

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
3

4 WASTE MANAGEMENT OF NEVADA;
5 AND KAREN GONZALEZ,
6 Petitioners,

Supreme Court
Case No.:
Electronically Filed
Jun 10 2016 01:36 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

7 vs.

8 THE SECOND JUDICIAL DISTRICT
9 COURT IN AND FOR THE COUNTY OF
10 WASHOE, and THE HONORABLE
11 CONNIE STEINHEIMER, DISTRICT
12 JUDGE,
13 Respondents,

Second Judicial District Court
Case No. CV12-02995

PETITION FOR WRIT OF
MANDAMUS

14 and

15 WEST TAYLOR STREET, LLC,
16 Real Party in Interest.

17 _____/

18 MARK G. SIMONS, ESQ.

19 Nevada Bar No. 5132

20 THERESE M. SHANKS, ESQ.

21 Nevada Bar No. 12890

22 ROBISON, BELAUSTEGUI, SHARP & LOW

23 A Professional Corporation

24 71 Washington Street

25 Reno, Nevada 89503

26 T: (775) 329-3151

27 F: (775) 329-7941

28 E: msimons@rbsllaw.com

and tshanks@rbsllaw.com

Attorneys for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES	v
NRAP 26.1 DISCLOSURE	ix
NRAP 17 ROUTING STATEMENT	x
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
FACTUAL BACKGROUND	2
SUMMARY OF THE ARGUMENT	7
ARGUMENT	11
I. STANDARD OF REVIEW	11
A. WRIT RELIEF IS APPROPRIATE	11
B. THIS COURT REVIEWS THE DISTRICT COURT’S DECISION DE NOVO	13
II. THE DISTRICT COURT ERRED IN INCORPORATING MULTIPLE MECHANIC’S LIEN STATUTORY REQUIREMENTS INTO NRS 444.520	14
A. NRS 444.520(3) IS NOT AMBIGUOUS	15
B. THE DISTRICT COURT CANNOT IMPOSE ADDITIONAL REQUIREMENTS INTO THE STATUTORY TEXT OF NRS 444.520	18
1. The District Court Erred In Expanding Upon NRS 444.520’s Statutory Language to Include Additional Notice and Perfection Requirements	19

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

2.	The District Court's Imposition of Additional Requirements is Contrary to the Legislative History.....	21
a.	The Legislature Specifically Declined to Adopt Any Additional Requirements From NRS Chapter 108 Into NRS 444.520.....	21
b.	The Legislative History of NRS 444.520 Does Not Support the District Court's Holding.....	23
3.	The District Court's Holding is Contrary to The Rules of Statutory Construction.....	27
4.	Other Courts Interpreting Identical Statutes Reject The District Court's Interpretation.....	29
C.	NRS 444.520 IS CONSTITUTIONAL AS ENACTED.....	31
1.	NRS 444.520 Is Not Unconstitutional Because It Creates a Perpetual Lien.....	32
2.	The Foreclosure Process for NRS 444.520(3) Comports with Due Process.....	33
III.	THE DISTRICT COURT ERRED IN HOLDING THAT A GARBAGE LIEN FORECLOSURE IS SUBJECT TO A TWO-YEAR STATUTE OF LIMITATION.....	34
A.	NO STATUTE OF LIMITATIONS APPLIES TO FORECLOSURES UNDER NRS 444.520(3).....	35
B.	SHOULD THIS COURT DISAGREE, THEN GARBAGE LIENS ARE GOVEREND BY A THREE-YEAR STATUE OF LIMITATIONS.....	37
	CONCLUSION.....	39

