

**No. 87356**

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown  
Clerk of Supreme Court

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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.*

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**COYOTE SPRINGS INVESTMENT, LLC, COYOTE SPRINGS NEVADA,  
LLC, and COYOTE SPRINGS NURSERY, LLC APPENDIX  
VOL. 3**

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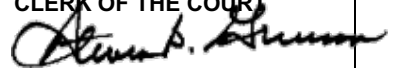
*Attorneys for Real Parties in Interest*

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**RIS**

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**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

**REPLY IN SUPPORT OF MOTION FOR  
LEAVE TO FILE THIRD AMENDED  
COMPLAINT**

**Hearing Date: September 28, 2023  
Time: 9:00 AM**

Plaintiffs reply in support of their Motion for Leave to File Third Amended Complaint  
(the "Motion") as follows.

1       **I.       Introduction**

2           The Plaintiffs' Motion is timely, made in good faith, and will not prejudice the  
3 Defendants. Plaintiffs filed their Motion ***nine months before trial***, five months before  
4 discovery cut off, and two months prior to the deadline to seek amendment. There was  
5 no delay. To the contrary, the Plaintiffs have diligently conducted discovery into this case.  
6 Based on that discovery, the Plaintiffs seek to amend and refine the operative pleading  
7 in this case so that it accurately reflects the facts and appropriate legal theories. This is  
8 exactly the purpose of Rule 15.

9           Additionally, at the request of the Defendants, the Plaintiffs have stipulated to  
10 extend the discovery deadlines in this case. *See Stipulation and Order to Extend*  
11 *Discovery Deadlines*, filed September 20, 2023. Expert disclosures are now due January  
12 16, 2024, and the close of discovery is not until March 1, 2024. The Defendants have  
13 substantial time to prepare their experts and conduct discovery. Thus, there can be no  
14 prejudice to the Defendants if leave to amend is granted. Accordingly, the Plaintiffs  
15 respectfully request that this Court grant the Motion.

16       **II.       The Plaintiffs Have Not Delayed in Seeking Leave to Amend**

17           The State repeatedly asserts that the Plaintiffs have delayed in seeking  
18 amendment, but the State provides no specificity or evidence to support its argument.  
19 *See, e.g.,* Motion, 11, 12 (baldly referencing that Plaintiffs have unduly delayed without  
20 any explanation). The truth is that the Plaintiffs are seeking leave well within the  
21 timeframe appropriate for amendment and for the State to be able to conduct discovery  
22 and prepare for trial based on the Proposed Third Amended Complaint.

23           Notably, the State does not refute that there is still ample time to conduct any  
24 discovery the State deems necessary if the Motion is granted. Thus, the State has failed  
25 to set forth any valid basis to deny the Motion. *See Residential Credit Sols., Inc. v. TRP*  
26 *Fund IV, LLC*, 136 Nev. 864, 457 P.3d 245 (2020) (unpublished disposition) (explaining  
27 that the district court should have granted leave to amend where the motion was timely  
28 as it was filed with three months left before the close of discovery and five months before

1 trial, which gave the defendant plenty of time to conduct discovery). The Motion should  
2 be granted.

### 3 **III. The Information Learned in Discovery Necessitates Amendment**

4 While the State contends that the Plaintiffs have known the information set forth in  
5 the Motion for years, it is significant that the State's witness with the most experience in  
6 the State Engineer's office has confirmed several of Plaintiffs' theories to be true. The  
7 State's characterization of the May 16, 2018 letter, Interim Order 1303, and Order 1309  
8 have been disingenuous, misleading, and dismissive of the impact each of these actions  
9 have had on the Plaintiffs' water rights.

10 Jason King is the first State witness to candidly and directly confirm that the State  
11 had never before combined multiple hydrographic basins into one. Moreover, Jason King  
12 is the first State witness to acknowledge the detriment to Plaintiffs and benefit to other  
13 water right holders that occurs when the State combines hydrographic basins into one.  
14 While the State is dismissive of the importance of Jason King's testimony because the  
15 State claims the Plaintiffs already knew these facts, Jason King's concessions were very  
16 enlightening for Plaintiffs given the State's adamant refusal to concede on these issues.

