonate aquifer. Since completion of the pumping test, groundwater levels and spring flows have remained relatively flat while precipitation has been nearly average and the five-basin carbonate pumping has been about 6,000 afa.

Adding to the consideration as to how much groundwater can be sustainably pumped from the *five-basin area* is the Memorandum of Agreement (MOA) that was entered into on April 20, 2006, between the Southern Nevada Water Authority, the United States Fish and Wildlife Service, Coyote Springs Investment, the Moapa Band of Paiute Indians, and the Moapa Valley Water District. The purpose of the MOA was "to make measurable progress toward protection and recovery of the Moapa dace and its habitat concurrent with the operation and development of water projects for human use." Analysis of the Order 1169 pumping test and the observed correlation between pumping and spring flow indicates that MOA-required curtailment thresholds could be rapidly triggered should carbonate pumping exceed its current rate.

#### Future Groundwater Development

Ultimately, the amount of groundwater pumping that will be allowed in the *five-basin area* will be limited to the amount that will not conflict with the Muddy River Springs or the Muddy River as they are the most senior rights in the *five-basin area* and, by law must be protected. Moving forward, in order to not conflict with the senior decreed rights and

SE 60066

CSI0363



Re: Coyote Spring Valley Water Supply  
May 16, 2018  
Page 3

negatively impact the Moapa Dace, carbonate pumping will have to be limited to a fraction of the 40,300 acre-feet already appropriated in the *five-basin area* as demonstrated by the hydrologic data and analysis from Order 1169 and Ruling 6255.

Therefore, specific to the question raised in your November 16, 2017, letter, considering current pumping quantities as the estimated sustainable carbonate pumping limit, pursuant to the provisions found in Nevada Revised Statutes Chapter 278, 533 and 534, the State Engineer cannot justify approval of any subdivision development maps based on the junior priority groundwater rights currently owned by CWSRGID or CSI unless other water sources are identified for development.

In closing, as outlined in this letter, the matter you're inquiring about is part of a much broader need to appropriately manage groundwater resources across the *five-basin area*. As such, it is incumbent upon the NDWR to work with all the water right holders on a conjunctive management plan for the *five-basin area*.

Sincerely,

 P.E.  
Jason King, P.E.  
State Engineer

cc: Albert Seeno III, Coyote Springs Investments, LLC

SE 60067

CSI0364

# **EXHIBIT 3**

# **EXHIBIT 3**

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 COYOTE SPRINGS INVESTMENT, )  
LLC, a Nevada Limited )  
5 Liability Company; COYOTE )  
SPRINGS NEVADA, LLC, a Nevada )  
6 limited liability company; )  
and COYOTE SPRINGS NURSERY, )  
7 LLC, a Nevada limited )  
liability company, )  
8 )  
Plaintiffs, )

9 vs. )

10 )CASE NO. A-20-820384-B  
)DEPT NO. 13

STATE OF NEVADA, on relation )  
11 to its Division of Water )  
Resources; DEPARTMENT OF )  
12 CONSERVATION and NATURAL )  
RESOURCES; ADAM SULLIVAN, )  
13 Nevada State Engineer; CLARK )  
COUNTY-COYOTE SPRINGS WATER )  
14 RESOURCES GENERAL IMPROVEMENT )  
DISTRICT, a political )  
15 subdivision of the State of )  
Nevada; and Does I through X, )  
16 )  
Defendants. )  
17 \_\_\_\_\_)

18 VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF

19 MELISSA FLATLEY

20 30(b)(6) of State of Nevada

21 Taken remotely via Zoom  
22 on Thursday, July 20, 2023  
at 9:33 a.m.

23

24 Reported by: Trina K. Sanchez, CCR No. 933, RPR

25 Job No.: 996499, Firm No.: 026F

1 BY MR. ROBISON:

2 Q. Okay. We're back on the record.

3 Are you good to go?

4 A. Yes.

5 Q. All right. Same admonishments; right?

6 A. Yes.

7 Q. And I'll try not to interrupt you, and  
8 I'll be more clear in my questions, if possible.

9 Before the break, we were talking about  
10 the -- Exhibit 14, the May 16, 2018, letter.

11 So as of the date of this letter, when the  
12 State Engineer cannot justify approving any  
13 subdivision maps, what the State Engineer knew at  
14 that time was that Basin 210 had an estimated  
15 perennial yield of 18,000 acre-feet; right?

16 A. Yes.

17 Q. And what the State Engineer knew at that  
18 time is that this five basin area had a perennial  
19 yield of 50,000 acre-feet; right?

20 A. I think that was what the term was. I  
21 think it said perennial yield of 50,000.

22 Q. So whether it was 50 or five basins or  
23 whether it's 18 for Coyote Springs, using water that  
24 were permitted would not have jeopardized the 18 or  
25 the 15; correct?

1           Q.     So the State Engineer really doesn't have  
2 a problem with us using 4,100 acre-feet for  
3 municipal purposes. The State Engineer has a  
4 problem with us using 4,100 acre-feet of water for  
5 subdivision?

6           A.     No.

7           Q.     Well, you just said we can't use it for  
8 subdivisions.

9           A.     What the decision -- what the prior  
10 rescinded decision was was that you couldn't use  
11 those groundwater rights to support subdivisions.

12          Q.     Right. And nothing has changed?

13          A.     I haven't seen a different decision.

14          Q.     All right. Do you know what the State  
15 Engineer will permit us to use for subdivisions if  
16 1309 is declared invalid?

17                 MS. WHELAN: Objection. Incomplete  
18 hypothetical.

19                 THE WITNESS: No.

20                 MS. WHELAN: It also goes to the  
21 deliberative process. So I'll just caution that  
22 there's a protective order in this case, and so we  
23 need to stay away from what will be considered by  
24 state officials or not considered.

25 ///

1 MR. ROBISON: Okay. Just wait a minute.

2 I want to be clear on that.

3 Judge Denton has allowed us to ask  
4 questions of the State Engineer about the evidence  
5 reviewed in issuing relevant decisions and the legal  
6 and factual basis or arguments that were considered  
7 or rejected in issuing the relevant decisions.

8 Okay? That's what the judge has allowed us to do.

9 BY MR. ROBISON:

10 Q. Okay. Let me see how this works.

11 So, again, in Exhibit 24 is the letter in  
12 2020 that has a rejection by the State Engineer  
13 based on 1309 of our subdivision map. What has  
14 changed since January -- June 7, 2020, that would  
15 make the State Engineer approve a request to use  
16 water for subdivisions?

17 A. I don't know if we would approve, so I  
18 don't know what would change to support an approval.

19 Q. Right. I mean, you disapproved because in  
20 2020 after 1309 was issued, "Coyote Springs"  
21 groundwater permit have prior dates which may exceed  
22 threshold allowable pumping within the definition of  
23 this order." And that's based on 1309 and an 8,000  
24 acre-foot cap.

25 What's changed that would allow the State

1 **Engineer to approve our subdivision maps --**

2 MS. WHELAN: Objection --

3 BY MR. ROBISON:

4 **Q. -- after this date?**

5 MS. WHELAN: Objection. Incomplete  
6 hypothetical.

7 THE WITNESS: I never said that they would  
8 be approved.

9 BY MR. ROBISON:

10 **Q. In fact, you said they would not.**

11 A. Right.

12 **Q. Okay.**

13 MR. ROBISON: I'm going to take a break  
14 right now. And it won't take long, but I may be  
15 done.

16 MR. LEMASTER: Just -- just -- I want to  
17 make a statement after you're done for the record.

18 MR. ROBISON: I'm not done.

19 MR. LEMASTER: I know, but I still want to  
20 make a statement.

21 MR. ROBISON: I need to...

22 MR. LEMASTER: No, no, not yet. After you  
23 get back.

24 MR. ROBISON: Okay. Fine.

25 THE VIDEOGRAPHER: We're off the record at

## 1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA )  
 ) ss  
3 COUNTY OF CLARK )

4 I, Trina K. Sanchez, a duly certified  
court reporter licensed in and for the State of  
5 Nevada, do hereby certify:

6 That I reported the taking of the  
deposition of the witness, MELISSA FLATLEY, at the  
7 time and place aforesaid;

8 That prior to being examined, the witness  
was by me duly sworn to testify to the truth, the  
9 whole truth, and nothing but the truth;

10 That I thereafter transcribed my shorthand  
notes into typewriting and that the typewritten  
11 transcript of said deposition is a complete, true,  
and accurate record of testimony provided by the  
12 witness at said time to the best of my ability.

13 I further certify (1) that I am not a  
relative, employee, or independent contractor of  
14 counsel or of any of the parties; nor a relative,  
employee, or independent contractor of the parties  
15 involved in said action; nor a person financially  
interested in the action; nor do I have any other  
16 relationship with any of the parties or with counsel  
of any of the parties involved in the action that  
17 may reasonably cause my impartiality to be  
questioned; and (2) that transcript review pursuant  
18 to NRCP 30(e) was not requested.

19 IN WITNESS WHEREOF, I have hereunto set my  
hand in the County of Clark, State of Nevada, this  
20 10th day of August, 2023.

21 

22 \_\_\_\_\_  
23 TRINA K. SANCHEZ, RPR, CCR NO. 933

24  
25



# **EXHIBIT 4**

# **EXHIBIT 4**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

DISTRICT COURT  
CLARK COUNTY, NEVADA

-oOo-

COYOTE SPRINGS INVESTMENT,                      Case No. A-20-820384-B  
LLC, a Nevada Limited  
Liability Company; et al.,                      Dept. No. 13

Plaintiffs,

vs.

STATE OF NEVADA, on relation  
to its Division of Water  
Resources; DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES; et al.,

Defendants.

=====

VIDEOTAPED DEPOSITION OF JASON KING

Thursday, February 16, 2023

Reno, Nevada

Job No. 950863

Reported By: PEGGY B. HOOGS, CCR #160, RDR, CRR

1 deal with dumping single stand-alone basin priority  
2 rights into a regional larger unit?

3 MR. IRELAND: I'll allow him to answer that.

4 THE WITNESS: I believe the plan was as you  
5 just stated. It's never been done before in the state of  
6 Nevada. It's the only location ever attempted, and the  
7 plan was to -- because the aquifers in these basins acted  
8 as -- in all these basins acted as a single basin, they  
9 responded the same way.

10 With all the data, all the pump test data, and  
11 everything, it made sense that these should not be  
12 administered as five separate basins but, yet, as just  
13 one large basin because of the hydrologic  
14 characteristics.

15 BY MR. COULTHARD:

16 Q Okay. And that had never been done before in  
17 the state of Nevada, in the history of water rights in  
18 the state of Nevada; correct?

19 A No, it has never been done.

20 Q And as to the priority dates in the single  
21 stand-alone basins, they were to be placed into this new  
22 regional unit with the same dates; correct?

23 A They would maintain their same priority date  
24 and be put into the same pot, if you will.

25 Q And the relative priority dates in this newer

1 unit, while the date remained the same, the relative  
2 position of those priority rights would change; correct?

3 A The priority -- I think -- I agree with you.  
4 The priority dates stay the same completely, but now,  
5 instead of 50-whatever rights in one basin, those 50  
6 rights are thrown in with 200 other rights, and they fall  
7 in place with their priority.

8 Q And that's never been done in the state of  
9 Nevada?

10 A Never.

11 Q And that would not be -- that would be  
12 inconsistent with the Nevada State Engineer's obligations  
13 to protect and preserve priority dates for groundwater  
14 and surface water users; correct?

15 A My answer, sir -- unless you just want a "yes"  
16 or "no."

17 Q I prefer a yes or no, and then if you feel the  
18 need to explain.

19 A No. It would not be consistent.

20 But if I may expand a little bit, it's, again,  
21 the goal of the office is to protect the resources, and  
22 based on the science and based on the data, it made  
23 perfect sense to the office that that should be  
24 considered a single basin and not five or six separate  
25 basins.

1           Q    It's a combined duty of those two rights that  
2   total about 452 AFA.

3                   Do you see that?

4           A    Yes, I do.

5           Q    And then scroll down the list to the next  
6   Coyote Spring Valley Basin water rights, and flip over,  
7   next page, and those rights are held by Coyote Springs  
8   Investment, LLC, and the Coyote Springs Water Resource  
9   GID.

10                  Do you see those?

11          A    Yes, I do.

12          Q    So just in Basin 210, Coyote Springs would only  
13   have two water rights more senior to it; isn't that true?

14          A    That looks to be true, yes.

15          Q    But with the combination of the Lower White  
16   River Flow System new area, I counted 57 water rights  
17   added above Coyote Springs.

18                  So is it true, sir, that the relative  
19   positioning and the ability to use -- for Coyote Springs  
20   to use its groundwater rights in this newly created super  
21   basin have been impacted?

22                  MR. IRELAND:  Objection to form.

23                  THE WITNESS:  Yes.

24   BY MR. COULTHARD:

25          Q    And they've been negatively impacted in that

1 57 water right holders are now placed above their  
2 priority date?

3 A In this new single basin, that is correct.

4 Q And that impacts their ability to divert and  
5 place to beneficial use their groundwater rights;  
6 correct?

7 A It does until such time as that cap is once and  
8 for all finalized.

9 Q And we know, do we not, sir, that at the time  
10 1303 was entered, there was no statute authorizing the  
11 State Engineer's office to conjunctively manage water in  
12 the state of Nevada? There was a policy directive but  
13 not a statutory grant of authority; correct?

14 A No, not -- I agree with that statement, not  
15 using -- there's no words about conjunctive management in  
16 the statute other than that policy. There's --

17 Q Thank you.

18 And there's no -- at the time 1303 was entered,  
19 there was no statutory authorization for the State  
20 Engineer's office to take six previously stand-alone  
21 basins and lump them together into a new Lower White  
22 River Basin, super basin, was there, sir?

23 MR. IRELAND: Objection to form.

24 THE WITNESS: I apologize. You said statutory  
25 authority?

1 BY MR. COULTHARD:

2 Q Correct.

3 A No.

4 Q No, there was not?

5 A No, there was not.

6 Q Thank you.

7 1303 also includes language related to a  
8 temporary moratorium regarding any final subdivision maps  
9 or other submission concerning development and  
10 construction submitted to the State Engineer for review;  
11 correct?

12 A Yes.

13 Q And is it your understanding that 1303  
14 continued the express moratorium on processing of final  
15 subdivision maps at Coyote Springs?

16 A Yes.

17 Q And the language changes a little, goes from  
18 "perpetuity" to "life of the subdivision" as an  
19 exception; correct?

20 A I don't remember that, and I apologize. I'm  
21 not back on that tab again.

22 Q Okay. Let's go back to Tab 24.

23 A Page number?

24 Q Tab 24, which is Exhibit 19, and page 14, 5B is  
25 the section.

## 1 REPORTER'S CERTIFICATION

2 I, PEGGY B. HOOGS, a Certified Court Reporter  
3 in and for the State of Nevada, do hereby certify:

4 That on Thursday, the 16th day of February,  
5 2023, at Sunshine Litigation Services, 151 Country  
6 Estates Circle, Reno, Nevada, personally appeared JASON  
7 KING, who was duly sworn by me and deposed in the matter  
8 entitled herein;

9 That I am not a relative, employee or  
10 independent contractor of counsel for any of the parties,  
11 or a relative, employee or independent contractor of any  
12 of the parties to the proceedings, or a person  
13 financially interested in the proceedings;

14 That said deposition was taken in verbatim  
15 stenographic notes by me, a Certified Court Reporter, and  
16 transcribed into typewriting as herein appears;

17 That the foregoing transcript, consisting of  
18 pages 1 through 181 of the deposition, is a full, true  
19 and correct transcription of my stenographic notes of  
20 said deposition.

21 Dated this 2nd day of March, 2023.

22  
23  
24  
25



---

Peggy B. Hoogs  
CSR #160, RDR, CRR



# **EXHIBIT 5**

# **EXHIBIT 5**

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

INTERIM ORDER

#1303

**DESIGNATING THE ADMINISTRATION OF ALL WATER RIGHTS WITHIN COYOTE SPRING VALLEY HYDROGRAPHIC BASIN (210), A PORTION OF BLACK MOUNTAINS AREA BASIN (215), GARNET VALLEY BASIN (216), HIDDEN VALLEY BASIN (217), CALIFORNIA WASH BASIN (218), AND MUDDY RIVER SPRINGS AREA (AKA UPPER MOAPA VALLEY) BASIN (219) AS A JOINT ADMINISTRATIVE UNIT, HOLDING IN ABEYANCE APPLICATIONS TO CHANGE EXISTING GROUNDWATER RIGHTS, AND ESTABLISHING A TEMPORARY MORATORIUM ON THE REVIEW OF FINAL SUBDIVISION MAPS**

**I. PURPOSE**

**WHEREAS**, the purpose of this Interim Order is to designate a multi-basin area known to share a close hydrologic connection as a joint administrative unit, which shall be known as the Lower White River Flow System (LWRFS).

**WHEREAS**, an adequate and predictable supply of groundwater within the LWRFS supports the health, safety and welfare of the area, and this Interim Order aims to protect existing senior rights and the public interest in an endangered species, recognize existing beneficial use, and limit development actions that are dependent on a supply of water that may not be available in the future.

**WHEREAS**, during the interim period that this Order is in effect, holders of existing rights and other interested parties are encouraged to submit reports to the Nevada Division of Water Resources (NDWR) analyzing the data available regarding sustainable groundwater development in the LWRFS, the geographic extent of the LWRFS, and considerations relating to groundwater pumping within the LWRFS and its effects on the fully decreed Muddy River. This collected and analyzed data is an essential step to optimize the beneficial use of the available water supply in the LWRFS.