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

AFFIDAVIT OF MARK G. SIMONS IN SUPPORT OF
PETITION FOR WRIT OF MANDAMUS..... 40

CERTIFICATE OF COMPLIANCE..... 42

CERTIFICATE OF SERVICE..... 44

TABLE OF AUTHORITIES

NEVADA CASES

<u>Aspen Fin. Servs., Inc. v. Eighth Jud. Dist. Ct.</u> , 129 Nev. ___, 313 P.3d 875 (2013)	11
<u>Borgerson v. Scanlon</u> , 117 Nev. 216, 19 P.3d 236 (2001).....	13
<u>Browning v. Dixon</u> , 114 Nev. 213, 954 P.2d 741 (1998).....	32
<u>Double Diamond v. Second Jud. Dist. Ct.</u> , 131 Nev. ___, 354 P.3d 641 (2015)	28
<u>In re Cay Clubs</u> , 130 Nev. ___, 340 P.3d 563 (2014).....	21
<u>McKay v. Bd. of Cnty. Comm'rs</u> , 103 Nev. 490, 746 P.2d 124 (1987)	19
<u>Mineral Cnty. v. State, Dep't of Conservation & Natural Res.</u> , 117 Nev. 235, 20 P.3d 800 (2001).....	11
<u>Nev. Power Co. v. Haggerty</u> , 115 Nev. 353, 989 P.2d 870 (1999).....	28
<u>Nev. State Democratic Party v. Nev. Republican Party</u> , 127 Nev. ___, 256 P.3d 1 (2011).....	21
<u>Paley v. Second Judicial Dist. Ct.</u> , 129 Nev. ___, 310 P.3d 590 (2013).....	11
<u>Sandpointe Apartments, LLC v. Eighth Jud. Dist. Ct.</u> , 129 Nev. ___, 313 P.3d 849 (2013).....	11, 16
<u>Schettler v. RalRon Capital Corp.</u> , 128 Nev. ___, 275 P.3d 933 (2012)	13
<u>Silver State Elec. Supply Co. v. State, Dep't of Taxation</u> , 123 Nev. 80, 157 P.3d 710 (2007).....	13-14

1		
2	<u>State v. Eighth Judicial Dist. Ct.</u> , 118 Nev. 140, 42 P.3d 233 (2002).....	31
3	<u>State v. Yellow Jacket Silver Min. Co.</u> , 14 Nev.	
4	220 (1872).....	9-10, 34, 35-36
5	<u>State Indus. Ins. Sys. v. Bokelman</u> , 113 Nev. 1116,	
6	946 P.2d 179 (1997).....	20
7	<u>Williams v. United Parcel Servs.</u> , 129 Nev. ___,	
8	302 P.3d 1144 (2013).....	16, 20
9	<u>Wood v. Safeway, Inc.</u> , 121 Nev. 724, 121 P.3d 1026 (2005).....	13
10		
11	<u>EXTRA JURISDICTIONAL CASE LAW</u>	
12	<u>Frazier v. Jackson</u> , 641 P.2d 64 (Or. Ct. App. 1982).....	38
13	<u>Heisel v. Cunningham</u> , 491 P.2d 178 (Idaho 1971).....	38
14		
15	<u>N. Wa. Water & Sanitation Dist. v. Majestic Sav. &</u>	
16	<u>Loan Ass'n</u> , 594 P.2d 599 (Colo. App. 1979).....	29-30, 37
17	<u>Skyland Metro. Dist. v. Mountain W. Enter.</u> , 184 P.3d	
18	106 (Colo. App. 2007).....	30
19	<u>Wasson v. Hogenson</u> , 583 P.2d 914 (Colo. 1978).....	35
20		
21	<u>NEVADA STATUTE</u>	
22	NRS 11.030.....	36
23	NRS 11.040.....	36
24	NRS 11.190.....	36
25		
26	NRS 11.190(3)(a).....	11, 34, 38
27	NRS 11.190(4)(b).....	35, 38
28		