17 Jason King's testimony about the consequences of combining the basins together  
18 is key to CSI's new claim for appropriation *per se*. Jason King specifically explained that  
19 the impact of combining the basins is that now over 50 water right holders have priority  
20 over CSI who otherwise would not. Ex. 4, 155-56. Thus, Jason King has established that  
21 CSI's senior water rights were appropriated for use by these 50+ water right holders. See  
22 *id.*; see also *See Brown v. Legal Foundation of Washington*, 538 U.S. 1406 (2013) (an  
23 appropriation *per se* occurs when the government seizes private property and makes  
24 itself or a third party the owner of that property); *International Paper Co. v. United States*,  
25 282 U.S. 399 (1931).

26 The State's assertion that these factual issues do not relate to the appropriation  
27 *per se* theory or temporary taking claim is incorrect. It is crucial to the Plaintiffs' taking  
28 claims that the State's position as stated in the May 16, 2018 letter has not changed,



1 other than the fact that the State Engineer now contends even less water is available than  
2 what he stated in the May 16, 2018 letter. Further, the State Engineer's new, vague,  
3 unsupported representations that CSI has not been stopped from using its water rights  
4 necessitates an alternative temporary taking claim.<sup>1</sup>

5 Moreover, even if the factual allegations were included or implied in the Second  
6 Amended Complaint, the Plaintiffs should be permitted to identify the appropriate legal  
7 claims, which include an appropriation per se claim and an alternative claim for temporary  
8 taking. *See Liston v. Las Vegas Metro. Police Dep't*, 111 Nev. 1575, 1578, 908 P.2d 720,  
9 723 (1995) ("Notice pleading" requires plaintiffs to set forth the facts which support a legal  
10 theory, but does not require the legal theory relied upon to be correctly identified.")  
11 (footnote omitted).

12 Finally, the State objects to the Plaintiffs' separation and clarification of the *Lucas*  
13 and *Penn Central* takings claims for the taking of Plaintiffs' water rights and land,  
14 contending that "CSI is simply attempting to add new claims for relief that it could have,  
15 and should have, included in prior iterations of its Complaint." Motion, 11. But these are  
16 not new claims for relief. Plaintiffs merely separated the claims for clarity. Plaintiffs  
17 request leave to amend to clarify the factual allegations and appropriate claims for relief,  
18 which is proper and timely under Rule 15. Thus, the Motion should be granted.

#### 19 **IV. The State Engineer will not be Prejudiced if Leave is Granted**

20 "NRCP 15(a) contemplates the liberal amendment of pleadings, which in colloquial  
21 terms means that most such motions ought to be granted unless a strong reason exists  
22 not to do so, such as prejudice to the opponent or lack of good faith by the moving party."  
23 *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 284, 357 P.3d 966, 970 (Nev. App. 2015).

24 Here, there is no "strong reason"—especially not prejudice to the State—that  
25 would justify denying leave to amend. The State repeatedly argues that the Plaintiffs are  
26

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27 <sup>1</sup> Indeed, the State argued in its Reply in Support of Motion to Stay Proceedings Pending Nevada Supreme  
28 Court's Resolution of Related Matter, p. 2, that "[t]he State Engineer has **not** prevented Plaintiffs from  
developing their land. And the State Engineer has **not** prevented Plaintiffs from using their water rights."  
These types of arguments are dumbfounding. However, Plaintiffs must be able to assert an alternative  
temporary takings claim if these arguments are ultimately accepted by the trier of fact.

1 not adding new facts or theories to the Proposed Third Amended Complaint. See Motion,  
2 4, 6-11. If that is true, then the State cannot claim any prejudice because the State has  
3 had notice of the Plaintiffs' position and ample time to conduct discovery on the Plaintiffs'  
4 claims and factual allegations.

5 Moreover, the State ignores the fact that Plaintiffs' counsel sent Defendants'  
6 counsel the proposed Third Amended Complaint on August 17, 2023. Thus, the  
7 Defendants could have conducted discovery and prepared their experts as necessary  
8 based on the proposed Third Amended Complaint. Instead, the Defendants apparently  
9 have done neither and are waiting until the hearing on this matter to proceed. Regardless,  
10 given the parties' stipulation, the Defendants have months to prepare their experts and to  
11 conduct discovery.

12 The Defendants oppose this Motion because they want the entire case to be  
13 stayed. However, this Court denied the State's request to stay this case. Even still,  
14 Plaintiffs have cooperated in good faith with the Defendants by agreeing to extend the  
15 discovery deadlines as the Defendants requested. Notwithstanding, the Defendants  
16 continue to oppose this Motion without a valid basis to do so. The Plaintiffs have not  
17 delayed, and the Defendants will not suffer prejudice if leave to amend is granted.  
18 Accordingly, Plaintiffs respectfully request that the Motion be granted. *Fisher v. Exec.*  
19 *Fund Life Ins. Co.*, 88 Nev. 704, 706, 504 P.2d 700, 702 (1972) (explaining that "leave to  
20 amend should be permitted when no prejudice to the defendant will result and when  
21 justice requires it.").

