

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

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,

SUPREME COURT NO. 84739
District Court Case No. A816761
(Consolidated with Supreme
Court Cases 84741, 84742 and
84809)

SUPREME COURT NO. 84741
(Consolidated with Supreme
Court Cases 84739, 84742 and
84809)

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. /

CENTER FOR BIOLOGICAL DIVERSITY,

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

SUPREME COURT NO. 84742

(Consolidated with Supreme
Court Cases 84739, 84741 and
84809)

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
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. /

SUPREME COURT NO. 84809
(Consolidated with Supreme
Court Cases 84739, 84741 and
84742)

**REPLY IN SUPPORT OF RESPONDENTS' JOINT REQUEST FOR
JUDICIAL NOTICE**

Respondents Coyote Springs Investments, LLC; Lincoln County Water District; Vidler Water Company, Inc; Nevada Cogeneration Associates Nos. 1 and 2; Apex Holding Company, LLC; Dry Lake Water, LLC; Georgia-Pacific Gypsum, LLC; and Republic Environmental Technologies, Inc., by and through their respective counsel of record, reply in support of their Joint Request for Judicial Notice (“RJN”) as follows.

MEMORANDUM OF POINTS AND AUTHORITIES

I. The State Engineer’s Prior Inconsistent Statements Concerning the Scope of His Statutory Authority and the Historical Groundwater Management Practice Should Be Considered by this Court.

This Honorable Court should not condone the obvious. The State Engineer seeks to give contradictory “interpretations” to different governmental bodies. This practice of interpretation de jure is plagued with hypocrisy.

The State Engineer objects to this Court taking judicial notice of his prior inconsistent statements, contending that they “have no bearing on any fact in issue in this case.” Opposition, 3. However, in this appeal, the State Engineer contends that this Court must defer to his interpretation of his statutory authority “particularly when analyzed in the context of the stated policy of conjunctive management (NRS 533.024(1)(e)) and the proper historical context of NRS Chapter 534 and its dependence on NRS Chapter 533”. AOB 22, 40, 58-60. The State Engineer opposes

judicial notice so that the only interpretation before the Court is the one he conveniently adopts for the first time on appeal. This is improper.

When being candid with the Nevada Legislature when asking to change Nevada water law, the State Engineer admitted that he has no express authority to take the actions set forth in Order 1309. Moreover, in past judicial proceedings, the State Engineer has conceded that Nevada water is managed on a basin-by-basin basis. The State Engineer represents the opposite on both issues to this Court. It would be unjust for this Court to defer to the State Engineer's argument that he has "express and unambiguous" authority to "conjunctively manage water" when the State Engineer has publicly conceded in other forums that he does not have such express authority.

Notably, this Court has previously granted a request for judicial notice for the same reasons set forth in the RJN. In *Eureka Cnty. v. Seventh Jud. Dist. Ct.*, 134 Nev. 275, 417 P.3d 1121 (2018), this Court granted a party's request to take judicial notice of the State Engineer's statements made "in separate district court cases, as well as an order issued in one of those cases" where the moving party argued "the statements contradict arguments made by the State Engineer in its reply and those made in the petition, which the State Engineer joined." *See Order Granting Motion*, 2 (filed July 21, 2017, in Case No. 72317), a copy of which is attached hereto as Exhibit B for this Court's convenience. Accordingly, judicial notice for this same

purpose is appropriate here.

II. The Materials at Issue are Publicly Available, Generally Known Within the Jurisdiction of this Court, and from Sources Whose Accuracy Cannot be Reasonably Questioned.

While the State Engineer summarily argues that the documents are not appropriate for judicial notice under NRS 47.130, the State Engineer does not articulate a basis to support his argument. To be sure, the State Engineer essentially concedes that the materials are (1) generally known within the jurisdiction of the Court, or (2) capable of accurate and ready determination using sources whose accuracy cannot be reasonably questioned. The State Engineer does not dispute that NRS 47.140(2) requires judicial notice of such material if requested by a party and the Court is supplied with the necessary information. Rather, the State Engineer attempts to distinguish the facts in the other case or argue that the Respondents have mischaracterized the State Engineer's statements to the Legislature. These are not proper reasons to deny judicial notice.

The documents at issue include a brief filed by the State Engineer in a judicial proceeding, legislative minutes that are publicly available, and a State Engineer Order that is publicly available on the State Engineer's website. The authenticity and veracity of these publicly available documents cannot be questioned.