1		
2	NRS 11.200	39
3	NRS11.255	36
4	NRS 11.255(2)	34, 36, 39
5		
6	NRS 30.040	9, 29, 33
7	NRS 30.040(1)	9, 29
8		
9	NRS 34.170	11
10	NRS 108.226	19, 27, 28
11	NRS 108.2275	19, 28, 29, 32, 33
12		
13	NRS 108.239	7, 14, 15, 16, 17, 18, 20, 29, 33, 39
14	NRS 108.239(1)	17, 33
15		
16	NRS 108.239(2)	17, 33
17	NRS 108.239(7)	17, 33
18	NRS 108.239(10)	17, 33
19		
20	NRS 244A.549	15
21	NRS 318.015	21-22
22	NRS 318.197	x, xi, 8, 15, 21, 22, 23, 26
23		
24	NRS 318.197(2)	xi, 22, 23
25	NRS 318.197(9)	22, 24
26		
27	NRS 318.201	31
28		

NRS 444.520	x, xi, 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 28, 31, 32, 33, 34, 35, 39, 40
NRS 444.520(1)	4, 14, 31, 38
NRS 444.520(2)	xi, 23
NRS 444.520(3)	x, 1, 2, 3, 4, 5, 7, 8, 9, 10, 14, 15, 16, 17, 20, 21, 23, 24, 31, 32, 33, 34, 35, 37, 39, 40
NRS 444.520(4)	2, 9, 18, 20, 22, 24, 27, 28, 31, 32

NEVADA RULES

NRAP 17	x-xi
NRAP 26.1	ix
NRAP 28	42-43

SECONDARY SOURCES

<i>Foreclosure</i> , <u>Black's Law Dictionary</u> (10th ed. 2014)	17
<i>Forfeiture</i> , <u>Black's Law Dictionary</u> (10th ed. 2014)	38
99-24, Op. Atty. Gen. 125, 1-2 (1999)	30-31, 35

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

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a), and must be disclosed.

These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal.

Petitioner Waste Management of Nevada, Inc. is a corporation. It is wholly owned by Waste Management Holdings, Inc., a Delaware corporation. The undersigned counsel is expected to appear in this proceeding on behalf of this entity. Holland & Hart represented this entity before the District Court.

Petitioner Karen Gonzalez is an individual and is not using a pseudonym. The undersigned counsel do not anticipated they need to appear in this proceeding on behalf of Ms. Gonzalez. Holland & Hart represented Ms. Gonzalez before the District Court.

DATED this 9th day of June, 2016.

ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
(775) 329.3151

By: 

MARK G. SIMONS (NSB #5132)
THERESE M. SHANKS (NSB #12890)
Attorneys for Petitioners

NRAP 17 ROUTING STATEMENT

Pursuant to NRAP 21, Petitioners provide the following routing statement. This case is properly before this Court because this writ petition raises “as a principal issue a question of statewide public importance,” namely, whether NRS 444.520 is to be interpreted to require all garbage companies in Nevada to comply with all of the requirements set forth in Nevada’s mechanic’s lien statutes in order to perfect and foreclose upon a garbage lien.¹ This is an issue of first impression as NRS 444.520 has not yet been interpreted by this Court, and a published opinion on this issue would be helpful.

In addition, the language at issue in this case is contained in NRS 444.520. However, the almost identical language in NRS 444.520 is also contained in NRS 318.197 which applies to perpetual liens for services provided by general improvement districts and is contained in NRS

¹ NRS 444.520(3) states:

Until paid, any fee or charge levied pursuant to subsection 1 constitutes a perpetual lien against the property served, superior to all liens, claims and titles other than liens for general taxes and special assessments. The lien is not extinguished by the sale of any property on account of nonpayment of any other lien, claim or title, except liens for general taxes and special assessments. **The lien may be foreclosed in the same manner as provided for the foreclosure of mechanics’ liens.** (Emphasis added).