## 22 **V. CONCLUSION**

23 The Plaintiffs have agreed to extend the discovery deadlines in this case. There  
24 is substantial time for the Defendants to conduct any discovery they deem necessary and  
25 appropriate given the factual allegations and legal claims in the proposed Third Amended  
26 Complaint. Accordingly, "no strong reason exists" to deny leave to amend. Therefore,  
27 the Plaintiffs respectfully request that this Court grant the Motion.

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**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 20<sup>th</sup> day of September, 2023.

ROBISON, SHARP, SULLIVAN, & BRUST

/s/ Kent R. Robison  
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**IN ASSOCIATION WITH:**

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Robison, Sharp, Sullivan and Brust, and  
3 that on this day, I electronically filed a copy of the foregoing document via Odyssey, the  
4 Court's mandatory e-filing/e-service system, which will automatically serve an electronic  
5 copy of the foregoing to all registered e-filing/e-service participants in this case as listed  
6 below:

7 **Vidler Water Company:**

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4 DATED this 20<sup>th</sup> day of September, 2023.

5 /s/ Christine O'Brien  
6 Employee of Robison, Sharp, Sullivan and Brust

**From:** [Hannah Winston](#)  
**To:** [Casey J. Quinn](#); [Jessica E. Whelan](#)  
**Cc:** [Emilia Cargill](#); [Kent Robison](#); [Chrissy O'Brien](#); [Ashley DeHaven](#); "[wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)"  
**Subject:** CSI v. State - Depositions  
**Date:** Thursday, September 21, 2023 9:23:00 AM

---

Hi Casey,

Emilia Cargill is available for her deposition in Reno on October 12<sup>th</sup> at 9:00am. Albert Seeno, Jr. is available for his deposition in Reno on October 13<sup>th</sup>, but he cannot start until 10:00am. We're still working on Albert Seeno, III.

Please let us know if these dates work for you.

Thanks!

Hannah

**HANNAH E. WINSTON, ESQ.**



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**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 No. XIII

**STATE ENGINEER'S AMENDED  
NOTICE OF DEPOSITIONS**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at the time and place designated below, Defendant  
State of Nevada ex rel. Department of Conservation and Natural Resources, Division of



1 Water Resources, Adam Sullivan, P.E., the Nevada State Engineer (the “State Engineer”),  
2 by and through counsel, will take the videotaped deposition of the following witnesses, upon  
3 oral examination recorded by videotape means, pursuant to Nevada Rule of Civil Procedure  
4 30, before a Notary Public, or before some other officer authorized by law to administer  
5 oaths:

DATE/TIME	DEPONENT
10/12/2023, 9:00 AM	Emilia Cargill
10/13/2023, 10:00 AM	Albert D. Seeno Jr.
TBD	Albert D. Seeno III

11 Unless otherwise specified, all depositions will take place at Sunshine Litigation,  
12 151 Country Estates Circle, Reno, Nevada 89511, and will continue from day to day until  
13 completed or adjourned. You are invited to attend and cross-examine.

14 DATED this 25th day of September, 2023.

15 AARON D. FORD  
16 Attorney General

17 By: /s/ Casey J. Quinn

CASEY J. QUINN, (Bar No. 11248)  
Senior Deputy Attorney General  
JESSICA E. WHELAN, (Bar No. 14781)  
Senior Deputy Attorney General  
JAMES N. BOLOTIN, (Bar No. 13829)  
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*Attorneys for Defendant State Engineer*

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 25th day of September, 2023, I served a true correct copy of the foregoing document via Odyssey, the Court's mandatory e-filing/e-service system. Registered participants will be served electronically.

/s/ Jeny M. Beesley  
Jeny M. Beesley, an employee of the  
State of Nevada Office of the Attorney General

**ORDD**

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**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  
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RESOURCES; ADAM SULLIVAN, Nevada  
State Engineer; and Does I through X.

Defendants.