**WHEREAS**, concurrent with this interim order, holders of existing rights and other interested parties are encouraged to participate in the public process to develop a conjunctive management plan.



CSI000557

CSI0381

**I. BASIN DESIGNATIONS PURSUANT TO NRS § 534.030**

**WHEREAS**, the Coyote Spring Valley Hydrographic Basin was designated pursuant to Nevada Revised Statute (NRS) § 534.030 by Order 905 dated August 21, 1985, which also declared municipal, power, industrial and domestic uses as preferred uses of the groundwater resource pursuant to NRS § 534.120.

**WHEREAS**, the Black Mountains Area Hydrographic Basin was designated pursuant to NRS § 534.030 by Order 1018 dated November 22, 1989, which also declared municipal, industrial, commercial and power generation purposes as preferred uses of the groundwater resource pursuant to NRS § 534.120, declared irrigation of land using groundwater to be a non-preferred use, and ordered that applications to appropriate groundwater for irrigation purposes would be denied.

**WHEREAS**, the Garnet Valley Hydrographic Basin was designated pursuant to NRS § 534.030 by Order 1025 dated April 24, 1990, which also declared municipal, quasi-municipal, industrial, commercial, mining, stockwater and wildlife purposes as preferred uses pursuant to NRS § 534.120, and declared irrigation of land using groundwater to be a non-preferred use, and ordered that applications to appropriate groundwater for irrigation purposes would be denied.

**WHEREAS**, the California Wash Hydrographic Basin was designated pursuant to NRS § 534.030 by Order 1026 dated April 24, 1990, which also declared municipal, quasi-municipal, industrial, commercial, mining, stockwater and wildlife purposes as preferred uses pursuant to NRS § 534.120, and declared irrigation of land using groundwater to be a non-preferred use, and ordered that applications to appropriate groundwater for irrigation purposes would be denied.

**WHEREAS**, the Hidden Valley Hydrographic Basin was designated pursuant to NRS § 534.030 by Order 1024 dated April 24, 1990, which also declared municipal, quasi-municipal, industrial, commercial, mining, stockwater and wildlife purposes as preferred uses pursuant to NRS § 534.120, and declared irrigation of land using groundwater to be a non-preferred use, and ordered that applications to appropriate groundwater for irrigation purposes would be denied.

**WHEREAS**, the Muddy River Springs Area was partially designated pursuant to NRS § 534.030 by Order 392 dated July 14, 1971, and was fully designated by Order 1023 dated April 24, 1990, which also declared municipal, quasi-municipal, industrial, commercial, mining, stockwater and wildlife purposes as preferred uses pursuant to NRS § 534.120, and declared irrigation of land using groundwater to be a non-preferred use, and ordered that applications to appropriate groundwater for irrigation purposes would be denied.

## **II. ORDERS 1169 AND 1169A**

**WHEREAS**, on March 8, 2002, the State Engineer issued Order 1169 holding in abeyance carbonate-rock aquifer system groundwater applications either pending or to be filed in Coyote Spring Valley (Basin 210), Black Mountains Area (Basin 215), Garnet Valley (Basin 216), Hidden Valley (Basin 217), Muddy River Springs Area (Basin 219), and Lower Moapa Valley (Basin 220) and ordering an aquifer test of the carbonate-rock aquifer system, which was not well understood, to determine whether additional appropriations could be developed from the carbonate-rock aquifer system. The Order required that at least 50%, or 8,050 acre-feet annually (afa), of the water rights then currently permitted in Coyote Spring Valley be pumped for at least two consecutive years.

**WHEREAS**, on April 18, 2002, in Ruling 5115, the State Engineer added the California Wash (Basin 218) to the Order 1169 aquifer test basins.

**WHEREAS**, prior to the Order 1169 aquifer test beginning, there were significant concerns that pumping 8,050 afa from the Coyote Spring Valley as part of the aquifer test would adversely impact the water resources at the Muddy River Springs, and consequently the Muddy River. Ultimately, the Order 1169 study participants agreed that even if the minimum 8,050 afa was not pumped, sufficient information would be obtained to inform future decisions relating to the study basins.

**WHEREAS**, on November 15, 2010, the Order 1169 aquifer test began, whereby the study participants began reporting to NDWR on a quarterly basis the amounts of water being pumped from wells in the carbonate and alluvial aquifer during the pendency of the aquifer test.

**WHEREAS**, on December 21, 2012, the State Engineer issued Order 1169A declaring the completion of the aquifer test to be December 31, 2012, after a period of 25½ months. The

State Engineer provided the study participants the opportunity to file reports with NDWR until June 28, 2013, addressing the information gained from the aquifer test and the water available to support applications in the aquifer test basins.

**WHEREAS**, during the Order 1169 aquifer test, an average of 5,290 acre-feet per year was pumped from carbonate wells in Coyote Spring Valley, and a cumulative total of approximately 14,535 acre-feet per year of water was pumped throughout the LWRFS. Of this total, approximately 3,840 acre-feet per year was pumped from the Muddy River Springs Area alluvial aquifer.<sup>1</sup>

**WHEREAS**, during the aquifer test, pumpage was measured and reported from 30 other wells in the Muddy River Springs Area, Garnet Valley, California Wash, Black Mountains Area, and Lower Meadow Valley Wash. Stream diversions from the Muddy River were reported, and measurements of the natural discharge of the Muddy River and several of the Muddy River's headwater springs were collected daily. Water-level data were collected from a total of 79 monitoring and pumping wells within the LWRFS. All of the data collected during the aquifer test was made available to each of the study participants and the public.

**WHEREAS**, during the Order 1169 aquifer test, the resulting water-level decline encompassed 1,100 square miles and extended from northern Coyote Spring Valley through the Muddy River Springs Area, Hidden Valley, Garnet Valley, California Wash, and the northwestern part of the Black Mountains Area.<sup>2,3</sup> The water-level decline was estimated to be 1 to 1.6 feet in this area with minor drawdowns of 0.5 feet or less in the northern part of Coyote Spring Valley north of the Kane Springs Wash fault zone.

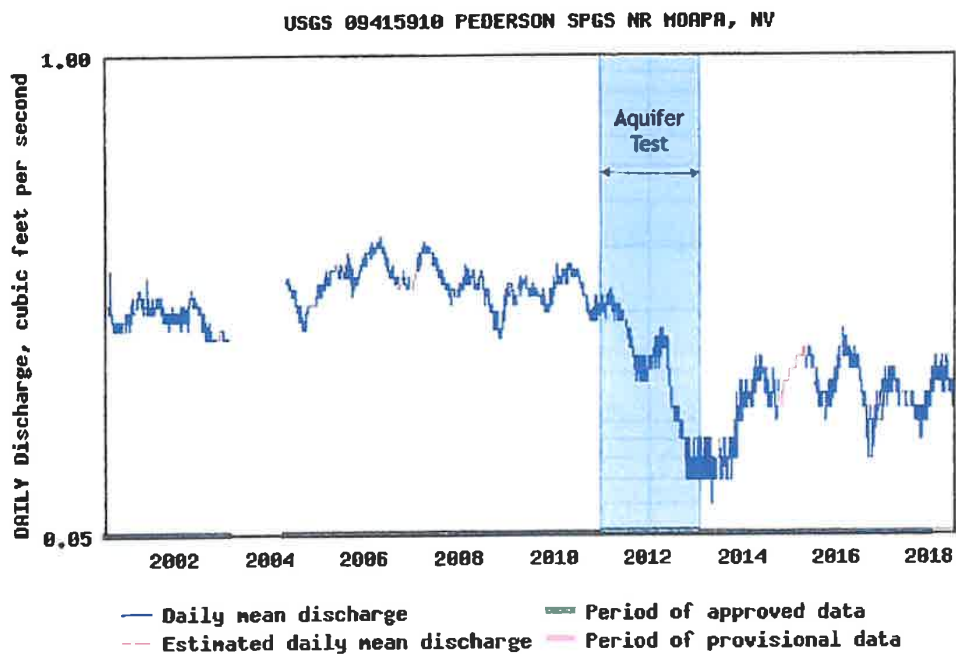
**WHEREAS**, results of the two-year test demonstrated that pumping 5,290 acre-feet annually from the carbonate aquifer in Coyote Spring Valley, in addition to the other carbonate pumping in Garnet Valley, Muddy River Springs Area, California Wash and the northwest part

<sup>1</sup> See, e.g., Ruling 6254, p. 17; Appendix B.

<sup>2</sup> See, e.g., Ruling 6254. See also U.S. Fish and Wildlife Service, U.S. Bureau of Land Management and U.S. National Park Service Order 1169A Report, *Test Impacts and Availability of Water Pursuant to Applications Pending Under Order 1169*, June 28, 2013, official records in the Office of the State Engineer.

<sup>3</sup> There was no groundwater pumping in Hidden Valley but effects were still observed in the Hidden Valley monitor well.

of the Black Mountains Area, caused sharp declines in groundwater levels and flows in the Pederson and Pederson East springs. These two springs are considered to be sentinel springs for the overall condition of the Muddy River because they are at a higher altitude than other Muddy River source springs, and therefore are proportionally more affected by a decline in groundwater level in the carbonate aquifer.<sup>4</sup> The Pederson spring flow decreased from 0.22 cubic feet per second (cfs) to 0.08 cfs and the Pederson East spring flow decreased from 0.12 cfs to 0.08 cfs. The following hydrograph at Pederson spring illustrates the decline in discharge during the aquifer test and also demonstrates that in the five years since the end of the aquifer test, spring flow has not recovered to pre-test flow rates.



<sup>4</sup> See the 2006 Memorandum of Agreement among the Southern Nevada Water Authority, United States Fish and Wildlife Service, Coyote Springs Investments, Moapa Band of Paiutes, and the Moapa Valley Water District.

Additional headwater springs at lower altitude, the Baldwin and Jones springs, declined approximately 4% during the test.<sup>5</sup> All of the headwater springs contribute to the decreed and fully appropriated Muddy River and are the predominant source of water that supplies the habitat of the endangered Moapa dace, a fish federally listed as an endangered species since 1967.

**WHEREAS**, based upon the analysis of the carbonate aquifer test, it was asserted that pumping at the Order 1169 rate at well MX-5 in Coyote Spring Valley could result in both of the high-altitude Pederson and Pederson East springs going dry in 3 years or less.<sup>6</sup>

**WHEREAS**, based upon the findings of the aquifer test, the carbonate aquifer underlying Coyote Spring Valley, Garnet Valley, Hidden Valley, Muddy River Springs Area, California Wash and the northwest part of the Black Mountains Area<sup>7</sup> (the LWRFS as depicted in Appendix A) was acknowledged to have a unique hydrologic connection and share the same supply of water.<sup>8</sup>

### **III. RULINGS 6254, 6255, 6256, 6257, 6258, 6259, 6260, AND 6261**

**WHEREAS**, on January 29, 2014, the State Engineer issued Ruling 6254 on pending applications of the Las Vegas Valley Water District (LVVWD) and Coyote Springs Investment, LLC (CSI) in the Coyote Spring Valley; Ruling 6255 on pending applications of Dry Lake Water, LLC (Dry Lake), and CSI in Coyote Spring Valley; Ruling 6256 on pending applications of Bonneville Nevada Corporation, Nevada Power Company (Nevada Power), Dry Lake, and the Southern Nevada Water Authority (SNWA) in the Garnet Valley; Ruling 6257 on pending applications of Nevada Power, Dry Lake, and SNWA in the Hidden Valley; Ruling 6258 on

<sup>5</sup> U.S. Fish and Wildlife Service, U.S. Bureau of Land Management and U.S. National Park Service Order 1169A Report, *Test Impacts and Availability of Water Pursuant to Applications Pending Under Order 1169*, pp. 43-46, 50-51, June 28, 2013, official records in the Office of the State Engineer. See also, <http://waterdata.usgs.gov/nv/nwis/>.

<sup>6</sup> See, e.g., Ruling 6254. See also U.S. Fish and Wildlife Service, U.S. Bureau of Land Management and U.S. National Park Service Order 1169A Report, *Test Impacts and Availability of Water Pursuant to Applications Pending Under Order 1169*, p. 85, June 28, 2013, official records in the Office of the State Engineer.

<sup>7</sup> That portion of the Black Mountains Area lying within the Lower White River Flow System is defined as those portions of Sections 29, 30, 31, 32, and 33, T.18S., R.64E., M.D.B.&M.; Section 13 and those portions of Sections 1, 11, 12, and 14, T.19S., R.63E., M.D.B.&M.; Sections 5, 7, 8, 16, 17, and 18 and those portions of Sections 4, 6, 9, 10, and 15, T.19S., R.64E., M.D.B.&M.

<sup>8</sup> See, e.g., State Engineer Ruling 6254, p. 24, official records in the Office of the State Engineer.

pending applications by LVVWD, Nevada Power, Dry Lake, and the Moapa Band of Paiute Indians in the California Wash; Ruling 6259 on pending applications by the Moapa Valley Water District in the Muddy River Springs Area; and Ruling 6260 on pending applications by Nevada Cogeneration Associates #1, Nevada Cogeneration Associates #2, and Dry Lake, in the Black Mountains Area, upholding in part the protests to said applications and denying the applications on the grounds that there was no unappropriated groundwater at the source of supply, the proposed use would conflict with existing rights, and the proposed use of the water would threaten to prove detrimental to the public interest because it would threaten the water resources upon which the endangered Moapa dace are dependent.

#### IV. LOWER WHITE RIVER FLOW SYSTEM

**WHEREAS**, the total long-term average water supply to the LWRFS, from subsurface groundwater inflow and local precipitation recharge, is not more than 50,000 acre-feet annually.<sup>9</sup>

**WHEREAS**, the Muddy River, a fully appropriated surface water source, has its headwaters in the Muddy River Springs Area and has the most senior rights in the LWRFS. Spring discharge in the Muddy River Springs Area is produced from the regional carbonate aquifer. Prior to groundwater development, the Muddy River flows at the Moapa gage were approximately 34,000 acre-feet annually.<sup>10</sup>

**WHEREAS**, the alluvial aquifer surrounding the Muddy River ultimately derives virtually all of its water supply from the carbonates, either through spring discharge that infiltrates into the alluvium or through subsurface hydraulic connectivity between the carbonate rocks and the alluvium.<sup>11</sup>

**WHEREAS**, the State Engineer has determined that pumping of groundwater within the LWRFS has a direct interrelationship with the flow of the decreed and fully appropriated Muddy River, which has the most-senior rights.<sup>12</sup>

---

<sup>9</sup> *Id.*

<sup>10</sup> United States Geological Survey Surface-Water Annual Statistics for the Nation, USGS 09416000 MUDDY RV NR MOAPA, NV, accessed at [https://waterdata.usgs.gov/nwis/annual/?search\\_site\\_no=09416000&agency\\_cd=USGS&referred\\_module=sw&format=sites\\_selection\\_links](https://waterdata.usgs.gov/nwis/annual/?search_site_no=09416000&agency_cd=USGS&referred_module=sw&format=sites_selection_links).

<sup>11</sup> See, e.g., State Engineer Ruling 6254, p. 24, official records in the Office of the State Engineer.

<sup>12</sup> *Id.*



**WHEREAS**, since the conclusion of the Order 1169 aquifer test, the State Engineer has jointly managed the groundwater rights within LWRFS.

**WHEREAS**, the State Engineer, under the joint management of the LWRFS, has not distinguished pumping from wells in the Muddy River Springs Area alluvium from pumping carbonate wells within the LWRFS.

**WHEREAS**, within the LWRFS, there exist more than 38,000 acre-feet of groundwater appropriations. Groundwater pumping from 2007 forward is included in Appendix B and is significantly less than the total appropriations.

**WHEREAS**, groundwater levels within the LWRFS have been relatively flat in the five years since the end of the Order 1169 aquifer test, but groundwater levels have not recovered to pre-test levels.<sup>13</sup>

#### **IV. PUMPAGE INVENTORIES**

**WHEREAS**, annual groundwater pumpage inventories in the Coyote Spring Valley have been published by the State Engineer since 2005. In the years 2005 through 2017 pumping has ranged from 665 acre-feet to 5,606 acre-feet, averaging 2,605 acre-feet. The average pumping in Coyote Spring Valley, excluding the years 2011 and 2012 when the aquifer test was being conducted, is 2,068 acre-feet.<sup>14</sup>

**WHEREAS**, annual groundwater pumpage inventories in the Black Mountains Area have been published by the State Engineer since 2001. In the years 2001 through 2017 pumping in the northwest portion of the basin has ranged from 1,137 acre-feet to 1,591 acre-feet, with an average of 1,476 acre-feet.<sup>15</sup>

<sup>13</sup> See, e.g., *USGS water level data for Site 364650114432001 219 S13 E65 28BDBA1 USGS CSV-2*. [waterdata.usgs.gov/nwis](http://waterdata.usgs.gov/nwis).

<sup>14</sup> See, e.g., *Nevada Division of Water Resources, Coyote Spring Valley Hydrographic Basin 13-210 Groundwater Pumpage Inventory*, 2017.

<sup>15</sup> See, e.g., *Nevada Division of Water Resources, Black Mountains Area Hydrographic Basin 13-215 Groundwater Pumpage Inventory*, 2017.

**WHEREAS**, annual groundwater pumpage inventories in the Garnet Valley have been published by the State Engineer since 2001. In the years 2001 through 2017 pumping has ranged from 797 acre-feet to 2,181 acre-feet, averaging 1,358 acre-feet.<sup>16</sup>

**WHEREAS**, the State Engineer does not conduct annual groundwater pumpage inventories in the Hidden Valley basin because there is no groundwater pumping in the basin.