1
2 244A.549 for perpetual liens for sewage and wastewater treatment.²

3 Therefore, while this writ seeks clarification of language contained in NRS
4 444.520, this Court's decision will necessarily impact the interpretation and
5 application of NRS 318.197 and NRS 244A.549.
6

7 In addition, none of the categories presumptively assigned to the
8 Court of Appeals are implicated in this writ petition. *See* NRAP 17(b).
9
10 Although this writ petition will discuss Chapter 108 of the NRS
11 (mechanic's lien statutes), the lien at issue in this case is not a mechanic's
12 lien. Instead, this petition focuses on a lien created under NRS 444.520
13 (garbage lien statute).
14
15
16
17
18
19
20
21

22
23 ² NRS 318.197(2)(a), applicable for services provided in a general
24 improvement district provides: "**A perpetual lien must be foreclosed in**
25 **the same manner as provided by the laws of the State of Nevada for the**
26 **foreclosure of mechanics' liens.**" (Emphasis added). NRS 544A.549
27 provides for a perpetual lien for sewage and wastewater and provides: "**A**
28 **lien for unpaid services charges may be foreclosed in the same manner**
as provided for the foreclosure of mechanics' liens." (Emphasis added).
Accordingly, the District Court's interpretation of NRS 444.520(2) applies
to multiple statutes and statutory frameworks in Nevada.

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

STATEMENT OF THE ISSUES

1. Whether the District Court erred holding NRS 444.520 required the incorporation of all statutes relating to mechanics' liens in NRS Chapter 108 and not just the single foreclosure statute specifically referenced in NRS 444.520?

2. Whether the District Court erred in imposing a two-year limitation period on foreclosure proceedings brought under NRS 444.520(3) even though it is a perpetual lien?

STATEMENT OF THE CASE

This writ petition arises from a district court order granting summary judgment in favor of respondent West Taylor Street, LLC ("WTS") on WTS's claim for declaratory relief that petitioner Waste Management of Nevada, Inc. ("Waste Management") failed to comply with the proper procedural requirements in noticing, recording and moving forward to enforce a garbage lien under NRS 444.520. The District Court's interpretation of NRS 444.520 has state-wide importance for the regulation of waste collection and removal, and raises an issue of first impression. Accordingly, Waste Management brings this current writ petition.

FACTUAL BACKGROUND

WTS owns real property located in Reno, Nevada. 1 Petitioner's Appendix ("PA") 2. On February 23, 2012, Waste Management recorded a notice of lien for unpaid garbage fees pursuant to NRS 444.520(4) against WTS's property. Id. On November 15, 2012, Waste Management sent WTS another notice of lien for unpaid garbage fees pursuant to NRS 444.520(4). Id.

WTS sued Waste Management, and asserted claims for (1) declaratory relief that Waste Management did not comply with the proper statutory process for notice and recording of the lien, (2) declaratory relief that NRS 444.520 is unconstitutional as enacted, and (3) slander of title. Id. 1-5. The only claims relevant to this writ petition are WTS's claims for declaratory relief.³

WTS moved for partial summary judgment on its claims for declaratory relief and argued that liens recorded pursuant to NRS 444.520 must comply with **all** statutes related to the notice, perfection **and** foreclosure of mechanics' liens under NRS Chapter 108. Id. at 32-37. WTS based its argument on the fact that NRS 444.520(3) provides that garbage liens may be "foreclosed" in the same manner as mechanics' liens;

³ WTS's remaining claim is the slander of title claim. *See* 1 PA 4.

1
2 therefore, under WTS's logic, all other requirements pertaining to the
3 creation, perfection and notice of a mechanic's lien must be complied with
4 in order to have an enforceable lien under NRS 444.520. Id. at 36-37.

5
6 WTS then argued that because Waste Management did not comply with
7 multiple notice and perfection requirements contained in NRS Chapter 108
8 in recording its lien, WTS was entitled to declaratory relief that Waste
9 Management's garbage lien was invalid. Id.

