

SIXTH JUDICIAL DISTRICT COURT
HUMBOLDT COUNTY, NEVADA
MICHAEL R. MONTERO
DISTRICT JUDGE

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CASE NO. CV0022919

DEPT. NO. II

FILED

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TAMI RAE SPERO
DIST. COURT CLERK

**IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY HUMBOLDT**

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BUTTONPOINT Limited Partnership,

Petitioner,

vs.

**ORDER STAYING STATE ENGINEER'S
ORDER 1329 PENDING DISPOSITION**

ADAM SULLIVAN, P.E., State Engineer
of the State of Nevada, DIVISION OF
WATER RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES,

Respondent.

HAVING REVIEWED the pleadings and papers herein, and having considered the arguments presented by the parties at the hearing on November 16, 2023, the Court **HEREBY STAYS** the State Engineer's Order 1329 pending a decision on the merits thereof.

In support of this **ORDER**, and pursuant to NRS 533.450,¹ the Court **FINDS** as follows:

¹ NRS 533.450 Orders and decisions of State Engineer subject to judicial review; procedure; motions for stay; appeals; appearance by Attorney General.

5. An order or decision of the State Engineer must not be stayed unless the petitioner files a written motion for a stay with the court and serves the motion personally or by registered or certified mail upon the State Engineer, the applicant or other real party in interest and each party of record within 10 days after the petitioner files the petition for judicial review. Any party may oppose the motion and the petitioner may reply to any such opposition. In determining whether to grant or deny the motion for a stay, the court shall consider:

- (a) Whether any nonmoving party to the proceeding may incur any harm or hardship if the stay is granted;
- (b) Whether the petitioner may incur any irreparable harm if the stay is denied;
- (c) The likelihood of success of the petitioner on the merits; and

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First, granting the stay will cause no harm or hardship to any nonmoving party. The stay will allow the decades-old status quo to be maintained pending review of the validity of the State Engineer’s Order 1329. There is no evidence that any nonmoving party’s existing rights are going unfulfilled, or that there is some causal connection between capture and any volume of decreed water rights going unfulfilled. There is also no evidence that Order 1329’s newfound regulations will solve the aforementioned problem.

Significantly, the comprehensive groundwater model commissioned to demonstrate the supposed capture and loss—measuring the impact of groundwater pumping on existing water rights—has yet to be adequately developed. Motion for Stay at Exhibit 1 (Order 1329), p. 4-5, *Buttonpoint v. Sullivan*, Case No. CV0022919 (January 12, 2022) (“[I]n practice, actual deliveries over the expanse of the Humboldt River Region may be different than exact scheduled deliveries **due to a wide range of variables**” ... “It is scientifically understood that groundwater pumping has **the potential** to capture streamflow when surface water and groundwater are hydraulically connected.”) (emphasis added); Amended Motion for Stay at 2-3, *Buttonpoint v. Sullivan*, Case No. CV0022919 (January 3, 2023) (“Order 1329 was supposed to be based on a comprehensive groundwater model according to the settlement agreement, but no model yet exists. The State Engineer’s Office has publicly commented on the model for years, but cannot state when the model will be available.”).

An undeveloped groundwater model cannot be classified as the “best available science” when it is unequivocally unavailable. NRS 533.024(c).

(d) Any potential harm to the members of the public if the stay is granted.

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Consequently, the Court is unconvinced that any nonmoving party will suffer some harm or undue hardship should the stay be granted. This factor therefore weighs in favor of staying Order 1329 pending disposition, or simply the development of an operative groundwater model.

Second, Petitioner, Buttonpoint limited partnership, *may* incur irreparable harm should the stay be denied. Order 1329 governs the consideration of applications for water rights, which Buttonpoint has filed, and applies vague and ambiguous terms that may result in a permanent dedication of water or denial of an application without proper notice or the ability to fully advocate for such rights. Moreover, Buttonpoint is at risk of irreparable harm—irreversible loss of water rights—should applications be reviewed pursuant to an undeveloped groundwater model. This factor weighs in favor of stay.

Third, Buttonpoint has a likelihood of success on the merits. Should the district court ruling in Nevada Supreme Court Case No. 84739 be upheld, the State Engineer may not have the authority to engage in conjunctive management as it so attempts. Order 1329 also has a high likelihood of being overturned due to its heavy reliance on an undeveloped groundwater model that threatens the permanent relinquishment of water rights without recourse, especially if Order 1329 is found to be in violation of the prior settlement agreement. This factor weighs in favor of stay.

Fourth, granting the stay will not harm the public at large, because Order 1329 only affects those with pending applications to appropriate or modify existing and/or future water rights in the Humboldt Region, not the general public. Instead, the Court finds that Order 1329 is actually more harmful to the public absent a stay, because it relies on an unfinished

1 groundwater model, subjecting the public to a fundamentally unproven methodology for
2 calculating capture and any permanent effect it may have on existing and future water rights.
3 With a stay in place, the decades-old status quo will be maintained pending a decision herein,
4 and any potential harm to the public averted. This factor weighs in favor of stay.

5 In conclusion, the NRS 533.450(5) factors weigh overwhelmingly in favor of granting
6 a stay of the State Engineer's Order 1329 pending a decision on the merits.

7 **ACCORDINGLY, IT IS HEREBY ORDERED** that Order 1329 shall be **STAYED**
8 until a decision is rendered herein.

9 **IT IS FURTHER ORDERED** that no bond will be required under NRS 533.450(6).
10 There has been no showing of an identified conflict between groundwater uses and decreed
11 water users. Thus, no dollar amount can reasonably be calculated for any offset water rights.
12 In addition, no party has demonstrated any harm should a stay be granted. Accordingly, no
13 bond shall be posted.

14 **IT IS SO ORDERED.**

15 DATED this 24th day of January, 2024.

17 
18 HONORABLE MICHAEL R. MONTERO
19 DISTRICT JUDGE

CERTIFICATE OF SERVICE


I hereby certify that I am an employee of the Honorable Michael R. Montero, District Court Judge, Sixth Judicial District Court and am not a party to, nor interested in, this action;

and that on this 24th day of January, 2024, I caused to be served

a true and correct copy of the enclosed **ORDER STAYING STATE ENGINEER'S**

ORDER 1329 PENDING DISPOSITION upon the following parties:

KAEMPFER CROWELL Alex Flangas, Esq. Severin A. Carlson, Esq. Ellsie E. Lucero, Esq. 50 W Liberty Street, Ste 700 Reno, NV 89501 <i>Via US Mail</i>	James N. Bolotin, Esq. Ian E. Carr, Esq. Office of the Attorney General 100 N Carson Street Carson City, NV 89701 <i>Via US Mail</i>
PISANELLI BICE, LLC Todd L. Bice, Esq. 400 S 7 th Street, Ste 300 Las Vegas, NV 89101 <i>Via US Mail</i>	Laura A. Schroeder, Esq. Therese A. Stix, Esq. Caitlin R. Skulan, Esq. SCHROEDER LAW OFFICES P.C. 10615 Double R Blvd., Ste 100 Reno, NV 89521 <i>Via US Mail</i>
Paul G. Taggart, Esq. Timothy D. O'Connor, Esq. TAGGART & TAGGART, LTD. 108 N Minnesota Street Carson City, NV 89703 <i>Via US Mail</i>	


 TAYLOR M. STOKES, ESQ.
 STAFF ATTORNEY
 SIXTH JUDICIAL DISTRICT COURT