**WHEREAS**, annual groundwater pumpage inventories in the California Wash have been published by the State Engineer since 2016. In the years 2016 and 2017 pumping has ranged from 88 acre-feet to 252 acre-feet, averaging 170 acre-feet.<sup>17</sup> Groundwater pumpage data have been reported by water right holders since 2009.

**WHEREAS**, annual groundwater pumpage inventories in the Muddy River Springs Area have been published by the State Engineer since 2016. In the years 2016 and 2017 pumping has ranged from 3,553 acre-feet to 4,048 acre-feet, with an average of 3,801 acre-feet.<sup>18</sup> Groundwater pumpage data have been reported by water right holders since 1976.

**WHEREAS**, total groundwater pumpage in Coyote Spring Valley, Muddy River Springs Area (MRSA), California Wash, Hidden Valley, Garnet Valley, and the northwest portion of the Black Mountains Area in calendar years 2007 through 2017, ranged from 9,090 acre-feet to 14,766 acre-feet. Pumpage in years 2011-2012 during the aquifer test averaged 14,535 afa. Pumpage in years 2015 through 2017, when alluvial pumping in the MRSA was greatly reduced because of the Reid Gardner Generating Station closure, ranged from 9,090 afa to 9,637 afa.

#### V. AUTHORITY AND NECESSITY

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

<sup>16</sup> See, e.g., *Nevada Division of Water Resources, Garnet Valley Hydrographic Basin 13-216 Groundwater Pumpage Inventory*, 2017.

<sup>17</sup> See, e.g., *Nevada Division of Water Resources, California Wash Hydrographic Basin 13-218 Groundwater Pumpage Inventory*, 2017.

<sup>18</sup> See, e.g., *Nevada Division of Water Resources, Muddy River Springs Area (AKA Upper Moapa Valley) Hydrographic Basin 13-219 Groundwater Pumpage Inventory*, 2017.

**WHEREAS**, NRS § 533.024(1)(e) was added in 2017 to declare the policy of the State to “manage conjunctively the appropriation, use and administration of all waters of this State regardless of the source of the water.”

**WHEREAS**, given that the State Engineer must use the best available science and manage conjunctively the water resources in the LWRFS, consideration of any development of long-term, permanent, uses that could ultimately be curtailed due to water availability will be examined with great caution.

**WHEREAS**, as demonstrated by the results of the aquifer test, Coyote Spring Valley, Muddy River Springs Area, Hidden Valley, Garnet Valley, California Wash, and the northwestern part of the Black Mountains Area have a direct hydraulic connection, and as a result must be administered as a joint administrative unit, including the administration of all water rights based upon the date of priority of such rights in relation to the priority of rights in the other basins.<sup>19</sup>

**WHEREAS**, the pre-development discharge of 34,000 acre-feet of the Muddy River system, which is fully appropriated, plus the more than 38,000 acre-feet of groundwater appropriations within the LWRFS greatly exceed the total water budget within the flow system.

**WHEREAS**, the results from the aquifer test, the data from groundwater level recovery and spring flow, and climate data indicate to the State Engineer that the quantity of water that may be pumped within the LWRFS without conflicting with senior rights on the Muddy River or adversely affecting the habitat of the Moapa dace is less than the quantity pumped during the aquifer test.

**WHEREAS**, the current amount of pumping corresponds to a period of time in which spring flows have remained relatively stable and have not demonstrated a continuing decline.

<sup>19</sup> See, e.g., Southern Nevada Water Authority, *Nevada State Engineer Order 1169 and 1169A Study Report*, June 2013; Tom Meyers, Ph.D., *Technical Memorandum Comments on Carbonate Order 1169 Pump Test Data and Groundwater Flow System in Coyote Springs and Muddy River Springs Valley, Nevada*, June 25, 2013; U.S. Fish and Wildlife Service, U.S. Bureau of Land Management and U.S. National Park Service Order 1169A Report, *Test Impacts and Availability of Water Pursuant to Applications Pending Under Order 1169*, June 28, 2013; Johnson and Mifflin, *Summary of Order 1169 Testing Impacts, per Order 1169A*, June 28, 2013; Tetra Tech, *Comparison of Simulated and Observed Effects of Pumping from MX-5 Using Data Collected to the End of the Order 1169 Test, and Prediction of Recovery from the Test*, June 10, 2013, official records in the Office of the State Engineer.

**WHEREAS**, the precise extent of the development of existing appropriations of groundwater within the LWRFS that may occur without conflicting with the senior rights of the fully decreed Muddy River has not been determined.

**WHEREAS**, recognizing that there exists a need for further analysis of the historic and ongoing groundwater pumping data, the relationship of groundwater pumping within the LWRFS to spring discharge and flow of the fully decreed Muddy River, the extent of impact of climate conditions on groundwater levels and spring discharge, and the ultimate determination of the sustainable yield of the LWRFS, the State Engineer finds that input by means of reports by the stakeholders in the interpretation of the data from the aquifer test and from the years since the conclusion of the aquifer test is important to fully inform the State Engineer prior to setting a limit on the quantity of groundwater that may be developed in the LWRFS or to developing a long-term Conjunctive Management Plan for the LWRFS and Muddy River.

**WHEREAS**, the State Engineer finds that it is necessary to carefully monitor the effects of groundwater development within the LWRFS under current conditions, toward the goal of collaboratively (with stakeholders) evaluating the amount of groundwater that may ultimately be developed within the LWRFS without conflicting with senior decreed rights on the Muddy River or adversely affecting the public interest in maintaining the habitat of the endangered Moapa dace. The evaluation process will include public meetings, meetings of a stakeholder representative working group, and coordination with the Hydrologic Review Team (HRT) developed under the 2006 Memorandum of Agreement among the Southern Nevada Water Authority, United States Fish and Wildlife Service, Coyote Springs Investments, Moapa Band of Paiutes, and the Moapa Valley Water District. The process will provide the opportunity for the stakeholders to engage in the development of a conjunctive management plan that will be informed by the determination of the total quantity of groundwater that may be developed within the LWRFS and that will facilitate the continued use of groundwater by junior priority groundwater rights holders whom have perfected their water rights while protecting the senior decreed rights on the Muddy River.

**WHEREAS**, recognizing that an amount less than the full quantity of the appropriated groundwater rights within the LWRFS may be developed in a manner that will provide for a reasonably certain supply of water for future permanent uses without jeopardizing the economies of the communities reliant on the water supply within the LWRFS, the health and safety of those

whom are either presently reliant the water, existing public interests, or those who may in the future become reliant on a reliable and sustainable source of supply, the State Engineer, with the following exception, finds that it is necessary to issue a temporary moratorium on the review and decision by the Division of Water Resources regarding any final subdivision map or other construction or development submission requiring a finding that adequate water is available to support the proposed development. During the pendency of this Interim Order, the State Engineer may review and grant approval of a subdivision or other submission if a showing of an adequate and sustainable supply of water to meet the anticipated life of the subdivision, other construction or development can be made to the State Engineer's satisfaction.

**WHEREAS**, through continued monitoring of the LWRFS during the effective period of this Interim Order, the State Engineer seeks to maintain recent groundwater pumping amounts, while providing time for the submission of additional scientific data and analysis regarding the total quantity of water that may be sustainably withdrawn from the LWRFS over the long-term without conflicting with senior Muddy River decreed rights or jeopardizing the communities, water users, or public interests identified above.

**WHEREAS**, the State Engineer is empowered to make such reasonable rules and regulations as may be necessary for the proper and orderly execution of the powers conferred by law.<sup>20</sup>

**WHEREAS**, within an area that has been designated by the State Engineer, as provided for in NRS Chapter 534, where, in the judgment of the State Engineer, the groundwater basin is being depleted, the State Engineer in his or her administrative capacity may make such rules, regulations and orders as are deemed essential for the welfare of the area involved.<sup>21</sup>

**WHEREAS**, the State Engineer finds that additional data relating to the impacts of groundwater pumping from the LWRFS coupled with the public process will allow his office to make a determination as to the appropriate long-term management of groundwater pumping that may occur in the LWRFS by existing holders of water rights without conflicting with existing senior decreed rights or adversely affecting the endangered Moapa dace.

---

<sup>20</sup> NRS § 532.120.

<sup>21</sup> *Id.*

## VI. ORDER

**NOW THEREFORE**, the State Engineer orders:

1. The Lower White River Flow System consisting of the Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, and the portion of the Black Mountains Area as described in this Order, is herewith designated as a joint administrative unit for purposes of administration of water rights. All water rights within the Lower White River Flow System will be administered based upon their respective date of priorities in relation to other rights within the regional groundwater unit.
2. Any stakeholder with interests that may be affected by water right development within the Lower White River Flow System may file a report in the Office of the State Engineer in Carson City, Nevada, no later than the close of business on Monday, June 3, 2019.<sup>22</sup> Reports filed with the Office of the State Engineer should address the following matters:
  - a. The geographic boundary of the hydrologically connected groundwater and surface water systems comprising the Lower White River Flow System;
  - b. The information obtained from the Order 1169 aquifer test and subsequent to the aquifer test and Muddy River headwater spring flow as it relates to aquifer recovery since the completion of the aquifer test;
  - c. The long-term annual quantity of groundwater that may be pumped from the Lower White River Flow System, including the relationships between the location of pumping on discharge to the Muddy River Springs, and the capture of Muddy River flow;

---

<sup>22</sup> For any stakeholder affected by the shut-down of the United States government beginning in December 2018, upon a request and showing of good cause to the satisfaction of the State Engineer, an extension of time may be granted to those affected parties.

- d. The effects of movement of water rights between alluvial wells and carbonate wells on deliveries of senior decreed rights to the Muddy River; and,
  - e. Any other matter believed to be relevant to the State Engineer's analysis.
- 3. Any stakeholder with interests that may be affected by water right development within the Lower White River Flow System may file with the Office of the State Engineer no later than the close of business on Thursday July 18, 2019, a rebuttal to the Reports filed on June 3, 2019.
- 4. The State Engineer will schedule an administrative hearing within the month of September 2019 to take comment on the submitted reports.
- 5. During the pendency of this Interim Order:
  - a. Permanent applications to change existing groundwater rights shall be held in abeyance pending the submission of the reports as required by Paragraph 2 of this Order and as authorized by NRS §§ 532.165(1), 533.368 and 533.370(4)(d). Temporary applications to change existing groundwater rights will be processed pursuant to NRS § 533.345.
  - b. A temporary moratorium is issued regarding any final subdivision or other submission concerning development and construction submitted to the State Engineer for review, and such submissions shall be held in abeyance pending the conclusion of the public process to determine the total quantity of groundwater that may be developed within the Lower White River Flow System. The State Engineer may review and grant approval of a subdivision or other submission if a showing of an adequate and sustainable supply of water to meet the anticipated life of the subdivision, other construction or development can be made to the State Engineer's satisfaction.

- c. Holders of water rights who maintain their water rights in good standing by filing all required applications for extension of time in conformity with the requirements of NRS §§ 533.390, 533.395 and 533.410 may cite this order in support of their applications for extension of time.
- d. Holders of water rights who file all required applications for extension of time in conformity with the requirements of NRS § 534.090 may cite this order in support of their applications for extension of time to prevent the working of a forfeiture.

  
\_\_\_\_\_  
JASON KING, P.E.  
State Engineer

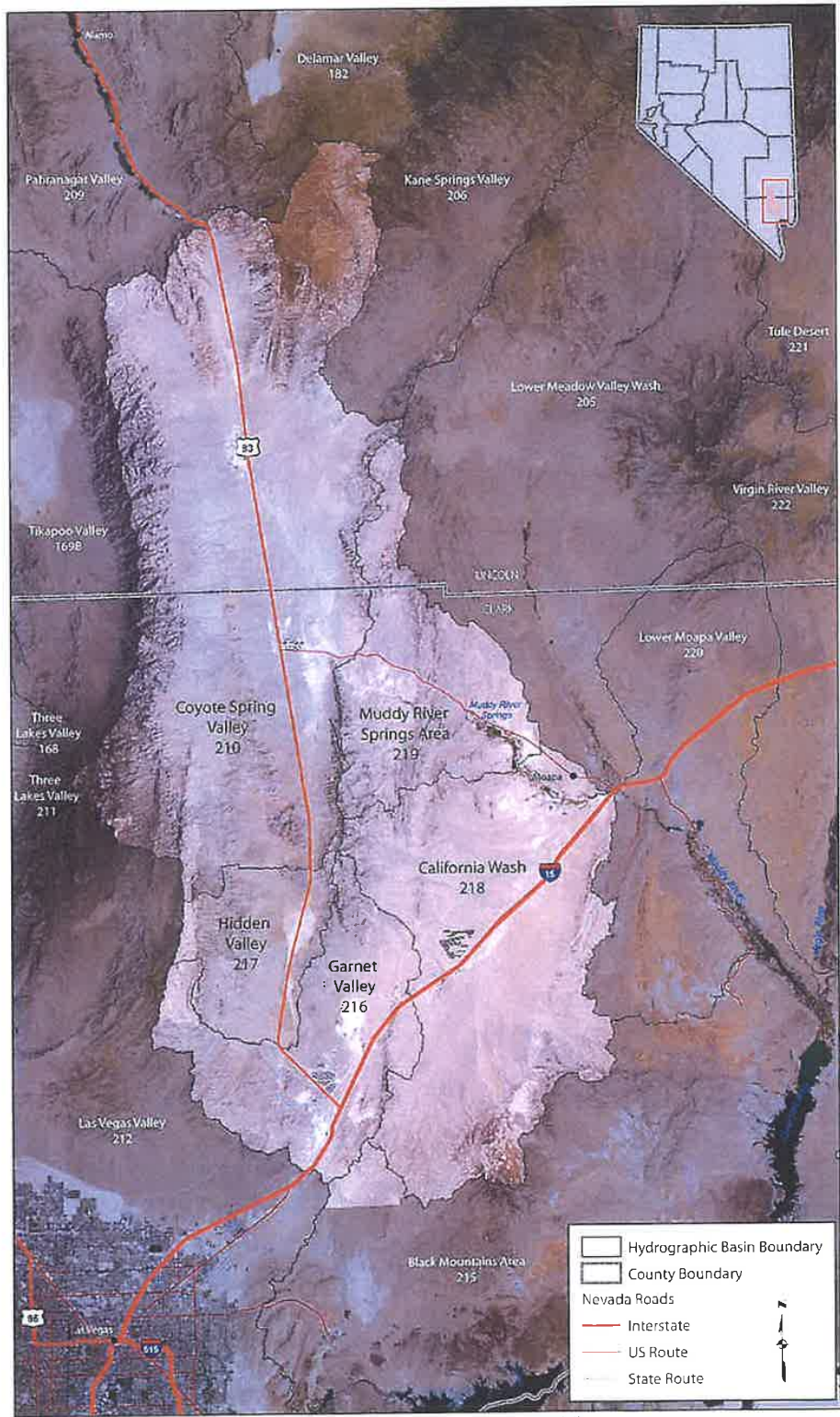
Dated at Carson City, Nevada this

11<sup>TH</sup> day of JANUARY, 2019.



## Order 1303, Appendix A : LOWER WHITE RIVER FLOW SYSTEM

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



Summer 2017 imagery from the National Agriculture Imagery Program

Nevada Division of Water Resources  
Office of the State Engineer  
Jason King, P.E.  
State Engineer

CSI000572

**Order 1303, APPENDIX B: Groundwater Pumping in the Lower White River Flow System, 2007-2017**

Basin No.	219											
Basin Name	Muddy River Springs Area			Black Mountains Area			Coyote Spring Valley		Garnet Valley	California Wash	Hidden Valley	Total pumping in the LWRFS
Year	Carbonate pumping (reported by MVWD)	Alluvial pumping (reported by NV Energy)	All other Alluvial Pumping <sup>1</sup>	Total Pumping in Basin 219 <sup>1</sup>	Carbonate pumping in the Northwest Portion of Basin 215	Total Pumping in Basin 215						
2007	2,079	4,744	253	7,076	1,585	1,732	3,147	1,412		27 <sup>2</sup>	0	13,247
2008	2,272	4,286	253	6,811	1,591	1,759	2,000	1,552		27 <sup>2</sup>	0	11,981
2009	2,034	4,092	253	6,379	1,137	1,159	1,792	1,427		21 <sup>3</sup>	0	10,756
2010	1,826	4,088	253	6,167	1,561	1,572	2,923	1,373		26 <sup>3</sup>	0	12,050
2011	1,837	4,212	253	6,302	1,398	1,409	5,606	1,427		33 <sup>3</sup>	0	14,766
2012	2,638	2,961	253	5,852	1,556	1,564	5,516	1,351		28 <sup>3</sup>	0	14,303
2013	2,496	3,963	253	6,712	1,585	1,776	3,407	1,484		66 <sup>3</sup>	0	13,254
2014	1,442	4,825	253	6,520	1,429	1,624	2,258	1,568		241 <sup>3</sup>	0	12,016
2015	2,396	1,249	253	3,898	1,448	1,708	2,064	1,520		460	0	9,390
2016	2,795	941	312	4,048	1,434	1,641	1,722	2,181		252	0	9,637
2017	2,824	535	194	3,553	1,507	1,634	1,961	1,981		88	0	9,090

The LWRFS includes basins 210, 216, 217, 218, 219 and the northwest portion of 215.

All values in this table are from State Engineer basin pumpage inventory reports except as noted in the footnotes below:

1. Alluvial Pumping not reported by NV Energy for years 2007-2015 estimated as the average of inventoried years 2016-2017.
2. Estimated as the average of groundwater pumping in years 2009-2012.
3. Reported to the State Engineer but not published in a basin inventory report.