10
11 Over Waste Management's objection, the District Court granted
12 WTS's motion for summary judgment and held that Waste Management
13 was required to comply with **all** of the mechanic's lien statutes (Chapter
14 108) in order to enforce its perpetual lien created under NRS 444.520. 2
15 PA 381-99. In rendering this ruling, the District Court concluded that NRS
16 444.520(3) was ambiguous because even though the statute specifically
17 states that garbage liens can be *foreclosed* in the same manner as
18 mechanics' liens, the statute does not identify which specific mechanic's
19 lien statutes are incorporated into NRS 444.520. Id. at 391. The District
20 Court then confusingly and improperly considered the legislative history of
21 the mechanic's lien statutes, because the legislative history of NRS 444.520
22 was silent on which "foreclosure" statute was referenced. Id. at 387-89.
23
24
25
26
27
28

1
2 From a review of these two completely separate legislative histories
3 (enacted for entirely distinct reasons), the District Court concluded that the
4 Legislature was “trying to create a real incentive for homeowners to
5 address outstanding charges when they are notified by the garbage
6 company that they are delinquent on the garbage bill, but also implement a
7 process that allows an opportunity for the deficiency to be cured before
8 foreclosure occurs.” Id. at 393. The District Court then concluded that
9 incorporating the entirety of the mechanic’s lien statutes into NRS 444.520
10 to the extent NRS 444.520 was silent on those issues would “further[] the
11 legislature’s specific interest in establishing a fair system.” Id.

12
13 The District Court then proceeded to adopt almost every requirement
14 for notice, perfection and foreclosure of mechanics’ liens under NRS
15 Chapter 108 into NRS 444.520 despite the fact that the plain language of
16 NRS 444.520(3) only incorporated the **foreclosure** process contained in the
17 mechanic’s lien statutes, which is only found in one statute in NRS Chapter
18 108. Id. at 393-96.

19
20 Specifically, the District Court found that notices of liens must be
21 recorded within ninety days of the first “delinquency” in order to be valid
22 even though this requirement is not contained in NRS 444.520. Id. at 395-
23 96. The District Court then found that even though NRS 444.520(1)

1
2 creates a “perpetual” lien, such a lien must be foreclosed upon within two
3 years of recording the lien. Id. at 396-97. Of note, NRS 444.520 does not
4 require Waste Management to initiate a lien foreclosure action within two
5 years. In rendering its decision, the District Court reasoned that while the
6 garbage lien could remain on the property in perpetuity, Waste
7 Management would lose its right to foreclose on the lien after two years.
8
9 Id. at 397.

10
11 While the motion for partial summary judgment was pending, WTS
12 filed a second amended complaint. Id. at 369-75. After obtaining the order
13 granting summary judgment on its first amended complaint, WTS moved
14 for an order granting summary judgment on the same grounds for its
15 second amended complaint. Id. at 401-04. Waste Management opposed
16 this second motion as being procedurally unnecessary, id. at 411-16, and
17 filed a motion for reconsideration of the District Court’s order granting
18 summary judgment. Id. at 426-45.

19
20 In its motion for reconsideration, Waste Management argued that
21 NRS 444.520(3) was not ambiguous because there is only one statute in
22 NRS Chapter 108 that deals with foreclosure of the mechanic’s lien. Id.
23
24 430-33. Waste Management then argued that the District Court erred in
25
26
27
28

1
2 incorporating every provision in NRS Chapter 108 into NRS 444.520
3 where the statute was otherwise silent. Id. at 433-35.

4
5 In particular, Waste Management noted that there was no statutory
6 language from which the District Court could have based its requirement
7 that liens be recorded within ninety days of the last “delinquency,” since
8 “delinquency” did not appear anywhere in NRS Chapter 444 or NRS
9 Chapter 108. Id. at 441-42. Waste Management then noted that **WTS**
10 **never argued whether a limitations period applied to the garbage lien**
11 **statutes**; therefore, the District Court erred in making this finding since it
12 was never at issue. Id. at 443-45. Finally, Waste Management argued that
13 the District Court applied the wrong limitations period even **if** a limitations
14 period could be applied to NRS 444.520, because the correct underlying
15 claim is one for statutory liability and not forfeiture. Id.