The State Engineer contends that the Legislative materials are not proper for judicial notice because he contends that his office merely asked the Legislature to

provide stronger authority than he currently has, which is not inconsistent with the arguments in this appeal. However, the State Engineer's office admitted to the Legislature that he does not have express authority for conjunctive management and that his office does not know how to "honor the scientific bases of interconnectivity regardless of administrative boundaries". *See* Exhibit 1 to RJN, 24. In this action, the opposite is argued. In this appeal, the State Engineer argues that he does have "express and unambiguous authority" for conjunctive management and that water is managed by the "aquifer" instead of by the administrative hydrographic basins. *See* AOB 23-25, 36, 46-50. He knows better. These positions are clearly inconsistent. Regardless, the State Engineer's weak attempt to minimize the inconsistency in his positions does not render publicly available legislative committee minutes improper for judicial notice.

Notably, the Appellants contend that Exhibit 5 and Exhibit 6 to the RJN "have little value . . . when there is not even text of a Bill Draft Request to examine." Appellant Center for Biological Diversity recently submitted to the Legislature "Proposed Legislative Language" that demonstrates the drastic measures the Appellants seek from the Legislature that would entirely upend Nevada water law. *See* Exhibit A attached hereto (January 5, 2023 Memorandum and Proposed Legislative Language for Joint Management or Combination of Hydrographic Areas or Hydrographic Basins).

The proposed changes make clear that the current statutes (1) require basin-by-basin management; (2) establish priority of water rights in relation only to those priority dates within an individual hydrographic basin; and (3) do not authorize the State Engineer to “jointly manage” or “conjunctively manage” water by combining multiple basins into one. While Exhibit A was not attached to the RJN, the Appellants’ argument that Exhibit 5 and Exhibit 6 have “little value” without a bill draft justify this Court’s consideration of the bill draft that the Center for Biological Diversity is proposing. Moreover, it is not what is stated in the proposed legislative language that controls; rather, it is the concession made that the water management prescribed in Order 1309 is not permitted by statute. That concession contradicts the arguments in the Appellants’ Opening Brief.

The State Engineer argues that the facts of the *Pyramid Lake Paiute Tribe of Indians v. Ricci*, Case No. CV01-05764 are different than those in this case. However, the facts are not at issue. The document is the State Engineer’s own Answering Brief, the authenticity of which is not questioned. The State Engineer expressly argued in that case that water is managed basin by basin. See RJN, Exhibit 2, 9. The State Engineer now tells this Court otherwise. While the State Engineer now contends that NRS 533.024’s statement of policy justifies his changing position, NRS 533.024 certainly could not and did not authorize the State Engineer to disregard the basin-by-basin management approach that he has implemented for

decades. This Court should take judicial notice of the State Engineer's prior position as all water right holders in Nevada understand (as the State Engineer admitted) that groundwater is managed by the individual hydrographic basin.

The State Engineer further argues that this Court should not take judicial notice of Order 1329, which is publicly available on the State Engineer's website, because the District Court did not take judicial notice of it. However, this Court is not bound by the District Court's decision on judicial notice and can take judicial notice of appropriate materials under NRS 47.130 and NRS 47.140(2).

Regardless of the State Engineer's attempt to mischaracterize his prior official statements or distinguish the circumstances in which they were made, this Court is qualified to review the State Engineer's prior positions and determine the credibility of the arguments set forth in the Appellants' Opening Brief. The State Engineer's arguments do not refute that the materials at issue are appropriate for judicial notice. Accordingly, the Respondents respectfully request that this Court grant their request for judicial notice.

CONCLUSION

On one hand, the State Engineer unequivocally admits he does not have express authority to conjunctively manage water but comes before this Court and argues that he has express and unambiguous authority to conjunctively manage. One of these statements is not true. The State Engineer has asked this Court to defer to

his interpretation of his statutory authority. However, the statutory interpretation the State Engineer presents to this Court is different than the interpretations expressed in previous judicial proceedings and to the Nevada Legislature. This Court should be aware of the State Engineer's historical interpretation, which was understood and relied on by the Respondents, other courts, the public, and the Legislature.

When analyzing the issue in this case, this Court should be aware of the State Engineer's willingness to contradict its own professed "interpretations". Accordingly, the Respondents respectfully request that this Court take judicial notice of the exhibits attached to their Request for Judicial Notice.

DATED this 7th day of February 2023.