# **EXHIBIT 6**

# **EXHIBIT 6**

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

#1309

ORDER

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

Table of Contents

I.	Background of the Administration of the Lower White River Flow System Basins .....	1
II.	Interim Order 1303 .....	10
III.	Public Comment .....	41
IV.	Authority and Necessity .....	42
V.	Endangered Species Act .....	43
VI.	Geographic Boundary of the LWRFS .....	46
VII.	Aquifer Recovery Since Completion of the Order 1169 Aquifer Test .....	55
VIII.	Long-term Annual Quantity of Water That Can Be Pumped .....	57
IX.	Movement of Water Rights .....	63
X.	Order .....	65

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

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



SE 56631

Muddy River Springs Area Hydrographic Basin (Muddy River Springs Area), Basin 219, since July 14, 1971.<sup>1</sup>

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

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

Confidence in predictions of the effects of development, however, is low; and it will remain low until observations of the initial hydrologic results of development are analyzed. A strategy of staging developments gradually and adequately monitoring the resulting hydrologic conditions would provide information that eventually could be used to improve confidence in the predictions.<sup>4</sup>

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

<sup>2</sup> Memorandum dated August 3, 1984, from Terry Katzer, Nevada Office Chief, Water Resources Division, United States Department of Interior Geological Survey, Carson City, Nevada to Members of the Carbonate Terrane Study.

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

<sup>4</sup> *Id.*, p. 2.

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

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

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

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

---

<sup>5</sup> See NSE Exs. 14-20, *Ruling 6254-Ruling 6260*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>6</sup> See NSE Ex. 14.

<sup>7</sup> *Id.*

<sup>8</sup> See NSE Ex. 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See State Engineer's Ruling 5115, dated April 18, 2002, official records of the Division of Water Resources.

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

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

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

---

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

<sup>13</sup> See NSE Ex. 236, *2006 Memorandum of Agreement between the Southern Nevada Water Authority, United States Fish and Wildlife Service, Coyote Springs Investment LLC, Moapa Band of Paiute Indians and Moapa Valley Water District*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>14</sup> *Id.*

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

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

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

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

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

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

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

---

<sup>17</sup> See July 1, 2010, letter from Jason King, Nevada State Engineer, to Order 1169 Study Participants, official records of the Division of Water Resources.

<sup>18</sup> See NSE Ex. 2, *Order 1169A*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>19</sup> See, e.g., NSE Ex. 1, Appendix B.

<sup>20</sup> See Division, *Water Use and Availability – Order 1169*, <https://bit.ly/Order1169>



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

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

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

---

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

<sup>22</sup> *See, e.g.*, NSE Ex. 14. *See also* NSE Ex. 256.

<sup>23</sup> *See* NSE Ex. No. 236.

<sup>24</sup> NSE Ex. 256, pp. 43-46, 50-51. *See also*, USGS, *Water Data for Nevada*, <https://bit.ly/nvwater>.

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

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

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

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

---

<sup>25</sup> See NSE Ex. 245, *Southern Nevada Water Authority Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 23-25.

<sup>26</sup> *Id.*

<sup>27</sup> NSE Ex. 247, *Coyote Springs Investments, LLC Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>28</sup> See, e.g., NSE Ex. 14, pp.15-18. See also NSE Ex. 256.

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

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

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

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

---

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See NSE Ex. 252, *Moapa Band of Paiute Indians Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 25.

<sup>32</sup> *Id.*

<sup>33</sup> NSE Ex. 250, *Moapa Valley Water District Basin 220 Well Site Analysis*, Hearing on Interim Order 1303, official records of the Division of Water Resources; NSE Ex. 251, *Moapa Valley Water District Evaluation of MX-5 Pumping Test on Springs and Wells in the Muddy Springs Area*, dated June 24, 2013, Hearing on Interim Order 1303, official records of the Division of Water Resources.

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

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

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

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

---

<sup>34</sup> NSE Ex. 246, *Great Basin Water Network Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>35</sup> *Id.*

<sup>36</sup> NSE Ex. 248, *Center for Biological Diversity Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>37</sup> NSE Exs. 14-21. The study basins include Coyote Spring Valley, Garnet Valley, Hidden Valley, Muddy River Springs Area, California Wash, and that portion of the Black Mountains Area lying within the LWRFS was defined as those portions of Sections 29, 30, 31, 32, and 33, T.18S., R.64E., M.D.B.&M.; Section 13 and those portions of Sections 1, 11, 12, and 14, T.19S., R.63E., M.D.B.&M.; Sections 5, 7, 8, 16, 17, and 18 and those portions of Sections 4, 6, 9, 10, and 15, T.19S., R.64E., M.D.B.&M.

<sup>38</sup> *See, e.g.*, NSE Ex. 14, p. 24.

any groundwater that could be developed without conflicting with senior rights on the Muddy River and the springs was uncertain.<sup>39</sup>

## II. INTERIM ORDER 1303

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

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

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

<sup>39</sup> *Id.*

<sup>40</sup> See NSE Ex. 1, *Order 1303 and Addendum to Interim Order 1303*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>41</sup> *Id.*, p. 7.

submitted by interested stakeholders were intended to aid in the fact-finding goals of the Division.<sup>42</sup>

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

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

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

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

---

<sup>42</sup> *Id.*, pp. 16–17.

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

*Center for Biological Diversity*

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

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

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

---

<sup>44</sup> See CBD Ex. 3, *CBD Order 1303 Report by Dr. Tom Myers*; 27 pp., Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 1; Transcript 1504-1505.

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

increased carbonate-rock aquifer pumping, led the CBD to infer the dependency of spring flows on carbonate-rock aquifer water supply.<sup>46</sup>

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

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

*Church of Jesus Christ of Latter-day Saints*

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

<sup>46</sup> See CBD Ex. 3, pp. 1, 24; See CBD Ex. 4, p. 8–10, 21–25; Tr. 1508–1525; LC-V Ex. 2, p. 12, GP-REP Ex. 2, p. 3; CBD's expert suggest that the Palmer Drought Severity Index is more robust to evaluate for drought rather than using precipitation.

<sup>47</sup> See CBD Ex. 3, pp. 20–26; See CBD Ex. 4, p. 28–29; Tr. 1525–1528.

<sup>48</sup> See Letter from the Church, received August 15, 2019, Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>49</sup> See *Closing Brief of the Church of Jesus Christ of Latter-Day Saints* (Church closing), Hearing on Interim Order 1303, official records of the Division of Water Resources.



*City of North Las Vegas*

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

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

---

<sup>50</sup> See CNLV Ex. 5, *City of North Las Vegas Utilities Department: Interim Order 1303 Report Submittal from the City of North Las Vegas – July 2, 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources. See CNLV Ex. 6, *Rebuttal Document submitted on behalf of the City of North Las Vegas, to Interim Order 1303 Report Submittals of July 3, 2019 – Prepared by Interflow Hydrology – August 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources. See Tr. 1416–66, and *City of North Las Vegas' Closing Statement* (CNLV Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>51</sup> See CNLV Ex. 5, pp. 2–3. See also CNLV Ex. 3, *Garnet Valley Groundwater Pumping Review for APEX Industrial Complex, City of North Las Vegas, Clark County, Nevada- Prepared by Interflow Hydrology, Inc.- July 2019*, pp. 7–8, 38.

<sup>52</sup> *Id.*, p. 3, Technical Memo, pp. 14–16.

<sup>53</sup> *Id.*, pp. 3–4.

<sup>54</sup> *Id.*, p. 4., Technical Memo, p. 45.

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

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

#### *Coyote Springs Investments*

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

---

<sup>55</sup> *Id.*, Technical Memo, p. 48–49.

<sup>56</sup> *Id.*

<sup>57</sup> See CNLV Ex. 6, pp. 1–2.

<sup>58</sup> *Id.*, p. 2.

<sup>59</sup> *Id.*, pp. 2–3.

<sup>60</sup> *Id.*, p. 3.

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

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

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

<sup>61</sup> CSI Ex. 1, *CSI July 3, 2019 Order 1303 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 4–5; Tr. 53.

<sup>62</sup> CSI Ex. 1, p. 5.

<sup>63</sup> CSI Ex. 2, *CSI August 16, 2019 Rebuttal Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 2, 7.

<sup>64</sup> CSI Ex. 1, p. 7.

<sup>65</sup> CSI Ex. 1, p. 7; Tr. 131–132.

<sup>66</sup> Tr. 154.

<sup>67</sup> CSI Ex. 2, p. 2; *CSI Closing Statement* (CSI Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources; CSI recommended including Lower Meadow Valley Wash in its Rebuttal report. See CSI Ex. 2, p. 12; Mr. Herrema said Lower Moapa Valley, but the report said Lower Meadow Valley 10:10.

<sup>68</sup> CSI Ex. 1, p. 15; the outflow from Kane Springs Valley is included in the water budget, but due to isolating geologic features, groundwater elevations in Kane Springs Valley are not impacted by pumping in the LWRFS, Tr. 135:7–137:3, 160:2–12.

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

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

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

<sup>69</sup> CSI Ex. 1, p. 25.

<sup>70</sup> CSI Ex. 1, p. 25.

<sup>71</sup> CSI Ex. 1, p. 29; evidence of impermeability, Tr. 181.

<sup>72</sup> CSI Ex. 1, p. 29.

<sup>73</sup> CSI Closing.

<sup>74</sup> CSI Ex. 1, pp. 31-40.

<sup>75</sup> Tr. 221-223; CSI Closing, pp. 8-9.

<sup>76</sup> CSI Closing.

<sup>77</sup> CSI Closing, p. 19.

<sup>78</sup> CSI Closing.

<sup>79</sup> CSI Ex. 1, p. 58.

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

*Georgia Pacific and Republic*

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

---

<sup>80</sup> CSI Closing.

<sup>81</sup> CSI Ex. 2, p. 17.

<sup>82</sup> The initial response was submitted on behalf of Dry Lake Water, LLC, Georgia Pacific, and Republic. See GP-REP Ex. 1, *Broadbent July 2, 2019 Initial Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources. The rebuttal response was submitted on behalf of Dry Lake Water, LLC, Georgia Pacific Gypsum LLC, and Republic. See GP-REP Ex. 2, *Broadbent August 16, 2019 Rebuttal Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources. However, the expert only appeared at the Hearing on Interim Order 1303 on behalf of Georgia Pacific and Republic. See Tr. 1588-91.

<sup>83</sup> See GP-REP Ex. 01, GP-REP Ex. 02, and *Closing Argument of Georgia Pacific Corporation and Republic Environmental Technologies, Inc.* (Closing GP-REP), Hearing on Interim Order 1303, official records of the Division of Water Resources.

the Garnet Valley and the Black Mountains Area has a measurable impact to spring flow in the Warm Springs area.<sup>84</sup>

*Great Basin Water Network*

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

*Lincoln County Water District and Vidler Water Company*

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

<sup>84</sup> See Closing GP-REP.

<sup>85</sup> *GBWN Report on Order 1303*, (GBWN Report), Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>86</sup> LC-V Ex. 1, *Lower White River Flow System Interim Order #1303 Report Focused on the Northern Boundary of the Proposed Administrative Unit, prepared by Lincoln County Water District and Vidler Water Company in Association with Zonge International Inc.*, dated July 3, 2019, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 2-1.

<sup>87</sup> LC-V Ex. 2, *Rebuttal Submittal to Reports Submitted in Response to Interim Order #1303*, dated August 16, 2019 and Attachments A, B, C, D and E containing the reports or technical memorandums of Greg Bushner, Peter Mock, Thomas Butler, Todd Umstot and Norman Carlson., Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 7, 14-15.

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

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

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

<sup>88</sup> LC-V Ex. 1, pp. 2-2 through 2-3, citing State Engineer's Rulings 5712, 6254, 5712.

<sup>89</sup> LC-V Ex. 1, p. 2-3.

<sup>90</sup> Testimony generally at Tr. 1311-1318. "... simply having correlation is not proof of causation. Causation is neither proved nor evaluated in a regression analysis." Tr. 1303.

<sup>91</sup> LC-V Ex. 1, p. 3-1.

<sup>92</sup> LC-V Ex. 1, pp. 1-1, 3-1 through 3-4. LC-V went on to conclude that local groundwater recharge occurs in Kane Springs Valley that does not flow to the LWRFS, and therefore there is available unappropriated water in the basin. LC-V Ex. 1, p. 3-5.

<sup>93</sup> LC-V Ex. 1, Appendix C, pp. 111-153.

<sup>94</sup> *Id.*, pp. 124-125.

<sup>95</sup> "Gradient alone does not mean flow." Thomas Butler, witness on behalf of LC-V, Tr. 1281.

<sup>96</sup> Tr. 1281-1282; LC-V Ex. 1, pp. 3-7 through 3-11.

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

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

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

---

<sup>97</sup> Tr. 1284.

<sup>98</sup> Tr. 1286.

<sup>99</sup> LC-V Ex. 1, pp. 1-1, 4-1 through 4-10.

<sup>100</sup> LC-V Ex. 1, p. 4-3.

<sup>101</sup> LC-V Ex. 1, p. 4-3.

<sup>102</sup> LC-V Ex. 1, p. 4-8, Tr. 1322.

<sup>103</sup> Tr. 1271-1272; LC-V Ex. 1, p. 4-9.

<sup>104</sup> LC-V Ex. 1, p. 7-1 through 7-2; Tr. 1408. Questions from the National Park Service and the State Engineer inquired whether the areas of high resistivity in the CSAMT necessarily implied low transmissivity, low permeability of the rock. LC-V conceded that the resistivity information alone does not provide data about the hydraulic properties of either side of the resistive area, but when considered with all available information, LC-V concluded that the fault is likely an impediment to groundwater flow. Tr. 1327-1328, 1363-1364.

<sup>105</sup> LC-V Ex. 1, p. 5-2.



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

*Moapa Band of Paiutes*

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

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

---

<sup>106</sup> LC-V Ex. 1, p. 5-3.

<sup>107</sup> LC-V Ex. 1, p. 5-3.

<sup>108</sup> Tr. 772- 773; 839.

<sup>109</sup> See *Closing Statement by the Moapa Band of Paiute Indians for Order 1303 Hearing* (MBOP Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 1-2, 6.

<sup>110</sup> *Id.*, pp. 7-12, 15-16; See MBOP Ex. 3, Johnson, C., and Mifflin, M. *Rebuttal Report of the Moapa Band of Paiutes in Response to Stakeholder Technical Reports Filed under Order #1303: unpublished report and appendices*, August 16, 2019. 27 p., Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>111</sup> See MBOP Ex. 2, Johnson, C., and Mifflin, M. *Water Level Decline in the LWRFS: Managing for Sustainable Groundwater Development. Initial Report of the Moapa Band of Paiutes in Response to Order #1303: unpublished report and appendices*, July 3, 2019. 84 p., Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 2, 4, 14, 35; Tr. 819.

River Springs Area.<sup>112</sup> This hydrodynamic divide theory was not shared by SNWA, CBD, CSI, and NPS.<sup>113</sup>

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

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

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

<sup>112</sup> See MBOP Ex. 2, pp. 2, 4, 12, 14, 20, 35, 55; Tr. 812; 845.

<sup>113</sup> SNWA Ex. 9, pp. 12–13; CBD Ex. 4, p. 15; CSI Ex. 2, p. 23; NPS Ex. 3, *National Park Service's Response to July 2019 Interim Order 1303 Reports*, Waddell, August 16, 2019, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 4.

<sup>114</sup> See MBOP Ex. 2, pp. 3, 26–32, 35; Tr. 764–771; 805.

<sup>115</sup> See MBOP Ex. 2, pp. 3, 35; Tr. 821–826.

<sup>116</sup> See MBOP Ex. 2, p. 29; Tr. 775, 838–840; 848.

<sup>117</sup> See MBOP Ex. 2, pp. 2, 20, 35.

<sup>118</sup> See MBOP Ex. 2, pp. 6, 19, 35; Tr. 850–851.

<sup>119</sup> See MBOP Ex. 2, pp. 23–24, 35; Tr. 836.

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

*Moapa Valley Water District*

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

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

<sup>120</sup> See MBOP Ex. 2, pp. 23, 35.

<sup>121</sup> See MBOP Closing.

<sup>122</sup> Tr. 1172.

<sup>123</sup> MVWD Ex. 3, *District July 1, 2019 Report in response to Interim Order 1303*, p.5, Hearing on Interim Order 1303, official records of the Division of Water Resources; MVWD Ex. 4, *District August 16, 2019 Rebuttal Report*, p. 1, Hearing on Interim Order 1303, official records of the Division of Water Resources. MVWD has 3,147 afa of water rights in Arrow Canyon. Tr. 1169-1170.

<sup>124</sup> MVWD Ex. 3, p. 1; Tr. 1175.

<sup>125</sup> MVWD Ex. 3, p. 1; MVWD Ex. 4, p. 2.

<sup>126</sup> MVWD Ex. 3, pp. 1-2, referring to State Engineer's Ruling 5712 (*see*, NSE Ex. 12, *Ruling 5712*, Hearing on Interim Order 1303, official records of the Division of Water Resources) and MVWD Ex. 8, *Las Vegas Valley Water District, Water Resources and Ground-Water Modeling in the White River and Meadow Valley Flow Systems, Clark, Lincoln, Nye, and White Pine Counties, Nevada (2001)*, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 6-3.

<sup>127</sup> Tr. 1177-1178.

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

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

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

---

<sup>128</sup> Tr. 1195-1197.

<sup>129</sup> Tr. 1176-1177.