16
17
18
19
20 The District Court denied Waste Management’s motion for
21 reconsideration on the ground that Waste Management did not raise any
22 new law or facts to support reconsideration, or demonstrate that the prior
23 order was clearly erroneous. 3 PA 518-20. Following denial of the motion
24 for reconsideration, WTS renewed its second motion for partial summary
25 judgment on its declaratory relief claims in its second amended complaint.
26
27
28

1
2 Id. at 522-23. The District Court granted that motion, and this writ
3 petition follows. Id. at 529-31.

4 5 **SUMMARY OF THE ARGUMENT**

6 The general premise of this writ is that the District Court erred in
7 incorporating multiple statutory requirements from NRS Chapter 108
8 (mechanic's lien) into NRS 444.520 (garbage lien). Given the perceived
9 deficiencies in the District Court's decision and analysis, there are a
10 number of grounds requiring reversal.
11

12 First, the District Court erred in concluding that NRS 444.520(3)
13 was ambiguous merely because it incorporates by reference the foreclosure
14 process identified for foreclosing upon a mechanic's lien as contained in
15 NRS Chapter 108. The District Court ignored the fact that there is only
16 one statute in Chapter 108 that addresses the "foreclosure" of a mechanic's
17 lien and that statute is NRS 108.239. Therefore, applying the plain
18 language of NRS 444.520, there is no ambiguity in 444.520 and the plain
19 language of the statute must be enforced and must include only those
20 provisions in NRS 108.239 that address the foreclosure process.
21

22 Second, even if NRS 444.520 is somehow ambiguous, the District
23 Court's decision is still in error because the rules of statutory interpretation
24 clearly hold that the District Court cannot expand upon the statutory text of
25
26
27
28

1 NRS 444.520(3) to include additional notice and perfection requirements.
2
3 When the District Court expanded upon the obligations referenced in NRS
4 444.520, the court impermissibly created statutory obligations that did not
5 exist.
6

7 Third, the District Court's imposition of these additional notice and
8 perfection requirements for a garbage lien is contrary to the legislative
9 history of NRS 444.520's related statute NRS 318.197. As discussed at
10 Argument II.B.2.a, the Nevada Legislature rejected the very requirements
11 that the District Court imposed in interpreting the identical language
12 contained in NRS 318.197 that is at issue herein in NRS 444.520.
13
14

15 Fourth, the District Court's holding is also contrary to the rules of
16 statutory construction. Specifically, because a specific statute controls a
17 general statute, the District Court erred in imposing to NRS Chapter 108's
18 general mechanic's lien requirements for notice and perfection into NRS
19 444.520(3), the statute specifically governing garbage liens. The
20
21 Legislature is deemed to have been aware of the requirements for notice
22 and perfection contained in Chapter 108 yet explicitly chose not to adopt
23 those additional procedural hurdles for the creation and enforcement of a
24
25 garbage lien.
26
27

28 ///

1
2 Fifth, other courts interpreting identical statutes as the one herein
3 have overwhelming rejected the District Court's interpretation.⁴

4
5 Sixth, NRS 444.520 does not need the additional notice requirements
6 provided in NRS Chapter 108 inserted into it because it is constitutional as
7 enacted. NRS 444.520(4) provides for notice of the lien. The foreclosure
8 process incorporated into NRS 444.520(3) is a judicial foreclosure process
9 which by its very nature provides notice to the landowner and provides an
10 opportunity to be heard. Finally, to the extent that the recordation of a
11 garbage lien is sought to be contested by a landowner, the remedy is a
12 declaratory relief action under NRS Chapter 30.040.⁵

13
14 Seventh, the District Court erred in holding that a garbage lien
15 foreclosure action is subject to a two-year statute of limitations. The
16 District Court relied upon a very old Nevada Supreme Court case, State v.