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CERTIFICATE OF SERVICE

I certify that on the 7th day of February 2023, I served a copy of the **REPLY IN SUPPORT OF RESPONDENTS' JOINT REQUEST FOR JUDICIAL NOTICE** upon all counsel of record:

_____ BY MAIL: I placed a true copy thereof enclosed in a sealed envelope addressed as follows:

_____ BY FACSIMILE: I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below:

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DATED: This 7th day of February 2023.

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

EXHIBIT INDEX

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EXHIBIT “A”

EXHIBIT “A”

January 5th, 2023

From: Center for Biological Diversity
Patrick Donnelly, Great Basin director
Scott Lake, Nevada staff attorney

To: Interested Parties

Re: Memorandum & Proposed Legislative Language for Joint Management or
Combination of Hydrographic Areas or Hydrographic Basins

Summary:

This proposed legislation would give the State Engineer the explicit authority to jointly manage or combine hydrographic areas or basins to reflect the nature of their source of supply. Specifically, it would empower the State Engineer to manage multiple basins jointly if they share a common source of supply. This authority would be situated within NRS 534.110, within the State Engineer's authorities to address conflict and overappropriation. This legislation would help address overappropriation of groundwater resources and the resulting negative impacts to senior water rights holders and the public interest.

Background:

The Nevada water statutes frequently employ the term "basin" but do not define it. Nevertheless, the statutes provide the State Engineer, at minimum, implicit authority for the delineation and revision of hydrographic basin boundaries. The legislature has directed the State Engineer to enter into agreements with the U.S. Geological Survey (USGS) to conduct studies and investigations "related to the use of groundwater resources in Nevada." NRS 532.170. The legislature has also authorized the State Engineer to determine the boundaries of "definable" aquifers, NRS 534.100, and to supervise wells drilled in definable aquifers. NRS 534.030(4); NRS 534.080(1).

In the 1960s, several years after these statutes were enacted, the State Engineer and the USGS divided Nevada into "groundwater study areas" based on topographic divides. These "groundwater study areas" roughly correspond to the "hydrographic basins" or "hydrographic areas" currently used in Nevada Water Law, though the State Engineer has altered the boundaries of some of the basins over time. Since no "hydrographic basins" existed when statutory groundwater law was enacted, and because the State Engineer used authority granted by the Legislature to define the boundaries of "groundwater study areas," and later basins, the State Engineer has implied authority which arguably includes the power to amend, modify, or combine basins.

However, the Legislature has not provided the State Engineer with express authority to delineate hydrographic basins. Without express authority, the State Engineer may be unable to carry out his various, expressly authorized statutory duties and unable to effectively protect Nevada's publicly owned groundwater resources from over-appropriation and overuse.

Chapter 534 of the Nevada Revised Statutes (NRS) concerns the management and appropriation of groundwater, and it frequently employs the term "basin" when defining the State Engineer's authority. For example, NRS 534.030 authorizes the State Engineer to "designate" areas for heightened regulation "by basin, or portion therein." NRS 534.110 provides the State Engineer various powers to address over-appropriation in "any basin or portion thereof." And NRS 534.120 provides the State Engineer power to prescribe rules and regulations where "the groundwater basin is being depleted."

Although Nevada's hydrographic basins lack a clear foundation in statutory law, they have become highly important to the State Engineer's implementation of the water statutes because groundwater availability and priority of water rights have customarily been determined in the context of individual basins. Put simply, for most of Nevada's history, each groundwater basin has been assumed to represent a single and separate source of supply.

This approach makes sense where groundwater is drawn from valley-floor alluvial aquifers, which are recharged by local precipitation and typically hydrologically distinct from aquifers in neighboring topographic valleys. However, a great deal of groundwater in Nevada is stored not in valley-floor aquifers, but in deeper regional aquifers or "flow systems"—hydrologically connected geologic formations that span large portions of the State and underlie multiple topographic valleys. Recent decades have seen increasing interest in developing carbonate-aquifer groundwater resources, resulting in risks that regional flow systems may become over-appropriated before their hydrology is adequately understood.

The State Engineer therefore needs express authority to recognize and appropriately manage multi-basin regional flow systems as a common source of supply. Any such legislative proposal must be carefully designed in order to ensure that the authority granted is utilized to address water-rights conflicts, provide effective tools to prevent over-appropriation, protect the environment, and encourage water conservation, rather than to encourage unsustainable appropriations or undermine bedrock principles of Nevada Water Law such as prior appropriation and beneficial use. Moreover, the proposal must permit the State Engineer to acknowledge the unique challenges associated with each groundwater system in the State, and seek to ensure equitable outcomes through robust public and stakeholder participation, as well as judicial review.