<sup>130</sup> Tr. 1181-1182. MVWD also quoted from the report that "the fracturing was so extensive that the fractured aquifer system really behaved as an equivalent porous media." *Id.* MVWD later agreed that this would behave like a sandy aquifer. Tr. 1224.

<sup>131</sup> Tr. 1185.

<sup>132</sup> Tr. 1250.

<sup>133</sup> Tr. 1219.

<sup>134</sup> *Post-Hearing Brief of Moapa Valley Water District (MVWD Closing)*, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 5.

regarding aquifer recovery.<sup>135</sup> MVWD viewed this as being consistent with the State Engineer's statements in Interim Order 1303.<sup>136</sup>

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

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

<sup>135</sup> Tr. 1198, MVWD Ex. 3, p. 4.

<sup>136</sup> Tr. 1199.

<sup>137</sup> Tr. 1199-1200; MVWD Closing, pp. 9-10.

<sup>138</sup> MVWD Ex. 3, p. 5.

<sup>139</sup> *Id.*

<sup>140</sup> MVWD Ex. 3, p. 5.

<sup>141</sup> MVWD Ex. 3, p. 6; Tr. 1203-1204; 6,791 afa constitutes an increase in the carbonate-rock aquifer pumping for MVWD. Tr. 1228.

<sup>142</sup> MVWD Ex. 3, pp. 6-7; Tr. 1202-1203.

*Muddy Valley Irrigation Company*

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

*United States Department of the Interior, National Park Service*

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

<sup>143</sup> Tr. 1693–1696, 1705.

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

<sup>145</sup> MVIC Ex. 1, p. 5; Tr. 1698.

<sup>146</sup> *See* MVIC Ex. 1, p. 3; Tr. 1697–1698.

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

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

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

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

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

---

<sup>149</sup> See NPS Ex. 2, p. 22. See also, Tr. 569-70; NPS, *Closing Statements Interim Order 1303 Hearing Testimony* (NPS Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 2.

<sup>150</sup> NPS Ex. 2, p. 22; NPS Closing, pp. 2-4.

<sup>151</sup> *Id.*

<sup>152</sup> NPS Ex. 2, p. 22; NPS Ex. 3, pp. 5-11; Tr. 550-551; NPS Closing, pp. 4-5.

<sup>153</sup> NPS Ex. 2, p. 22; NPS Ex. 3, pp. 5-11; Tr. 550-551; NPS Closing, pp. 5-6.

<sup>154</sup> NPS Ex. 2, p. 22; Tr. 552-554.

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

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

*Nevada Cogeneration Associates*

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

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

---

<sup>155</sup> NPS Ex. 2, pp. 7, 22–23. *See also* NPS Closing, pp. 5–6.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> NPS Ex. 2, p. 23. *See also* NPS Closing, p. 6, and Tr. 593–594.

<sup>159</sup> NCA Ex. 1, *NCA Rebuttal Report Pertaining to Interim Order 1303 August 16, 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources; Tr. 1602–50.

<sup>160</sup> NCA Ex. 1, pp. 1, 23.

<sup>161</sup> *Id.*, pp. 2, 23.



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

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

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

---

<sup>162</sup> *Post-hearing brief of Nevada Cogeneration Associates Nos. 1 and 2 pertaining to Amended Notice of Hearing Interim Order #1303 following the hearing conducted September 23, 2019, through October 4, 2019, before the Nevada State Engineer (NCA Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 2–10. See also Tr. 1619–22.*

<sup>163</sup> NCA Ex. 1 pp. 3–7, 23. *See also* NCA Closing, pp. 15–16.

<sup>164</sup> NCA Ex. 1, pp. 8–17, 23. *See also* NCA Closing, pp. 10–14, and Tr. 1629–44.

<sup>165</sup> NCA Ex. 1, pp. 11–16.

<sup>166</sup> *Id.*, pp. 17–18, 23.

<sup>167</sup> *Id.*, pp. 19, 24.

<sup>168</sup> *Id.*

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

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

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

#### *NV Energy*

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

<sup>169</sup> *Id.*

<sup>170</sup> NCA Ex. 1, p. 19. *See, e.g.* Draft order of the State Engineer distributed to LWRFS stakeholders at the LWRFS Working Group meeting, September 19, 2018, official records of the Division of Water Resources.

<sup>171</sup> *Id.*, pp. 18, 24.

<sup>172</sup> NCA Closing, pp. 14–15.

<sup>173</sup> NCA Ex. 1, pp. 19–23, 24.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> NVE Ex. 1, *NV Energy Rebuttal Report to State Engineer's Order 1303 Initial Reports by Respondents*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>177</sup> *Id.*, pp. 1–2.

opined that the existence of subsurface outflow from Kane Springs Valley into the LWRFS basins was insufficient to support its inclusion.<sup>178</sup>

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

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

---

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*, pp. 2–7.

<sup>180</sup> NVE Ex. 1, p. 8.

<sup>181</sup> *Id.*, pp. 8–9; *Nevada Energy's Closing Statements* (NV Energy Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 4–5.

<sup>182</sup> *Id.*, pp. 9–12.

534.120, require the water right holders within the LWRFS to develop a conjunctive management plan.<sup>183</sup>

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

*Southern Nevada Water Authority and Las Vegas Valley Water District*

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

<sup>183</sup> *Id.*, p. 12.

<sup>184</sup> Tr. 1761-1762.

<sup>185</sup> NV Energy Closing, pp. 2-3.

<sup>186</sup> *Id.*, pp. 3-6.

<sup>187</sup> SNWA Ex. 7; SNWA Ex. 8, Marshall, Z.L., and Williams, R.D., 2019, *Assessment of Moapa dace and other groundwater-dependent special status species in the Lower White River Flow System, Presentation to the Office of the Nevada State Engineer: Southern Nevada Water Authority, Las Vegas, Nevada*, Hearing on Interim Order 1303, official records of the Division of Water Resources; SNWA Ex. 9, Burns, A., Drici, W., and Marshall Z.L., 2019, *Response to stakeholder reports submitted to the Nevada State Engineer with regards to Interim Order 1303, Presentation to the Office of the Nevada State Engineer: Southern Nevada Water Authority, Las Vegas, Nevada*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

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

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

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

<sup>188</sup> SNWA Ex. 7, pp. 5-1 through 5-18, 8-1. *See also*, Tr. 953.

<sup>189</sup> *Closing Brief of Southern Nevada Water Authority and Las Vegas Valley Water District* (SNWA Closing), pp. 4-9, Hearing on Interim Order 1303, official records of the Division of Water Resources. *See also* SNWA Ex. 9 at sections 6, 7 and 12.

<sup>190</sup> SNWA Closing, pp. 9-12. *See also* SNWA Ex. 7, pp. 5-1 through 5-18, and SNWA Ex. 9, pp. 15-20.

<sup>191</sup> SNWA Closing, pp. 11-12. *See also* Tr. 932.

<sup>192</sup> SNWA Closing, pp. 12-14. *See also* SNWA Ex. 9, pp. 15-17.

<sup>193</sup> SNWA Ex. 7, pp. 6-3 through 6-4, 8-2 through 8-4.

<sup>194</sup> *Id.*, pp. 6-4 through 6-11, 8-2 through 8-4; SNWA Ex. 9, pp. 22-27.

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

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

#### *Technichrome*

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

<sup>195</sup> Tr. 921-22. *See also* SNWA Ex. 7, pp. 8-1 through 8-5; SNWA Ex. 9, p. 27.

<sup>196</sup> *See* SNWA Ex. 8.

<sup>197</sup> *Id.*, pp. 8-1 through 8-2. *See also* SNWA Closing, pp. 17-19.

<sup>198</sup> *See* SNWA Closing, pp. 19-20. *See also* SNWA Ex. 7, pp. 6-3 through 6-11, 8-4; SNWA Ex. 9, pp. 21-22.

<sup>199</sup> SNWA Closing, p. 20. *See also* Tr. 904-05.

<sup>200</sup> *Response to Interim Order #1303 Submitted [sic] by Technichrome* (Technichrome Response), Hearing on Interim Order 1303, official records of the Division of Water Resources, and *Additional Comments from Technichrome* (Technichrome Addendum), Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>201</sup> Technichrome Response, pp. 1-3.

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

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

*U.S. Fish and Wildlife Service*

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

---

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*, and Technichrome Addendum.

<sup>204</sup> Technichrome Addendum.

<sup>205</sup> *Id.*

<sup>206</sup> The USFWS' mission is to work with others to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people. *See also*, USFWS, *About the U.S. Fish and Wildlife Service*, <https://bit.ly/aboutusfws> (last accessed June 4, 2020).

<sup>207</sup> USFWS Ex. 5, *Report in Response to Order 1303*, Hearing on Interim Order 1303, official records of the Division of Water Resources; USFWS Ex. 7, *Rebuttal to: Water Level Decline in the LWRFS: Managing for Sustainable Groundwater Development by Cady Johnson and Martin Mifflin [sic], Mifflin & Associates, Inc., submitted by the Moapa Band of Paiutes in accordance with Order 1303*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

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

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

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

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

<sup>208</sup> See USFWS Ex. 5, pp. 2, 28–36.

<sup>209</sup> USFWS Ex. 5, pp. 3, 32–33, 35, 37–45; Tr. 266–270, 273–281, 299–301, 433–435.

<sup>210</sup> USFWS Ex. 5, p. 3.



periods.<sup>211</sup> Using the pumpage inventories for this time period, USFWS estimated the sustainable groundwater withdrawals to be 9,318 afa.<sup>212</sup>

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

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

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

---

<sup>211</sup> USFWS Ex. 5, pp. 3, 37; Tr. 269–270, 433–435.

<sup>212</sup> USFWS Ex. 5, pp. 3, 36–38; Tr. 268–270.

<sup>213</sup> See USFWS Ex. 5, pp. 3–4, 38–39; Tr. 272–273.

<sup>214</sup> See USFWS Ex. 5, pp. 4, 39–45; Tr. 273–282; See also, NSE Ex. 256; NSE Ex. 244, 2006 *Memorandum of Agreement Trigger Levels agreed to by the Southern Nevada Water Authority, Moapa Valley Water District, Coyotes Springs Investments LLC and Moapa Band of Paiute Indians*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>215</sup> See USFWS Ex. 5, pp. 24–28, 34–35; See USFWS Ex. 7, pp. 2–16; Tr. 258–260, 299–322, 429–432.

*Western Elite Environmental/Bedroc*

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

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

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

---

<sup>216</sup> Bedroc Ex. 2, *Interim Order 1303- Rebuttal Report- Prepared by Bedroc and Dixon Hydrologic, PLLC- August 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>217</sup> Bedroc Ex. 2; *Western Elite Environmental Inc.'s and Bedroc Limited, LLC's Closing Statement* (Bedroc Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>218</sup> See Tr. 1718-1719.

<sup>219</sup> Tr. 1719, 1741.

<sup>220</sup> Tr. 1718-1757, 1749-1750.

<sup>221</sup> Bedroc Closing, pp. 13-14. Bedroc offered summary responses to the first four questions posed by Order 1303 but did no independent analysis. See Bedroc Closing, p. 12.

<sup>222</sup> Bedroc Closing, p. 2.

<sup>223</sup> *Id.*; Tr. 1726-1733.

available.<sup>224</sup> SNWA challenged this calculation, pointing out that the estimated recharge could be as low as 130 acre-feet.<sup>225</sup>

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

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

---

<sup>224</sup> Tr. 1724-1725, 1755.

<sup>225</sup> Tr. 1755.

<sup>226</sup> Bedroc Closing, pp. 5-9.

<sup>227</sup> Tr. 1735.

<sup>228</sup> *Id.*

<sup>229</sup> Tr. 1735-1736.

<sup>230</sup> Tr. 1734, 1738.

<sup>231</sup> Tr. 1739.

<sup>232</sup> Tr. 1739.

<sup>233</sup> Tr. 1739. *See also* Bedroc Closing, p. 8.

<sup>234</sup> Tr. 1746.

<sup>235</sup> Bedroc Ex. 2, p. 5.

<sup>236</sup> Tr. 1024.

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

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

### III. PUBLIC COMMENT

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

<sup>237</sup> Bedroc Closing, p.11. *See also* SNWA testimony of Andrew Burns that pumping at Bedroc wells is not likely to impact the carbonate system or the Muddy River. Tr. 1024–1025.

<sup>238</sup> Bedroc Closing, p. 12. *See also* Tr. 1736–1737, 1752.

<sup>239</sup> Tr. 1737–1738.

<sup>240</sup> Bedroc Ex. 2, pp. 2–4.

<sup>241</sup> *Id.*, p. 6.

<sup>242</sup> Tr. 1740.

County Commissioners submitted written public comment in addition to the closing argument submitted by LC-V.<sup>243</sup>

#### IV. AUTHORITY AND NECESSITY

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

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

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

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

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

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

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

<sup>244</sup> See, e.g., NSE Ex. 245; NSE Ex. 248; NSE Ex. 256; NSE Ex. 252; NSE Ex. 282, *Federal Bureaus Order 1169 Report Selected References: Comparison of Simulated and Observed Effects of Pumping from MX-5 Using Data Collected to the End of the Order 1169 Test, and Prediction of the Rates of Recovery from the Test*, TetraTech, 2013, Hearing on Interim Order 1303, official records of the Division of Water Resources. See also, e.g., CBD Ex. 3; MVWD Exs. 3–4; MVIC Ex. 1; NCA Ex. 1, SNWA Exs. 7–9; USFWS Exs. 5–6; NPS Exs. 2–3.

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

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

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

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

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

#### **V. ENDANGERED SPECIES ACT**

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

---

<sup>245</sup> See also NRS 534.030, NRS 534.110.

<sup>246</sup> 16 U.S.C. § 1531(a)-(b).

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

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

<sup>247</sup> 16 U.S.C. § 1531(c); 16 U.S.C. § 1536.

<sup>248</sup> 16 U.S.C.A. § 1536.

<sup>249</sup> 16 U.S.C.A. § 1538(g).

<sup>250</sup> 16 U.S.C.A. § 1532(13).

<sup>251</sup> 16 U.S.C.A. § 1532(19). The term “harm” is defined by regulation, 50 C.F.R. § 17.3 (1999).

<sup>252</sup> *Strahan v. Cox*, 127 F.3d 155 (1st Cir.1997), *cert denied* 525 U.S. 830 (1998).

<sup>253</sup> *Id.*, p. 163.

<sup>254</sup> *Id.*

<sup>255</sup> See *Sierra Club v. Yeutter*, 926 F.2d 429 (5th Cir.1991); *Defenders of Wildlife v. EPA*, 882 F.2d 1294 (8th Cir. 1989); *Loggerhead Turtle v. County Council*, 148 F.3d 1231 (11th Cir.1998); *Palila v. Hawaii Dept. of Land & Natural Resources*, 852 F.2d 1106 (9th Cir.1988).

<sup>256</sup> *Loggerhead Turtle*, 148 F.3d at 1251.

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

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

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

<sup>257</sup> NRS 533.030; 533.325; 534.020.

<sup>258</sup> NRS 533.325; 533.024(1)(e); 534.020.

<sup>259</sup> USFWS Ex. 5, pp. 50–52.

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

<sup>261</sup> Tr. 1127–1128.

<sup>262</sup> Tr. 401–402, 1147, 1157–1158.



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

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

#### **VI. GEOGRAPHIC BOUNDARY OF THE LWRFS**

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

<sup>263</sup> NSE Ex. 236; SNWA Ex. 8, pp. 5-1 through 5-8.

<sup>264</sup> See NSE Ex. 1, p. 6.

close hydrologic connection<sup>265</sup> and shared source and supply of water in the LWRFS required joint management.<sup>266</sup>

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

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

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

<sup>266</sup> See NSE Ex. 14, p. 12, 24.

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

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

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

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

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

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

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

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

<sup>269</sup> See e.g., GBWN Report, pp. 1-2.

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

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

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

<sup>270</sup> NPS Closing, pp. 3-5.

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

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

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

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

---

<sup>272</sup> See CSI Ex. 14, Plate 2, Map and Plate 4, Cross section K-K', in Peter D. Rowley et. al., *Geology and Geophysics of White Pine and Lincoln Counties, Nevada and Adjacent Parts of Nevada and Utah: The Geologic Framework of Regional Groundwater Flow Systems*, Nevada Bureau of Mines and Geology Report 56.

<sup>273</sup> See, e.g., USFWS Ex. 5, p. 30.

<sup>274</sup> *Id.*, p. 17.

<sup>275</sup> *Id.*, pp. 19-24.

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

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

<sup>276</sup> See, Tr. 1622, 1624; NCA Closing.

<sup>277</sup> See, e.g., Tr. 1467–1469 CNLV presentation, slides 21–23; Tr. 1784–1786; NV Energy presentation, slides 32–33.

<sup>278</sup> NCA Closing, p. 18, Figure 3.

<sup>279</sup> NCA Closing, p. 8.

<sup>280</sup> See e.g., USFWS Ex. 5.

<sup>281</sup> See map of the LWRFS Hydrographic Basin as defined by this Order, Attachment A.

<sup>282</sup> See, e.g., NV Energy Closing, p. 2; NCA Closing, p. 10–14; MVWD Closing, p. 2–8.

<sup>283</sup> See e.g., *Written Closing Statement of Lincoln County Water District and Vidler Water Company, Inc.* (LC-V Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 3–6; CSI Closing, p. 2.

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

---

<sup>284</sup> LC-V Closing, p. 7.

<sup>285</sup> See, e.g., LC-V Closing, pp. 5-6; LC-V Ex. 1, pp. 3-3-3-4; CSI Closing, pp. 5-6.