17
18
19
20
21 ⁴ These other jurisdictions include the very authority cited to and relied
22 upon by the District Court in its' opinion, however, these other
23 jurisdictions reached the exact opposite conclusion. The District Court did
24 not explain why it cited as support extra-jurisdictional authority as support
25 then rendered an opposite conclusion.

26
27 ⁵ NRS 30.040(1) states: "Any person interested under a deed, written
28 contract or other writings constituting a contract, or whose rights, status or
other legal relations are affected by a statute, municipal ordinance, contract
or franchise, may have determined any question of construction or validity
arising under the instrument, statute, ordinance, contract or franchise and
obtain a declaration of rights, status or other legal relations thereunder."

1 Yellow Jacket Silver Min., Co., 14 Nev. 220 (1879), which reasoned that
2
3 garbage liens are essentially taxes to protect the general welfare. In Yellow
4 Jacket, the Nevada Supreme Court applied the then-existing statute of
5
6 limitations to claims brought by the state seeking to recover property for
7
8 unpaid taxes which did contain a statute of limitations. However, the
9
10 statute that was addressed in Yellow Jacket was long ago amended to
11
12 address Yellow Jacket's decision and provided that civil actions brought on
13
14 behalf of the state to recover real property are **not** subject to the statute of
15
16 limitations found in NRS Chapter 11. Because Yellow Jacket dealt with an
17
18 unrelated statute that was long ago amended to say actions for the recovery
19
20 of taxes are not barred by any statute of limitation, the District Court's
21
22 ruling was clear error. Accordingly, there is no statute of limitations for
23
24 foreclosure of a garbage lien and the liens are "perpetual" until paid.

25 Eighth, even if there is a statute of limitation applicable to Waste
26
27 Management's perpetual lien, the two-year limitation period applied by the
28
District Court is again not the correct period to apply. This is because a 2-
year period applies to **forfeitures**, whereas NRS 444.520(3) is not a
forfeiture but is instead a lien allowing for a **foreclosure**. Forfeiture of
property and foreclosure upon a property are entirely different legal
remedies. Because a foreclosure of a garbage lien arises directly from

1
2 statutory liability for garbage fees, the appropriate statute of limitation is
3 three-years under NRS 11.190(3)(a) (“[a]n action upon a liability created
4 by statute . . .”). Each of the foregoing reasons are more fully discussed
5 herein.
6

7 8 **ARGUMENT**

9 **I. STANDARD OF REVIEW.**

10 **A. WRIT RELIEF IS APPROPRIATE.**

11 This Court has “complete discretion” whether to entertain a writ
12 petition. Sandpointe Apartments, LLC v. Eighth Jud. Dist. Ct., 129 Nev.
13 ___, ___, 313 P.3d 849, 852 (2013). This relief is an extraordinary remedy
14 that is only available when the petitioner has no “plain, speedy or adequate
15 remedy in the ordinary course of law.” Aspen Fin. Servs., Inc. v. Eighth
16 Jud. Dist. Ct., 129 Nev. ___, ___, 313 P.3d 875, 878 (2013) (quoting
17 Mineral Cnty. v. State, Dep’t of Conservation & Natural Res., 117 Nev.
18 235, 243, 20 P.3d 800, 805 (2001)); *see also* NRS 34.170. Importantly,
19 mandamus relief is also available where “an important issue of law needs
20 clarification and public policy is served by this court’s invocation of its
21 original jurisdiction.” Paley v. Second Jud. Dist. Ct., 129 Nev. ___, ___,
22 310 P.3d 590, 592 (2013) (quoting Mineral Cnty., 117 Nev. at 243, 20 P.3d
23 at 805).
24
25
26
27
28