To those ends, the authority granted to the State Engineer should be available only in response to water-rights conflicts, conflicts with the public trust/public interest, or over-appropriation, preferably on a local or regional basis. The State Engineer should not be granted authority to re-

draw the boundaries of hydrologic basins in any case other than when necessitated by management concerns and justified by a scientific delineation of a single source of supply. Further, any physical movement of water rights within a large, interconnected groundwater source must be carefully managed to avoid impacts to groundwater-dependent ecosystems and senior water rights. Any such new delineation should follow a robust public engagement process including scientific investigations, soliciting stakeholder input, holding hearings, and submitting written findings of fact and conclusions of law that are subject to judicial review.

Note on Prior Appropriation and Priority:

Nevada currently has several statutory provisions expressly recognizing prior appropriation and relative priority. NRS 534.020(1) provides that any appropriation of water is “subject to all existing rights to the use thereof.” NRS 533.085(1) provides that “[n]othing contained in this chapter shall impair the vested right of any person to the use of water.” NRS 534.110(6) and (7) provide that any curtailment of groundwater pumping “conform to priority rights.”

The courts also agree. “Nevada’s water statutes embrace prior appropriation as a fundamental principle.” *Mineral Cty. v. Lyon Cty.*, 473 P.3d 418, 423 (Nev. 2020). Simply put, prior appropriation means “first in time, first in right.” See *Reno Smelting, Milling and Reduction Works v. Stevenson*, 20 Nev. 269, 21 P. 317 (1889); *Application of Filippini In re Waters of Duff Creek*, 66 Nev. 17, 202 P.2d 535 (1949).

It must be acknowledged that with the combination of basins, some parties risk a diminishment of water rights where the source is currently improperly delineated or inadequately understood. A party which relies on its position as a “senior” rightsholder in a particular basin, suffers a loss when it is subjected to senior existing rights in neighboring basins. However, those same senior rightsholders suffer a loss if a junior rights holder’s interest in the common source goes unacknowledged or unaddressed.

If relative priority does not apply universally across the entire source, certain junior users are permitted to “jump the line,” so to speak, and impair rights with older priorities without consequence or accountability. If the water statutes are read to prevent the State Engineer from applying principles of prior appropriation across basin boundaries or water sources, he will be powerless to address the ongoing diminishment of senior rights and impacts to the public trust.

This memo therefore recommends that any legislation for joint management be consistent with, and reaffirm, principles of prior appropriation. Specifically, it is recommended that priority be defined to apply universally, regardless of geographic location. Practically, the geographic bounds of relative priority should extend as far as the potential for conflict. In other words, relative priority should apply among users of the same source of supply.

Proposed Legislative Language:

NRS 534.0185 “Basin” defined. As used in this Chapter, “basin” means any common or connected source of groundwater supply so designated by the State Engineer. “Basin” includes, but is not limited to, any hydrographic areas delineated by the State Engineer as the result of geological investigations authorized under Chapters 532, 533, and 534 of the NRS, as well as any common or connected sources of groundwater supply so delineated pursuant to NRS 534.110(7).

* * *

NRS 534.020 Underground waters belong to public and are subject to appropriation for beneficial use; declaration of legislative intent.

1. All underground waters within the boundaries of the State belong to the public, and, subject to all existing rights to the use thereof, are subject to appropriation for beneficial use only under the laws of this State relating to the appropriation and use of water and not otherwise.

2. Any appropriation of underground water in the State is subject to all existing rights to the use thereof, regardless of where the respective points of diversion are located, and regardless of whether the respective points of diversion are located in different basins.

23. It is the intention of the Legislature, by this chapter, to prevent the waste of underground waters and pollution and contamination thereof and provide for the administration of the provisions thereof by the State Engineer, who is hereby empowered to make such rules and regulations within the terms of this chapter as may be necessary for the proper execution of the provisions of this chapter.

* * *

NRS 534.110 Rules and regulations of State Engineer; statements and pumping tests; conditions of appropriation; designation of critical management areas; restrictions; limit to restrictions on domestic wells.

1. The State Engineer shall administer this chapter and shall prescribe all necessary regulations within the terms of this chapter for its administration.

2. The State Engineer may:

(a) Require periodical statements of water elevations, water used, and acreage on which water was used from all holders of permits and claimants of vested rights.

(b) Upon his or her own initiation, conduct pumping tests to determine if overpumping is indicated, to determine the specific yield of the aquifers and to determine permeability characteristics.