<sup>286</sup> See Tr. 524-55. See, e.g., NPS presentation, slides 23-27.

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

<sup>288</sup> See, e.g., NSE Ex. 12; Page, W.R., Dixon, G.L., Rowley, P.D., and Brickey, D.W., 2005, *Geologic Map of Parts of the Colorado, White River, and Death Valley Groundwater Flow Systems, Nevada, Utah, and Arizona*; Nevada Bureau of Mines and Geology Map 150, Plate plus text.

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

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

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

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

---

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

SE 56683



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

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

SE 56684

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

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

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

<sup>290</sup> NSE Ex. 1, p. 4.

<sup>291</sup> See, e.g. NSE Ex. 50, *Pumpage Report Coyote Spring Valley 2017*; NSE Ex. 67, *Pumpage Report Black Mountains Area 2017*; NSE Ex. 84, *Pumpage Report Garnet Valley Area 2017*; NSE Ex. 86, *Pumpage Report California Wash Area 2017*; Ex. 88, *Pumpage Report Muddy River Springs Area 2017*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> See, e.g., SNWA Ex. 7, pp. 5-17-5-18, 8-2; NPS Closing, p. 4; MVWD Closing, p. 8. See also Tr. 1807; NV Energy presentation, p. 11.

<sup>295</sup> SNWA Ex. 7, pp. 5-17-5-18; NVE Ex. 1, p. 2

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

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

<sup>296</sup> See USGS, 1993, *Drought*, US Geological Survey Open File Report 93-642, accessible at <https://bit.ly/93-642>, (last accessed June 6, 2020).

<sup>297</sup> SNWA Ex. 7, pp. 4-1-4-4.

<sup>298</sup> Tr. 577, 304-307.

<sup>299</sup> NPS Ex. 3, Appendix A.

<sup>300</sup> See, e.g., SNWA Closing, p. 11. NPS Closing, p. 4. See also Tr. 642, 644-45, 1545.

<sup>301</sup> MVWD Closing, pp. 8-9. See also NV Energy Closing, p. 3; CNLV Closing, pp. 5-7.

<sup>302</sup> SNWA Closing, pp. 11-12. NPS Closing, pp. 4-5.

<sup>303</sup> SNWA Ex. 7, pp. 5-7.

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

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

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

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

<sup>304</sup> *Id.*

<sup>305</sup> CSI Closing, p. 2.

<sup>306</sup> See e.g., SNWA Ex. 9, p. 24.; MVWD Ex. 3, p. 4; NPS Ex. 3, p. 23.

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

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

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

<sup>307</sup> See CNLV Ex. 3, pp. 45-47; GP-REP Ex. 1, pp. 2-3.

<sup>308</sup> NVE Ex. 1, pp. 8-9.

<sup>309</sup> See e.g. MBOP Ex. 2, p. 23; GP-REP Ex. 2, pp. 4-5. See also Technichrome Response.

<sup>310</sup> See e.g. NCA Closing, pp. 2-10; LC-V Closing, pp. 4-6; Bedroc Closing, pp. 9-11.

<sup>311</sup> CSI Closing, pp. 2-5.

<sup>312</sup> CSI Ex. 2, pp. 40-41.

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

The State Engineer finds that the data support the conclusion that pumping from locations within the LWRFS that are distal from the Warm Springs area can have a lesser impact on spring flow than pumping from locations more proximal to the springs. The LWRFS system has structural complexity and heterogeneity, and some areas have more immediate and more complete connection than others. For instance, the Order 1169 aquifer test demonstrated that pumping 5,290 afa from carbonate-rock aquifer wells in Coyote Spring Valley caused a sharp decline in discharge at the springs, but distributed pumping since the completion of the aquifer test in excess of 8,000 afa has correlated with a stabilization of spring discharge. The data collected during and after the Order 1169 aquifer test provide substantial evidence that groundwater levels throughout the LWRFS rise and fall in common response to the combined effects of climate and pumping stress, which controls discharge at the Warm Springs area.<sup>316</sup> The State Engineer finds that the best available data do not support the hypotheses that variable groundwater flow paths and heterogeneous subsurface geology are demonstrated to exist that create hydraulically isolated compartments or subareas within the LWRFS carbonate-rock aquifer from which pumping can occur without effect on the Warm Springs area. However, there remains some uncertainty as to the extent that distance and location relative to other capturable sources of discharge either delay, attenuate, or reduce capture from the springs.

<sup>313</sup> *Id.* See also CSI Ex. 1, pp. 31-40.

<sup>314</sup> MBOP Closing, p. 7.

<sup>315</sup> See e.g., SNWA Ex. 9, pp. 23-24.

<sup>316</sup> NSE Exs. 15-21.

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

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

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

<sup>317</sup> See, e.g., CBD Ex. 3, p. 23; SNWA Ex. 7, p. 8-4; MVIC Ex. 1, p. 3.

<sup>318</sup> NSE Ex. 333.

<sup>319</sup> *Id.*

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

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

<sup>320</sup> NSE Ex. 211, *USGS 09416000 Muddy River Moapa 1914-2013*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

<sup>321</sup> SNWA Ex. 7, p. 5-4.

<sup>322</sup> See, e.g., Huntington, J.L. and R. Allen, (2010), *Evapotranspiration and Net Irrigation Water Requirements for Nevada*, Nevada State Engineer's Office Publication, accessible at <https://bit.ly/jetniwr>, (last accessed June 7, 2020), official records of the Division of Water Resources.

<sup>323</sup> USFWS Ex. 5, p. 3; NCA Ex. 1, p. 19.

<sup>324</sup> CSI Closing, p. 2.

<sup>325</sup> CNLV Ex. 3, p. 2.



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

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

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

---

<sup>326</sup> NVE Ex. 1, p. 8.

<sup>327</sup> SNWA Ex. 7, p. 8-4.

<sup>328</sup> NPS Ex. 3, Appendix A. *See also* Tr. 304–307, 577.

<sup>329</sup> Tr. 1292–1300. *See, also* LC-V Ex. 11, *PowerPoint Presentation of Todd G. Umstot, entitled Drought and Groundwater*, Hearing on Interim Order 1303, official records of the Division of Water Resources, slides 3–10.

<sup>330</sup> CNLV Ex. 3, pp. 45–46.

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

#### **IX. MOVEMENT OF WATER RIGHTS**

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

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

SE 56693

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

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

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

<sup>331</sup> See SNWA Closing, pp. 10, 16; MVIC Closing, p. 6.

<sup>332</sup> See, e.g., SNWA Closing, p. 10.

<sup>333</sup> CNLV Closing, p. 8; Tr. 1456–1457, 1458. See also SNWA Closing, p. 16; MVWD Closing, p. 11; MVIC Closing, p. 6.

<sup>334</sup> CNLV Closing, pp. 8–10; Tr. 1457, 1458; NV Energy Closing, p. 4; MVIC Closing, p. 6.

<sup>335</sup> NSE Ex. 256. See also NSE Ex. 14, pp. 20–21; NSE Ex. 17, p. 19; SNWA Closing pp. 2, 3.

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


#### **X. ORDER**

**NOW THEREFORE**, the State Engineer orders:

1. The Lower White River Flow System consisting of the Kane Springs Valley, Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, and the northwest portion of the Black Mountains Area as described in this Order, is hereby delineated as a single hydrographic basin. The Kane Springs Valley, Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley and the northwest portion of the Black Mountains Area are hereby established as sub-basins within the Lower White River Flow System Hydrographic Basin.
2. The maximum quantity of groundwater that may be pumped from the Lower White River Flow System Hydrographic Basin on an average annual basis without causing further declines in Warm Springs area spring flow and flow in the Muddy River cannot exceed 8,000 afa and may be less.
3. The maximum quantity of water that may be pumped from the Lower White River Flow System Hydrographic Basin may be reduced if it is determined that pumping will adversely impact the endangered Moapa dace.
4. All applications for the movement of existing groundwater rights among sub-basins of the Lower White River Flow System Hydrographic Basin will be processed in accordance with NRS 533.370.

SE 56695

5. The temporary moratorium on the submission of final subdivision or other submission concerning development and construction submitted to the State Engineer for review established under Interim Order 1303 is hereby terminated.
6. All other matters set forth in Interim Order 1303 that are not specifically addressed herein are hereby rescinded.

  
TIM WILSON, P.E.  
State Engineer

Dated at Carson City, Nevada this

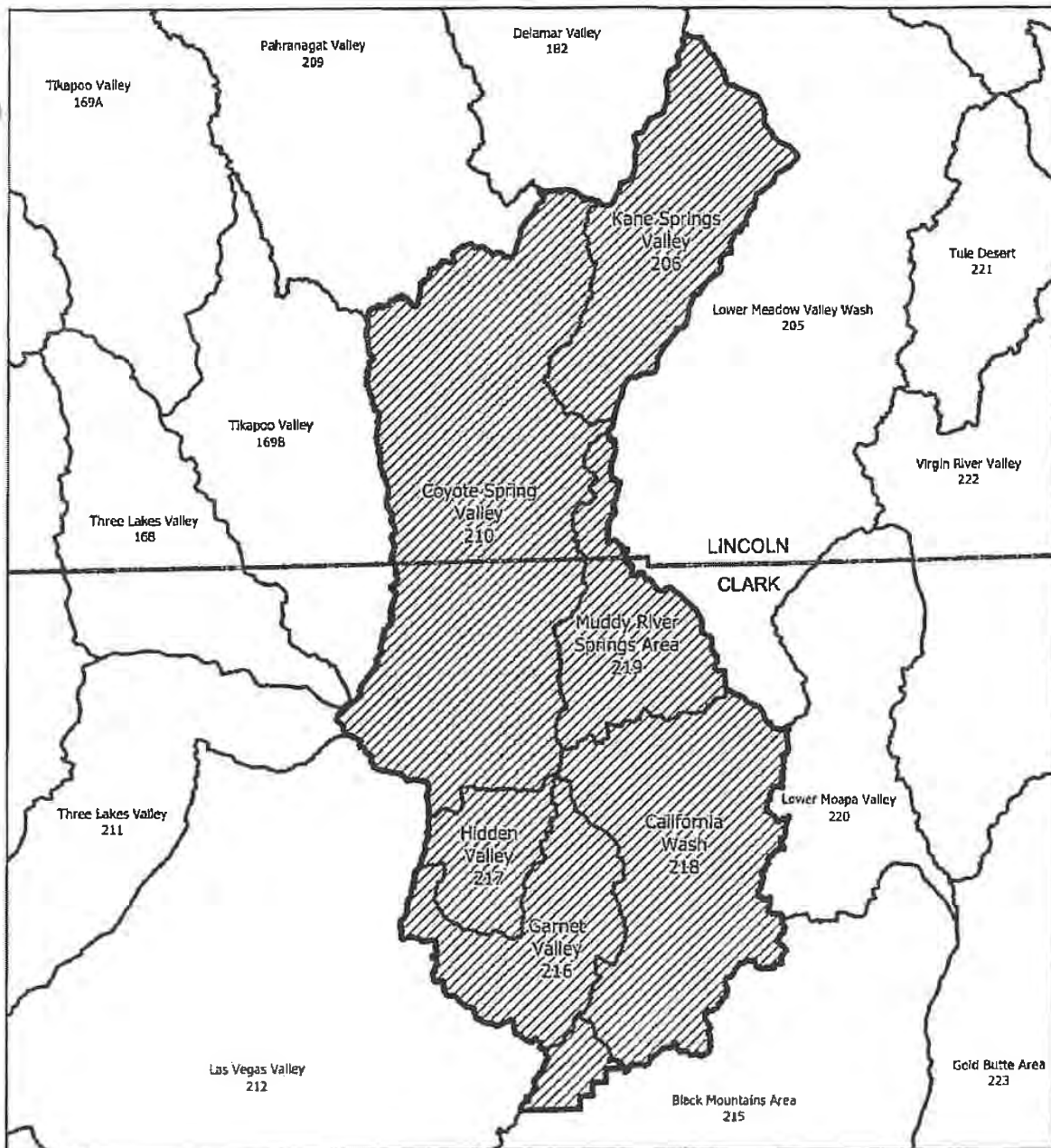
15th day of June, 2020.

SE 56696




Order #1309  
Page 67

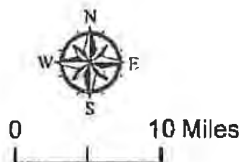
## ATTACHMENT A

SE 56697



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

-  LWRFS Boundary
-  Hydrographic Basin Boundary
-  County Boundary



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

T-m Wilson PE  
State Engineer

June 2020



SE 56698

# **EXHIBIT 7**

# **EXHIBIT 7**



**From:** [Leann Ramirez](#)  
**To:** [Emilie Carilli](#)  
**Subject:** Coyote Springs Village A  
**Date:** Wednesday, June 17, 2020 10:02:17 AM  
**Attachments:** [image001.png](#)  
[Coyote Springs Village A.pdf](#)

---

Good Morning,

Please see attached.

Thanks,

*Leann Ramirez*  
*Department of Conservation and Natural Resources*  
*Division of Water Resources*  
*Administrative Assistant III*  
*901 S. Stewart St. Ste 2002*  
*Carson City, NV 89701*  
*775-684-2800*



NEVADA DIVISION  
OF WATER RESOURCES



Nevada Department of  
**CONSERVATION &  
NATURAL RESOURCES**



CSI173518

CSI0468

STEVE SISOLAK  
Governor

STATE OF NEVADA



BRADLEY CROWELL  
Director

TIM WILSON, P.E.  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

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

June 17, 2020

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

**Re:** Final Subdivision Review No. 13217-F

**Name:** Coyote Springs Village A

**County:** Clark County -- Highway 93 and Highway 168

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

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

**Water Service Commitment**

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

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

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

CSI173519

CSI0469

Coyote Springs Investment, LLC  
June 17, 2020  
Page 2

**Water Supply:** Coyote Springs Water Resources General Improvement District

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

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

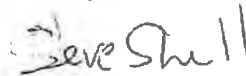
On June 15, 2020, the State Engineer issued Order #1309 which defined the maximum groundwater which can be pumped from the Lower White River Flow System as being 8,000 acre-feet annually, or less.

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

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

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

Best regards,



Steve Shell  
Water Resource Specialist II

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

CSI173520

CSI0470

# **EXHIBIT 8**

# **EXHIBIT 8**

---

**From:** Kayla Cassella  
**Sent:** Monday, May 2, 2022 3:39 PM  
**To:** Christi Cooper <[ccooper@water.nv.gov](mailto:ccooper@water.nv.gov)>; Annjanett Medina <[a.medina@water.nv.gov](mailto:a.medina@water.nv.gov)>; Jenifer Davis <[jdavis@water.nv.gov](mailto:jdavis@water.nv.gov)>  
**Subject:** RE: Map Appointment - Coyote Springs

Good afternoon,

Thank you for getting back to me regarding the appointment! We will reach out to reschedule for a later date.

Thank you!  
Kayla Cassella



VTN Nevada  
2727 S. Rainbow Blvd.  
Las Vegas, NV 89146  
702-253-2411

---

**From:** Christi Cooper <[ccooper@water.nv.gov](mailto:ccooper@water.nv.gov)>  
**Sent:** Monday, May 2, 2022 3:21 PM  
**To:** Kayla Cassella <[kaylac@vtnnv.com](mailto:kaylac@vtnnv.com)>; Annjanett Medina <[a.medina@water.nv.gov](mailto:a.medina@water.nv.gov)>; Jenifer Davis <[jdavis@water.nv.gov](mailto:jdavis@water.nv.gov)>  
**Subject:** RE: Map Appointment - Coyote Springs

Hi Kayla,  
Please feel free to drop off the map but we not be able to sign it at this time.  
Regards,  
Christi Cooper  
Water Commissioner  
Nevada Division of Water Resources - Southern Nevada Branch Office  
Department of Conservation and Natural Resources  
400 Shadow Lane, Suite 201  
Las Vegas, NV 89106  
[ccooper@water.nv.gov](mailto:ccooper@water.nv.gov)  
(O) 702-486-2770 | (F) 702-486-2781



NEVADA DIVISION  
OF WATER RESOURCES



Nevada Department of  
**CONSERVATION &  
NATURAL RESOURCES**  
Connect with us:



---

**From:** Kayla Cassella <[kaylac@vtnnv.com](mailto:kaylac@vtnnv.com)>  
**Sent:** Thursday, April 28, 2022 2:48 PM  
**To:** Christi Cooper <[ccooper@water.nv.gov](mailto:ccooper@water.nv.gov)>; Annjanett Medina <[a.medina@water.nv.gov](mailto:a.medina@water.nv.gov)>; Jenifer Davis <[jdavis@water.nv.gov](mailto:jdavis@water.nv.gov)>  
**Subject:** Map Appointment - Coyote Springs

**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good morning,

May we please request an appointment for the signature of the large lot final map of COYOTE SPRINGS Village A for this upcoming Tuesday 5/3/2022 at 9:00AM? This is associated to the Tentative Map 13216T.

Thank you!

Kayla Cassella



VTN Nevada

2727 S. Rainbow Blvd.

Las Vegas, NV 89146

702-253-2411

# **EXHIBIT 9**

# **EXHIBIT 9**

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM SULLIVAN, P.E., NEVADA  
STATE ENGINEER, DIVISION OF  
WATER RESOURCES, DEPARTMENT  
OF CONSERVATION AND NATURAL  
RESOURCES,

Appellant,

vs.