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

**ORDER GRANTING MOTION FOR  
LEAVE TO FILE THIRD AMENDED  
COMPLAINT**

Before the Court is Plaintiffs' Motion for Leave to File Third Amended Complaint (the "Motion"). The Defendant filed an Opposition to the Motion on September 5, 2023, and the parties' respective counsel presented argument on September 28, 2023.

Under NRCP 15(a), leave to amend "shall be freely given when justice so requires". NRCP

1 15(a) is to be liberally construed, and “in the absence of . . . undue delay, bad faith or dilatory motive  
2 on the part of the movant,” leave to amend should be freely given. *Stephens v. S. Nev. Music Co.,*  
3 *Inc.*, 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973) (citation omitted); *see also Nutton v. Sunset*  
4 *Station, Inc.*, 131 Nev. 279, 284, 357 P.3d 966, 970 (Nev. App. 2015) (“NRCP 15(a) contemplates  
5 the liberal amendment of pleadings, which in colloquial terms means that most such motions ought  
6 to be granted unless a strong reason exists not to do so[.]”); *Holcomb Condo. Homeowners’ Ass’n,*  
7 *Inc. v. Stewart Venture, LLC*, 129 Nev. 181, 191, 300 P.3d 124, 130 (2013).

8 Having carefully considered the Motion, the Defendant’s Opposition thereto, the parties’  
9 oral argument, and the parties’ stipulated November 1, 2023 deadline to amend pleadings, the Court  
10 finds good cause exists to grant the Plaintiffs’ Motion to Amend. The Court grants the Motion based  
11 upon all applicable considerations, including the absence of undue delay, bad faith, prejudice to the  
12 Defendant, or dilatory motive on the part of the Plaintiffs, without prejudice to either party’s right  
13 to seek extensions of discovery deadlines in the future. Thus, the Court orders as follows:

14 **ORDER**

15 IT IS HEREBY ORDERED THAT the Plaintiffs’ Motion for Leave to File Third Amended  
16 Complaint is GRANTED.

17 IT IS SO ORDERED.

18 Dated this 3rd day of October, 2023

19 

20  
21 DISTRICT COURT JUDGE

TMB

22 079 8D2 B707 8F4E  
23 Mark R. Denton  
24 District Court Judge

25 Respectfully submitted by:

26 ROBISON, SHARP, SULLIVAN & BRUST

27 By: /s/ Kent R. Robison

28 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

1 Approved as to content and form by:  
2 OFFICE OF THE ATTORNEY GENERAL

3 By: /s/ Jessica E. Whelan  
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12 *Attorneys for Defendant State of Nevada*  
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**From:** [Hannah Winston](#)  
**To:** [treilly\\_outsideparalegalsolutions.com](mailto:treilly_outsideparalegalsolutions.com)  
**Subject:** FW: CSI v. State  
**Date:** Tuesday, October 3, 2023 10:28:40 AM

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HANNAH E. WINSTON, ESQ.



Robison | Sharp | Sullivan | Brust

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**From:** Jessica E. Whelan <JWhelan@ag.nv.gov>  
**Sent:** Tuesday, October 3, 2023 10:01 AM  
**To:** Hannah Winston <hwinston@rssblaw.com>; Casey J. Quinn <CQuinn@ag.nv.gov>  
**Cc:** Kent Robison <krobison@rssblaw.com>; 'wlc@coulthardlaw.com' <wlc@coulthardlaw.com>; Emilia Cargill <emilia.cargill@wingfieldnevadagroup.com>  
**Subject:** RE: CSI v. State

Hi Hannah, I approve this as to form. You may use my e-signature to file. Thanks,

Jessica

CSI0514

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**From:** Hannah Winston <[hwinston@rssblaw.com](mailto:hwinston@rssblaw.com)>  
**Sent:** Tuesday, October 3, 2023 9:53 AM  
**To:** Casey J. Quinn <[CQuinn@ag.nv.gov](mailto:CQuinn@ag.nv.gov)>; Jessica E. Whelan <[JWhelan@ag.nv.gov](mailto:JWhelan@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

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Casey and Jessica,

Attached is our proposed order granting our motion for leave to amend. Please advise whether we can affix your electronic signature.

Thanks,

Hannah

**HANNAH E. WINSTON, ESQ.**



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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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6 Coyote Springs Investment LLC,  
7 Plaintiff(s)

CASE NO: A-20-820384-B

8 vs.

DEPT. NO. Department 13

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 Granting Motion was served via the court's electronic eFile  
14 system to all recipients registered for e-Service on the above entitled case as listed below:

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