3. The State Engineer shall determine whether there is unappropriated water in the area affected and may issue permits only if the determination is affirmative. In determining whether there is unappropriated water in the affected area, the State Engineer shall consider the potential for impacts to all permittees, vested-rights holders, and the public interest within the affected aquifer as well as impacts to hydrologically connected ground- and surface-water resources. The State Engineer may require each applicant to whom a permit is issued for a well:

(a) For municipal, quasi-municipal or industrial use; and

(b) Whose reasonably expected rate of diversion is one-half cubic foot per second or more,

to report periodically to the State Engineer concerning the effect of that well on other previously existing wells that are located within 2,500 feet of the well.

4. It is a condition of each appropriation of groundwater acquired under this chapter that the right of the appropriator relates to a specific quantity of water and that the right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion. In determining a reasonable lowering of the static water level in a particular area, the State Engineer shall consider the economics of pumping water for the general type of crops growing and may also consider the effect of using water on the economy of the area in general.

5. This section does not prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as any protectable interests in existing domestic wells as set forth in NRS 533.024 and the rights of holders of existing appropriations can be satisfied under such express conditions. At the time a permit is granted for a well:

(a) For municipal, quasi-municipal or industrial use; and

(b) Whose reasonably expected rate of diversion is one-half cubic foot per second or more,

the State Engineer shall include as a condition of the permit that pumping water pursuant to the permit may be limited or prohibited to prevent any unreasonable adverse effects on an existing domestic well located within 2,500 feet of the well, unless the holder of the permit and the owner of the domestic well have agreed to alternative measures that mitigate those adverse effects.

6. Except as otherwise provided in Section ~~79~~, the State Engineer shall conduct investigations in any basin, ~~or~~ portion thereof, or group of basins where it appears that the average annual replenishment to the groundwater supply may not be adequate for the needs of all permittees and all vested-right claimants, and if the findings of the State Engineer so indicate, except as otherwise provided in subsections ~~7 and 119~~, the State Engineer may order that withdrawals, including, without limitation, withdrawals from domestic wells, be restricted to conform to priority rights.

7. If, upon conducting an investigation pursuant to subsection 6, the State Engineer determines that the average annual replenishment to the groundwater supply may not be adequate for the needs of all permittees and all vested-right claimants within a common aquifer or hydrologically connected multi-basin area, the State Engineer may hold a public hearing and take testimony for the purposes of determining:

- (a) The nature of hydrologic connection in the affected area;
- (b) The degree of hydrologic connection in the affected area;
- (c) The geographic extent of hydrologic connection within the affected area;
- (d) Whether a common aquifer exists within all or part of the affected area; and
- (e) The perennial yield of the affected area.

The State Engineer may jointly manage, or adjust the boundaries of, any affected basins in accordance with findings of fact made pursuant to this subsection. Any decision by the State Engineer made pursuant to this subsection must be based upon substantial evidence, and may be appealed pursuant to NRS 533.450.

8. Following a final determination pursuant to subsection 7 regarding the geographic extent and perennial yield of a hydrologically connected multi-basin area, if the findings of the State Engineer indicate that the average annual replenishment to the groundwater supply within that area, or any distinct and/or common water source identified within that area, is not adequate for the needs of all permittees and all vested-right claimants, except as otherwise provided in subsection 12, the State Engineer may order that withdrawals be restricted to conform to priority rights.

9. Following a final determination pursuant to subsection 7 which combines or subjects to joint management multiple basins or portions thereof, no change in the point of diversion of any amount of water greater than 250 acre-feet within the affected basin or basins shall be permitted, except upon application to, and approval by the State Engineer. The State Engineer shall process any such application in the same manner as an application for interbasin transfer of groundwater under NRS Chapter 533.

710. The State Engineer:

- (a) May designate as a critical management area any basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin.
- (b) Shall designate as a critical management area any basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin upon receipt of a petition for such a designation which is signed by a majority of the holders of certificates or permits to appropriate water in the basin that are on file in the Office of the State Engineer.

The designation of a basin as a critical management area pursuant to this subsection may be appealed pursuant to NRS 533.450. If a basin has been designated as a critical management area for at least 10 consecutive years, except as otherwise provided in subsection 9, the State Engineer shall order that withdrawals, including, without limitation, withdrawals from domestic wells, be restricted in that basin to conform to priority rights, unless a groundwater management plan has been approved for the basin pursuant to NRS 534.037.