LINCOLN COUNTY WATER DISTRICT;  
VIDLER WATER COMPANY, INC.;  
COYOTE SPRINGS INVESTMENT,  
LLC; NEVADA COGENERATION  
ASSOCIATES NOS. 1 AND 2; APEX  
HOLDING COMPANY, LLC; DRY LAKE  
WATER, LLC; GEORGIA-PACIFIC  
GYPSUM, LLC; REPUBLIC  
ENVIRONMENTAL TECHNOLOGIES,  
INC.; SIERRA PACIFIC POWER  
COMPANY, D/B/A NV ENERGY;  
NEVADA POWER COMPANY, D/B/A  
NV ENERGY; THE CHURCH OF  
JESUS CHRIST OF LATTER-DAY  
SAINTS; MOAPA VALLEY WATER  
DISTRICT; WESTERN ELITE  
ENVIRONMENTAL, INC.; BEDROC  
LIMITED, LLC; CITY OF NORTH LAS  
VEGAS; AND LAS VEGAS VALLEY  
WATER DISTRICT,

Respondents.

SOUTHERN NEVADA WATER  
AUTHORITY,

Appellant,

vs.

LINCOLN COUNTY WATER DISTRICT;  
VIDLER WATER COMPANY, INC.;  
COYOTE SPRINGS INVESTMENT,  
LLC; NEVADA COGENERATION  
ASSOCIATES NOS. 1 AND 2; APEX  
HOLDING COMPANY, LLC; DRY LAKE

No. 84739

FILED

OCT 14 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

No. 84741



WATER, LLC; GEORGIA-PACIFIC GYPSUM, LLC; REPUBLIC ENVIRONMENTAL TECHNOLOGIES, INC.; SIERRA PACIFIC POWER COMPANY, D/B/A NV ENERGY; NEVADA POWER COMPANY, D/B/A NV ENERGY; THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS; MOAPA VALLEY WATER DISTRICT; WESTERN ELITE ENVIRONMENTAL, INC.; BEDROC LIMITED, LLC; CITY OF NORTH LAS VEGAS; AND LAS VEGAS VALLEY WATER DISTRICT,

Respondents.

CENTER FOR BIOLOGICAL DIVERSITY,

Appellants,

vs.

LINCOLN COUNTY WATER DISTRICT; VIDLER WATER COMPANY, INC.; COYOTE SPRINGS INVESTMENT, LLC; NEVADA COGENERATION ASSOCIATES NOS. 1 AND 2; APEX HOLDING COMPANY, LLC; DRY LAKE WATER, LLC; GEORGIA-PACIFIC GYPSUM, LLC; REPUBLIC ENVIRONMENTAL TECHNOLOGIES, INC.; SIERRA PACIFIC POWER COMPANY, D/B/A NV ENERGY; NEVADA POWER COMPANY, D/B/A NV ENERGY; THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS; MOAPA VALLEY WATER DISTRICT; WESTERN ELITE ENVIRONMENTAL, INC.; BEDROC LIMITED, LLC; CITY OF NORTH LAS VEGAS; AND LAS VEGAS VALLEY WATER DISTRICT,

Respondents.

MUDDY VALLEY IRRIGATION

No. 84742

No. 84809

COMPANY,  
Appellant,  
vs.  
LINCOLN COUNTY WATER DISTRICT;  
VIDLER WATER COMPANY, INC.;  
COYOTE SPRINGS INVESTMENT,  
LLC; NEVADA COGENERATION  
ASSOCIATES NOS. 1 AND 2; APEX  
HOLDING COMPANY, LLC; DRY LAKE  
WATER, LLC; GEORGIA-PACIFIC  
GYPSUM, LLC; REPUBLIC  
ENVIRONMENTAL TECHNOLOGIES,  
INC.; SIERRA PACIFIC POWER  
COMPANY, D/B/A NV ENERGY;  
NEVADA POWER COMPANY, D/B/A  
NV ENERGY; THE CHURCH OF  
JESUS CHRIST OF LATTER-DAY  
SAINTS; MOAPA VALLEY WATER  
DISTRICT; WESTERN ELITE  
ENVIRONMENTAL, INC.; BEDROC  
LIMITED, LLC; CITY OF NORTH LAS  
VEGAS; AND LAS VEGAS VALLEY  
WATER DISTRICT,  
Respondents.

*ORDER MODIFYING CAPTION AND SETTING BRIEFING  
SCHEDULE*

On September 14, 2022, this court held an NPAP 33 appeal conference. Pursuant to the discussions at that conference, we conclude Las Vegas Valley Water District is not properly a respondent to these consolidated appeals, and we direct the clerk of this court to remove Las Vegas Valley Water District as a respondent from each appeal.

In order to simplify the briefing of these appeals, this court has determined that the parties should address the following issues in their briefs. (1) The basin issues: whether the State Engineer had legal authority to delineate the Lower White River Flow System (LWRFS) as a single

hydrographic basin for joint administration and conjunctive management of ground and surface waters based on its interconnectivity and shared supply of water. (2) The due process issues: whether (A) the notice and hearing procedure employed by the State Engineer satisfied the requirements of due process; (B) the hearing provided by the State Engineer satisfied due process and afforded respondents a full and complete opportunity to address the implications of the State Engineer's decision to subject the LWRFS to conjunctive management and joint administration; and (C) the State Engineer's nondisclosure, before or during the Order 1303 proceedings, of the six criteria he would use in evaluating the connectivity of the basins and determining the new consolidated basin boundary satisfied the requirements of due process.

Appellants shall have 50 days from the date of this order to file and serve a single joint opening brief that does not exceed 45 pages or 21,000 words and addresses the basin issues and the due process issues.

Respondents shall have 30 days from the date the opening brief is served to file and serve a single joint answering brief that addresses the arguments in the opening brief regarding the basin issues and parts A and C of the due process issues.<sup>1</sup> The joint answering brief may not exceed 30 pages or 14,000 words. Further, each respondent may, within the same time period, file and serve a separate answering brief addressing part B of the due process issues that does not exceed 15 pages or 7,000 words.

---

<sup>1</sup>On October 11, 2022, Western Elite Environmental, Inc., Bedroc Limited, LLC, and City of North Las Vegas filed a notice that they will not be participating in this appeal. Accordingly, the remaining respondents need not coordinate with these entities when preparing their answering brief.

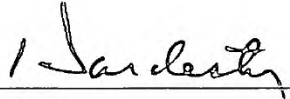
Appellants shall have 30 days from service of the last answering brief to file a single joint reply brief that does not exceed 45 pages or 21,000 words and that responds to the arguments in all answering briefs.

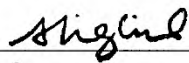
The parties shall have 20 days from the date of this order to file and serve a joint appendix. To reduce duplication of materials and make the joint appendix more manageable, we suspend the provisions of NRAP 30 as follows. NRAP 30(b)(2)(I) shall be suspended, and the parties will not be required to include copies of the notices of appeal in the joint appendix. NRAP 30(b) shall also be suspended to the extent that it requires multiple copies of the same document to be filed. Therefore, where a notice of entry of a judgment or order includes a copy of the judgment or order, a separate copy of that judgment or order need not be filed in the appendix. The joint appendix shall include copies of all petitions for judicial review filed below and the briefing on those petitions. However, if the petitions or briefs include attachments of documents that are already included in the appendix, the parties shall substitute the attachment with a single page that identifies the name of the document and the precise volume and page numbers where that same document can be found in the appendix filed with this court. NRAP 30(c)(2) is suspended to the extent it limits each volume of the appendix to 250 pages and requires each appendix to contain a copy of the index. For the purposes of this appeal, the parties may file a single index as a separate volume of the appendix. The parties may submit the joint appendix by FTP. Each volume of the appendix shall be saved as pdf files, have a resolution of between 200-300 dpi, and may not exceed 50 megabytes. We stress, however, that the joint appendix must comply with the provisions of NRAP 30(c)(1).

The court will not look favorably on any request for an extension of time. No telephonic extensions will be granted. And any other request for an extension of time must be requested by written motion demonstrating extraordinary and compelling circumstances and supported by affidavit. We note, counsel's caseload will not be deemed such a circumstance.

If any party objects to any portion of this scheduling order, they may file an objection within 5 days of the date of this order. Any objection must specifically identify and suggest an alternative to the portion of the order to which the party objects. No response or reply may be filed to any objection.

It is so ORDERED.

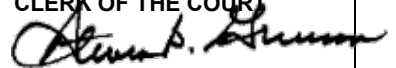
, J.  
Hardesty

, J.  
Stiglich

, J.  
Herndon

cc: Hon. Bita Yeager, District Judge  
Attorney General/Carson City  
Brownstein Hyatt Farber Schreck, LLP/Las Vegas  
Wingfield Nevada Group  
Attorney General/Las Vegas  
Robison, Sharp, Sullivan & Brust  
Taggart & Taggart, Ltd.  
Steven C. Anderson  
Coulthard Law PLLC  
Schroeder Law Offices, P.C.  
Marquis Aurbach Coffing  
Lincoln County District Attorney

Dyer Lawrence, LLP  
Parsons Behle & Latimer/Reno  
McDonald Carano LLP/Reno  
Justina Alyce Caviglia  
Allison MacKenzie, Ltd.  
Michael D. Knox  
Kaempfer Crowell/Reno  
Great Basin Law  
Eighth District Court Clerk



**ERR**

William L. Coulthard, Esq.  
Nevada Bar No. #3927  
Coulthard Law PLLC  
840 South Rancho Drive #4-627  
Las Vegas, Nevada 89106  
(702) 898-9944  
[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)

Kent R. Robison, Esq.  
Nevada Bar No. #1167  
Hannah E. Winston, Esq.  
Nevada Bar No #14520  
71 Washington Street  
Reno, Nevada 89503  
[krobison@rssblaw.com](mailto:krobison@rssblaw.com)  
[hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)

*Attorneys for Plaintiffs CS-Entities*

**DISTRICT COURT  
CLARK COUNTY NEVADA**

COYOTE SPRINGS INVESTMENT, LLC, a  
Nevada Limited Liability Company; COYOTE  
SPRINGS NEVADA, LLC, a Nevada limited  
liability company; and COYOTE SPRINGS  
NURSERY, LLC, a Nevada limited liability  
company,

Plaintiffs,

vs.

STATE OF NEVADA, on relation to its  
Division of Water Resources;  
DEPARTMENT OF CONSERVATION and  
NATURAL RESOURCES; ADAM  
SULLIVAN, Nevada State Engineer; CLARK-  
COUNTY-COYOTE SPRINGS WATER  
RESOURCES GENERAL IMPROVEMENT  
DISTRICT, a political subdivision of the State  
of Nevada; and Does I through X.

Defendants.

Case No.: A-20-820384-B  
Dept.: 13

**ERRATA TO OPPOSITION TO  
DEFENDANT'S MOTION TO STAY  
PROCEEDINGS PENDING NEVADA  
SUPREME COURT'S RESOLUTION OF  
RELATED MATTER**

Plaintiffs, by and through their counsel of record, hereby submit this Errata to their  
Opposition to Defendant's Motion to Stay Proceedings Pending Nevada Supreme Court's

1 Resolution of Related Matter (the "Opposition"), filed on September 5, 2023. Plaintiffs  
2 inadvertently omitted the Declaration of Albert D. Seeno, Jr. (the "Declaration"), which  
3 was intended to be filed contemporaneously with the Opposition. Thus, Plaintiffs submit  
4 the Declaration, attached hereto as **Exhibit 1**, in support of the Opposition.

5 DATED this 8<sup>th</sup> day of September, 2023.

6 ROBISON, SULLIVAN, & BRUST

7  
8 /s/ Kent R. Robison

9 Kent R. Robison, Esq. (#1167)  
10 Hannah E. Winston, Esq. (#14520)  
11 Robison, Sharp, Sullivan & Brust  
12 71 Washington Street  
13 Reno, Nevada 89503

14 **IN ASSOCIATION WITH:**

15 COULTHARD LAW, PLLC

16 /s/ William L. Coulthard

17 William L. Coulthard, Esq. (#3927)  
18 Coulthard Law PLLC  
19 840 South Rancho Drive #4-627  
20 Las Vegas, Nevada 89106

21 *Attorneys for Plaintiffs CS-Entities*  
22  
23  
24  
25  
26  
27  
28



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Robison, Sharp, Sullivan & Brust, and that I  
3 served, or caused to be served, a true and correct copy of the foregoing ERRATA TO  
4 OPPOSITION TO DEFENDANT'S MOTION TO STAY PROCEEDINGS PENDING  
5 NEVADA SUPREME COURT'S RESOLUTION OF RELATED MATTER on all parties to  
6 this action by:

7 \_\_\_\_\_ placing an original or true copy of the foregoing in a sealed, postage prepaid,  
8 envelope in the United States mail at Reno, Nevada, addressed to:

9 \_\_\_\_\_ by emailing a true copy of the foregoing to:

10   X   by electronically serving a true copy of the foregoing through Odyssey eFileNV,  
11 this Court's e-file and serve platform, to all the participants registered to receive  
12 notice of documents filed and/or served in this case, as follows:

13 **State of Nevada:**

14 Mary Pizzariello ([mpizzariello@ag.nv.gov](mailto:mpizzariello@ag.nv.gov))  
15 Jessica Whelan ([jwhelan@ag.nv.gov](mailto:jwhelan@ag.nv.gov))  
16 Jennifer Beesley ([jbeesley@ag.nv.gov](mailto:jbeesley@ag.nv.gov))  
17 Leslie Reynolds ([lreynolds@ag.nv.gov](mailto:lreynolds@ag.nv.gov))  
18 Micheline Fairbank ([mfairbank@water.nv.gov](mailto:mfairbank@water.nv.gov))  
19 Juanita Mordhorst ([jmordhorst@water.nv.gov](mailto:jmordhorst@water.nv.gov))  
20 Dorene Wright ([dwright@ag.nv.gov](mailto:dwright@ag.nv.gov))  
21 James Bolotin ([jbolotin@ag.nv.gov](mailto:jbolotin@ag.nv.gov))  
22 Craig Newby ([cnewby@ag.nv.gov](mailto:cnewby@ag.nv.gov))  
23 Kiel Ireland ([kireland@ag.nv.gov](mailto:kireland@ag.nv.gov))  
24 Marni Watkins ([mkwatkins@ag.nv.gov](mailto:mkwatkins@ag.nv.gov))  
25 Casey Quinn ([cquinn@ag.nv.gov](mailto:cquinn@ag.nv.gov))

26 **Clark County-Coyote Springs Water Resources General Improvement**  
27 **District:**

28 Paul Taggart ([paul@legaltnt.com](mailto:paul@legaltnt.com))  
Thomas Duensing ([Tom@legaltnt.com](mailto:Tom@legaltnt.com))  
Oliver Pancheri ([opancheri@santoronevada.com](mailto:opancheri@santoronevada.com))  
Nicholas Santoro ([nsantoro@santoronevada.com](mailto:nsantoro@santoronevada.com))

**Las Vegas Valley Water District:**

Oliver Pancheri ([opancheri@nevadafirm.com](mailto:opancheri@nevadafirm.com))  
Michelle Adams ([madams@nevadafirm.com](mailto:madams@nevadafirm.com))  
Nicholas Santoro ([nsantoro@nevadafirm.com](mailto:nsantoro@nevadafirm.com))  
Jana Chaffee ([jchaffee@nevadafirm.com](mailto:jchaffee@nevadafirm.com))

**Southern Nevada Water Authority:**

Oliver Pancheri ([opancheri@nevadafirm.com](mailto:opancheri@nevadafirm.com))  
Nicholas Santoro ([nsantoro@nevadafirm.com](mailto:nsantoro@nevadafirm.com))

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Other Service Contacts not associated with a party on the case:**

Steven Anderson ([Steven.Anderson@lvvwd.com](mailto:Steven.Anderson@lvvwd.com))  
Robert Warhola ([robert.warhola@clarkcountyda.com](mailto:robert.warhola@clarkcountyda.com))  
Karen Peterson ([kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com))  
Wayne Klomp ([wayne@greatbasinlawyer.com](mailto:wayne@greatbasinlawyer.com))  
Dylan Frehner ([dfrehner@lincolncountynv.gov](mailto:dfrehner@lincolncountynv.gov))  
Cindy Shi ([cshi@allisonmackenzie.com](mailto:cshi@allisonmackenzie.com))

**Vidler Water Company:**

Karen Peterson ([kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com))

**Lincoln County Water District:**

Dylan Frehner ([dfrehner@lincolncountynv.gov](mailto:dfrehner@lincolncountynv.gov))  
Wayne Klomp ([wayne@greatbasinlawyer.com](mailto:wayne@greatbasinlawyer.com))

DATED this 8<sup>th</sup> day of September 2023.

/s/ Christine O'Brien  
Employee of Robison, Sharp, Sullivan & Brust

# **EXHIBIT 1**

# **EXHIBIT 1**

1 **DECL**

2 Kent R. Robison, Esq.  
3 Nevada Bar No. #1167  
4 Hannah E. Winston, Esq.  
5 Nevada Bar No #14520  
6 71 Washington Street  
7 Reno, Nevada 89503  
8 [krobison@rssblaw.com](mailto:krobison@rssblaw.com)  
9 [hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)

6 William L. Coulthard, Esq.  
7 Nevada Bar No. #3927  
8 Coulthard Law PLLC  
9 840 South Rancho Drive #4-627  
10 Las Vegas, Nevada 89106  
11 (702) 898-9944  
12 [wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)  
13 *Attorneys for Plaintiffs CS-Entities*

11 **DISTRICT COURT**  
12 **CLARK COUNTY NEVADA**

14 COYOTE SPRINGS INVESTMENT, LLC, a  
15 Nevada Limited Liability Company;  
16 COYOTE SPRINGS NEVADA, LLC, a  
17 Nevada limited liability company; and  
18 COYOTE SPRINGS NURSERY, LLC, a  
19 Nevada limited liability company,

18 Plaintiffs,

19 vs.

20 STATE OF NEVADA, on relation to its  
21 Division of Water Resources;  
22 DEPARTMENT OF CONSERVATION and  
23 NATURAL RESOURCES; ADAM  
24 SULLIVAN, Nevada State Engineer; and  
25 Does I through X.

24 Defendants.

Case No.: A-20-820384-B  
Dept.: 13

**DECLARATION OF ALBERT D. SEENO,  
JR. IN SUPPORT OF OPPOSITION TO  
DEFENDANT'S MOTION TO STAY  
PROCEEDINGS PENDING NEVADA  
SUPREME COURT'S RESOLUTION OF  
RELATED MATTER**

25 I, Albert D. Seeno, Jr., under penalty of perjury, hereby declare as follows:  
26  
27  
28

1. I make this Declaration in support of the Opposition to the Defendant's Motion to Stay Proceedings Pending Nevada Supreme Court's Resolution of Related Matter.


2. I have personal knowledge of the information stated herein.

3. I own the Plaintiff entities with Thomas Seeno.

4. Thomas Seeno and I are both over 70 years old.

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

DATED: This 29th day of August, 2023.

  
ALBERT D. SEENO, JR.

**From:** [Hannah Winston](#)  
**To:** ["Casey J. Quinn"](#); [Kent Robison](#)  
**Cc:** [Bill Coulthard \(wlc@coulthardlaw.com\)](#); [Emilia Cargill](#); [Jessica E. Whelan](#); [Marni K. Watkins](#); [James N. Bolotin](#)  
**Subject:** RE: Motion to Stay  
**Date:** Monday, September 18, 2023 1:12:00 PM  
**Attachments:** [image002.png](#)

---

Hi Casey,

First, the deposition exhibits that we have electronically are incorrectly numbered because Kent went out of order during the depositions. I need to get the docs with the numbers actually used, and then I can send them to you electronically.

Second, yes, you can have the two-week extension on the RFPs.

Third, we're contacting our clients to get dates for depositions.

Fourth, we agree to the dates in your proposal below. I will put together a stipulation and send to you for approval.

Thanks,

Hannah

**HANNAH E. WINSTON, ESQ.**



Robison | Sharp | Sullivan | Brust

71 Washington Street  
Reno, NV 89503  
Phone - 775.329.3151  
Fax - 775.329.7941  
[www.rssblaw.com](http://www.rssblaw.com)

**CONFIDENTIALITY:** This email (including attachments) is intended solely for the use of the individual to whom it is addressed and may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, please do not read, copy, or re-transmit this communication. If you are the intended recipient, this communication may only be copied or transmitted with the consent of the sender. If you have received this email in error, please contact the sender immediately by return email and delete the original message and any attachments from your system. Thank you in advance for your cooperation and assistance.

**IRS CIRCULAR 230 DISCLAIMER:** Any tax advice contained in this email is not intended to

be used, and cannot be used by any taxpayer, for the purpose of avoiding Federal tax penalties that may be imposed on the taxpayer. Further, to the extent any tax advice contained in this email may have been written to support the promotion or marketing of the transactions or matters discussed in this email, every taxpayer should seek advice based on such taxpayer's particular circumstances from an independent tax advisor.

---

**From:** Casey J. Quinn <CQuinn@ag.nv.gov>  
**Sent:** Friday, September 15, 2023 12:21 PM  
**To:** Kent Robison <krobison@rssblaw.com>  
**Cc:** Hannah Winston <hwinston@rssblaw.com>; Bill Coulthard (wlc@coulthardlaw.com) <wlc@coulthardlaw.com>; Emilia Cargill <emilia.cargill@wingfieldnevadagroup.com>; Jessica E. Whelan <JWhelan@ag.nv.gov>; Marni K. Watkins <MKWatkins@ag.nv.gov>; James N. Bolotin <JBolotin@ag.nv.gov>  
**Subject:** RE: Motion to Stay

Kent,

I am writing with a few requests:

1. Do you have a digital version of the exhibits 71-100 that you can share with us?
2. We are working on the response to your third request for production of documents which we have due on Monday. Can we get a 2-week extension to finalize it as our clients were out of town this week and we may want to do some further investigation in light of the Clark County testimony?
3. Can you provide us with some deposition availability for the first part of October for Emilia Cargill, Al Seeno, Jr., and Al Seeno, III?
4. With regard to expert deadlines, I propose that we adjust them as indicated below:

	<b>Current Date</b>	<b>Proposed Date</b>
Final Date to File Motions to Amend Pleadings or Add Parties	November 1, 2023	November 1, 2023
Final Date to File Expert Disclosure	November 1, 2023	January 16, 2023
Final Date to File Rebuttal Expert Disclosure	December 1, 2023	February 16, 2023
Close of Discovery	January 1, 2024	March 1, 2024 (except for deposition of rebuttal experts as necessary)
Final Date to File Dispositive Motions	January 31, 2024	March 29, 2024
Pre-trial Conference	April 29, 2024 at 2:05 p.m.	April 29, 2024 at 2:05 p.m.
Calendar Call	May 6, 2024 at 2:00 p.m.	May 6, 2024 at 2:00 p.m.

Jury Trial	May 21, 2024 at 9:00 a.m. (five-week stack)	May 21, 2024 at 9:00 a.m. (five-week stack)
------------	--	--

Thanks,  
Casey

**Casey J. Quinn**

Senior Deputy Attorney General  
Complex Civil Litigation  
Office of the Attorney General  
555 E. Washington Avenue  
Las Vegas, NV 89101  
[cquinn@ag.nv.gov](mailto:cquinn@ag.nv.gov)  
D: 702-486-3783



*Notice: This e-mail message and any attachments thereto may contain confidential, privileged, or non-public information. Use, dissemination, distribution, or reproduction of this information by unintended recipients is strictly prohibited. If you have received this message in error, please notify the sender immediately and destroy all copies.*

---

**From:** Kent Robison <[krobison@rssblaw.com](mailto:krobison@rssblaw.com)>  
**Sent:** Monday, August 21, 2023 10:49 AM  
**To:** Casey J. Quinn <[CQuinn@ag.nv.gov](mailto:CQuinn@ag.nv.gov)>  
**Cc:** Hannah Winston <[hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)>; Bill Coulthard (<[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)> <[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>; Emilia Cargill <[emilia.cargill@wingfieldnevadagroup.com](mailto:emilia.cargill@wingfieldnevadagroup.com)>; Jessica E. Whelan <[JWhelan@ag.nv.gov](mailto:JWhelan@ag.nv.gov)>  
**Subject:** RE: Motion to Stay

**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thank you. I appreciate that.

Kent R. Robison, Esq.



71 Washington Street  
Reno, NV 89503  
Phone - 775.329.3151  
Fax - 775.329.7169  
[www.rssblaw.com](http://www.rssblaw.com)



Robison | Sharp | Sullivan | Brust

CONFIDENTIALITY: This email (including attachments) is intended solely for the use of the individual to whom it is addressed and may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, please do not read, copy, or re-transmit this communication. If you are the intended recipient, this communication may only be copied or transmitted with the consent of the sender. If you have received this email in error, please contact the sender immediately by return email and delete the original message and any attachments from your system. Thank you in advance for your cooperation and assistance.

IRS CIRCULAR 230 DISCLAIMER: Any tax advice contained in this email is not intended to be used, and cannot be used by any taxpayer, for the purpose of avoiding Federal tax penalties that may be imposed on the taxpayer. Further, to the extent any tax advice contained in this email may have been written to support the promotion or marketing of the transactions or matters discussed in this email, every taxpayer should seek advice based on such taxpayer's particular circumstances from an independent tax advisor.

---

**From:** Casey J. Quinn <[CQuinn@ag.nv.gov](mailto:CQuinn@ag.nv.gov)>  
**Sent:** Monday, August 21, 2023 10:48 AM  
**To:** Kent Robison <[krobison@rssblaw.com](mailto:krobison@rssblaw.com)>  
**Cc:** Hannah Winston <[hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)>; Bill Coulthard (<[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)> <[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>); Emilia Cargill <[emilia.cargill@wingfieldnevadagroup.com](mailto:emilia.cargill@wingfieldnevadagroup.com)>; Jessica E. Whelan <[JWhelan@ag.nv.gov](mailto:JWhelan@ag.nv.gov)>  
**Subject:** RE: Motion to Stay

Kent,  
I'm sorry that you have to deal with that. As a professional courtesy, we will suggest a timeline that seeks a hearing the week of the 11<sup>th</sup>.

Casey

---

**From:** Kent Robison <[krobison@rssblaw.com](mailto:krobison@rssblaw.com)>  
**Sent:** Monday, August 21, 2023 10:38 AM  
**To:** Casey J. Quinn <[CQuinn@ag.nv.gov](mailto:CQuinn@ag.nv.gov)>

**Cc:** Hannah Winston <[hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)>; Bill Coulthard (<[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>); Emilia Cargill <[emilia.cargill@wingfieldnevadagroup.com](mailto:emilia.cargill@wingfieldnevadagroup.com)>; Jessica E. Whelan <[JWhelan@ag.nv.gov](mailto:JWhelan@ag.nv.gov)>  
**Subject:** RE: Motion to Stay

**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Casey:

I have a bit of a family issue. My 27-year-old son is at MD Anderson being treated for a very aggressive cancer. I'll be there for this week and part of next. If you seek an order shortening time for the hearing, would you please suggest a date after September 1, 2023. I also will be in Houston for 9/3/23 to 9/8/23.

Hopefully, the week of 9/11/23 works for you and the court since that would be best for me. Briefing is not a problem...just the hearing. Thanks.

Kent R. Robison, Esq.  
71 Washington Street  
Reno, NV 89503  
Phone - 775.329.3151  
Fax - 775.329.7169  
[www.rssblaw.com](http://www.rssblaw.com)



Robison | Sharp | Sullivan | Brust

**CONFIDENTIALITY:** This email (including attachments) is intended solely for the use of the individual to whom it is addressed and may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, please do not read, copy, or re-transmit this communication. If you are the intended recipient, this communication may only be copied or transmitted with the consent of the sender. If you have received this email in error, please contact the sender immediately by return email and delete the original message and any attachments from your system. Thank you in advance for your cooperation and assistance.

**IRS CIRCULAR 230 DISCLAIMER:** Any tax advice contained in this email is not intended to be used, and cannot be used by any taxpayer, for the purpose of avoiding Federal tax penalties that may be imposed on the taxpayer. Further, to the extent any tax advice contained in this email may have been written to support the promotion or marketing of

the transactions or matters discussed in this email, every taxpayer should seek advice based on such taxpayer's particular circumstances from an independent tax advisor.

---

**From:** Casey J. Quinn <[CQuinn@ag.nv.gov](mailto:CQuinn@ag.nv.gov)>  
**Sent:** Monday, August 21, 2023 10:27 AM  
**To:** Kent Robison <[krobison@rssblaw.com](mailto:krobison@rssblaw.com)>  
**Cc:** Hannah Winston <[hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)>; Bill Coulthard (<[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)> <[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>); Emilia Cargill <[emilia.cargill@wingfieldnevadagroup.com](mailto:emilia.cargill@wingfieldnevadagroup.com)>; Jessica E. Whelan <[JWhelan@ag.nv.gov](mailto:JWhelan@ag.nv.gov)>  
**Subject:** RE: Motion to Stay

Kent,  
Yes, it makes sense that the Court may want to hear them the same day.

Casey

---

**From:** Kent Robison <[krobison@rssblaw.com](mailto:krobison@rssblaw.com)>  
**Sent:** Monday, August 21, 2023 10:11 AM  
**To:** Casey J. Quinn <[CQuinn@ag.nv.gov](mailto:CQuinn@ag.nv.gov)>  
**Cc:** Hannah Winston <[hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)>; Bill Coulthard (<[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)> <[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>); Emilia Cargill <[emilia.cargill@wingfieldnevadagroup.com](mailto:emilia.cargill@wingfieldnevadagroup.com)>; Jessica E. Whelan <[JWhelan@ag.nv.gov](mailto:JWhelan@ag.nv.gov)>  
**Subject:** RE: Motion to Stay

**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Casey:

Good Hurricane Morning.

Thank you. We will be filing the Motion to Amend today. Respectfully, we will be opposing any motion to stay the proceedings. We would like to see if we can get the same date for the hearing on both motions. Does that work for you?

Kent R. Robison, Esq.  
71 Washington Street  
Reno, NV 89503  
Phone - 775.329.3151  
Fax - 775.329.7169  
[www.rssblaw.com](http://www.rssblaw.com)



Robison | Sharp | Sullivan | Brust

CONFIDENTIALITY: This email (including attachments) is intended solely for the use of the individual to whom it is addressed and may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, please do not read, copy, or re-transmit this communication. If you are the intended recipient, this communication may only be copied or transmitted with the consent of the sender. If you have received this email in error, please contact the sender immediately by return email and delete the original message and any attachments from your system. Thank you in advance for your cooperation and assistance.

IRS CIRCULAR 230 DISCLAIMER: Any tax advice contained in this email is not intended to be used, and cannot be used by any taxpayer, for the purpose of avoiding Federal tax penalties that may be imposed on the taxpayer. Further, to the extent any tax advice contained in this email may have been written to support the promotion or marketing of the transactions or matters discussed in this email, every taxpayer should seek advice based on such taxpayer's particular circumstances from an independent tax advisor.

---

**From:** Casey J. Quinn <[CQuinn@ag.nv.gov](mailto:CQuinn@ag.nv.gov)>

**Sent:** Monday, August 21, 2023 9:25 AM

**To:** Kent Robison <[krobison@rssblaw.com](mailto:krobison@rssblaw.com)>

**Cc:** Hannah Winston <[hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)>; Bill Coulthard (<[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)> <[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>); Emilia Cargill <[emilia.cargill@wingfieldnevadagroup.com](mailto:emilia.cargill@wingfieldnevadagroup.com)>; Jessica E. Whelan <[JWhelan@ag.nv.gov](mailto:JWhelan@ag.nv.gov)>

**Subject:** RE: Motion to Stay

Kent,

This follows our discussion on the phone the other day. At this time, we are not going to stipulate to CSI's filing of a Third Amended Complaint unless CSI is willing to stay the case as well. In other words, in exchange for staying the case until the Supreme Court issues its decision on the 1309 PJR, the State Engineer would stipulate to CSI filing an amended after the stay. If that is something you can agree to or want to discuss further then let us know, otherwise I believe both sides would be free to move forward with filing their respective motions later today.

Best,  
Casey

**Casey J. Quinn**

Senior Deputy Attorney General  
Complex Civil Litigation  
Office of the Attorney General

CSI0495

555 E. Washington Avenue  
Las Vegas, NV 89101  
[cquinn@ag.nv.gov](mailto:cquinn@ag.nv.gov)  
D: 702-486-3783



*Notice: This e-mail message and any attachments thereto may contain confidential, privileged, or non-public information. Use, dissemination, distribution, or reproduction of this information by unintended recipients is strictly prohibited. If you have received this message in error, please notify the sender immediately and destroy all copies.*

---

**From:** Kent Robison <[krobison@rssblaw.com](mailto:krobison@rssblaw.com)>  
**Sent:** Thursday, August 17, 2023 1:13 PM  
**To:** Casey J. Quinn <[CQuinn@ag.nv.gov](mailto:CQuinn@ag.nv.gov)>  
**Cc:** Hannah Winston <[hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)>; Bill Coulthard (<[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>)  
<[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)>; Emilia Cargill <[emilia.cargill@wingfieldnevadagroup.com](mailto:emilia.cargill@wingfieldnevadagroup.com)>; Jessica E. Whelan <[JWhelan@ag.nv.gov](mailto:JWhelan@ag.nv.gov)>  
**Subject:** Motion to Stay

**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Casey,

I apologize for missing your call today. The meeting with our client and co-counsel was postponed until tomorrow at 9am. We will be seeking leave to file a third amended complaint, the draft of which we have attached to this e-mail. We believe the third amended complaint goes a long way to alleviate the need to stay these proceedings. Please let us know if you can stipulate to the filing of the third amended complaint. Otherwise, we will proceed with a motion. After you review the third amended complaint, please give me a call to discuss.

Kent

I'm using Adobe Acrobat.

CSI0496

You can view and comment on "P-Proposed Third Amended Complaint.pdf" at:  
<https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:bdc7f70d-bea5-434e-aec4-171967cd90bf>

Kent R. Robison, Esq.  
71 Washington Street  
Reno, NV 89503  
Phone - 775.329.3151  
Fax - 775.329.7169  
[www.rssblaw.com](http://www.rssblaw.com)



Robison | Sharp | Sullivan | Brust

CONFIDENTIALITY: This email (including attachments) is intended solely for the use of the individual to whom it is addressed and may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, please do not read, copy, or re-transmit this communication. If you are the intended recipient, this communication may only be copied or transmitted with the consent of the sender. If you have received this email in error, please contact the sender immediately by return email and delete the original message and any attachments from your system. Thank you in advance for your cooperation and assistance.

IRS CIRCULAR 230 DISCLAIMER: Any tax advice contained in this email is not intended to be used, and cannot be used by any taxpayer, for the purpose of avoiding Federal tax penalties that may be imposed on the taxpayer. Further, to the extent any tax advice contained in this email may have been written to support the promotion or marketing of the transactions or matters discussed in this email, every taxpayer should seek advice based on such taxpayer's particular circumstances from an independent tax advisor.