811. In any basin or portion thereof in the State designated by the State Engineer, the State Engineer may restrict drilling of wells in any portion thereof if the State Engineer determines that additional wells would cause an undue interference with existing wells. Any order or decision of the State Engineer so restricting drilling of such wells may be reviewed by the district court of the county pursuant to NRS 533.450.

912. If a court of competent jurisdiction orders the State Engineer to restrict withdrawals to conform to priority rights or if pursuant to subsection 6 or 7 the State Engineer orders that withdrawals be restricted to conform to priority rights, the State Engineer must limit the restriction of withdrawals from a domestic well to allow a domestic well to continue to withdraw 0.5 acre-feet of water per year, which must be recorded by a water meter.

EXHIBIT “B”

EXHIBIT “B”

IN THE SUPREME COURT OF THE STATE OF NEVADA

EUREKA COUNTY; AND DIAMOND
NATURAL RESOURCES PROTECTION
& CONSERVATION ASSOCIATION;
AND JASON KING, P.E., NEVADA
STATE ENGINEER, DIVISION OF
WATER RESOURCES, DEPARTMENT
OF CONSERVATION AND NATURAL
RESOURCES,

Petitioners,

vs.

THE SEVENTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
EUREKA; THE HONORABLE GARY
FAIRMAN, DISTRICT JUDGE; AND
BAUMANN FAMILY TRUST,

Respondents,

and

SADLER RANCH, LLC; BAUMANN
FAMILY TRUST; BURNHAM FARMS,
LLC; GALEN BYLER; MARIAN BYLER;
CONLEY LAND & LIVESTOCK, LLC;
DAMELE FARMS, INC.; DIAMOND
VALLEY HAY COMPANY, INC.; FRED
L. ETCHEGARAY; JOHN J.
ETCHEGARAY; MARY JEAN
ETCHEGARAY; LW & MJ
ETCHEGARAY FAMILY TRUST;
EUREKA MANAGEMENT CO., INC.;
GALLAGHER FARMS LLC; JAYME L.
HALPIN; SANDI HALPIN; TIM
HALPIN; HIGH DESERT HAY, LLC;
J&T FARMS, LLC; J.W.L.
PROPERTIES, LLC; MARK MOYLE
FARMS LLC; J.R. MARTIN TRUST;
CHERYL MORRISON; MATT
MORRISON; DEBRA L. NEWTON;
WILLIAM H. NORTON; PATRICIA

No. 72317

FILED

JUL 21 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

NORTON; D.F. & E.M. PALMORE
FAMILY TRUST; STEWARDSHIP
FARMING, LLC; SCOTT BELL;
KRISTINA BELL; DON BERGNER;
LINDA BERGNER; JAMES
ETCHEVERRY; MICHEL AND
MARGARET ANN ETCHEVERRY
FAMILY, LIMITED PARTNERSHIP;
MARK T. AND JENNIFER R.
ETCHEVERRY FAMILY TRUST;
MARTIN P. AND KATHLEEN A.
ETCHEVERRY FAMILY TRUST;
LAVON MILLER; KRISTI MILLER;
LYNFORD MILLER; SUSAN MILLER;
ALBERTA MORRISON; DONALD
MORRISON; RUBY HILL MINING
COMPANY, LLC; ROGER ALLEN; AND
JUDITH ALLEN,

Real Parties in Interest.

ORDER GRANTING MOTION

Real party in interest Sadler Ranch, LLC, has filed a motion requesting that this court take judicial notice of statements made by petitioner State Engineer in separate district court cases, as well as an order issued in one of those cases. Sadler asserts that the statements contradict arguments made by the State Engineer in its reply and those made in the petition, which the State Engineer joined. The State Engineer opposes the motion and Sadler has filed a reply. Having considered the parties' arguments as well as the documents before this court, we grant the motion. *See Occhiuto v. Occhiuto*, 97 Nev. 143, 625 P.2d 568 (1981) (examining the relationship between the current case and a second case to determine whether judicial notice of documents filed in the second case was appropriate). However, we decline to take judicial notice of the documents as appended to Sadler's motion because they are

incomplete and do not bear the file-stamp of the district court clerk. Accordingly, Sadler shall have 15 days from the date of this order to file complete and file-stamped copies of the documents that are the subject of the motion.

It is so ORDERED.

Cherry, C.J.

cc: McDonald Carano LLP/Reno
Attorney General/Carson City
Allison MacKenzie, Ltd.
Eureka County District Attorney
Holland & Hart LLP/Reno
Taggart & Taggart, Ltd.
Parsons Behle & Latimer/Reno