1
2 Here, the appropriate interpretation of NRS 444.520 is a matter of
3 first impression. A determination on what the “foreclosure” process is
4 under Nevada’s garbage lien statute will have statewide importance, as
5 these liens are utilized by all garbage haulers in this state. Many of the
6 haulers in this State have waste hauling contracts with cities and/or
7 municipalities that require the garbage haulers to remove all waste
8 regardless of whether payments are being paid by the customer.
9

10
11 Accordingly, if the District Court’s incorrect interpretation is
12 permitted to stand, garbage haulers face the possibility of initiating
13 litigation against homeowners for delinquent bills or risk losing the ability
14 to pursue collection. Further, garbage haulers face substantial litigation
15 from multiple claimants seeking to challenge liens that were recorded when
16 the liens may not have complied with the entirely “new” lien process
17 created by the District Court’s order.
18

19
20 Furthermore, an appeal is not an adequate remedy because a
21 determination on this issue will be directly relevant to the remaining
22 pending claim of slander of title since that claim alleges that Waste
23 Management acted improperly even though it relied upon the express
24 provisions of NRS 444.520 when it recorded its liens. A decision on this
25 issue will preserve judicial resources by avoiding a needless trial on the
26
27
28

1
2 slander of title action should this Court determine that the District Court's
3 decision was in error. Accordingly, it is respectfully requested that this
4 Court exercise its discretion to entertain this writ petition.
5

6 **B. THIS COURT REVIEWS THE DISTRICT COURT'S**
7 **DECISION DE NOVO.**

8 This court "reviews the district court's grant of summary judgment
9 de novo, without deference to the findings of lower court." Schettler v.
10 RalRon Capital Corp., 128 Nev. ___, ___, 275 P.3d 933, 936 (2012)
11 (quoting Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029
12 (2005)). This court views the record in the light most favorable to the non-
13 prevailing party. Borgerson v. Scanlon, 117 Nev. 216, 219, 19 P.3d 236,
14 238 (2001). "Summary judgment is appropriate when the record, viewed
15 in the light most favorable to the non-moving party, indicates there is no
16 genuine issue of material fact and the party is entitled to judgment as a
17 matter of law." Id. at 219-20, 19 P.3d at 238.
18
19
20
21

22 Summary judgment was granted in favor of WTS and against Waste
23 Management on a pure issue of law, i.e., the appropriate interpretation of
24 NRS 444.520. Accordingly, de novo review is also appropriate because
25 issues of statutory interpretation are subject to this Court's independent
26 review. Silver State Elec. Supply Co. v. State, Dep't of Taxation, 123 Nev.
27
28

1
2 80, 84, 157 P.3d 710, 713 (2007).

3 **II. THE DISTRICT COURT ERRED IN INCORPORATING**
4 **MULTIPLE MECHANIC'S LIEN STATUTORY**
5 **REQUIREMENTS INTO NRS 444.520.**

6 NRS 444.520(1) permits garbage companies to levy fees for the
7 collection of solid waste materials. If these fees are not paid, the fees
8 become "a perpetual lien against the property[.]" NRS 444.520(3). This
9 statute unambiguously then states: "**The lien may be foreclosed in the**
10 **same manner as provided for the foreclosure of mechanics' liens.**" Id.
11 (emphasis added).
12

13
14 The central issue in this petition is whether the phrase "[t]he lien
15 may be foreclosed in the same manner as provided for the foreclosure of
16 mechanics' liens" means what it says and only incorporates the mechanic's
17 lien statute requirements governing actual "foreclosure" of a lien, i.e., NRS
18 108.239. Alternatively, the Court must determine if the reference by the
19 Nevada Legislature to foreclosing in the same manner as a mechanic's lien
20 includes the wholesale adoption of the mechanic's lien statutory framework
21 even though it is not referenced and there appears no such inclusive
22 language or intent contained in NRS 444.520.
23

24
25
26 In the wholesale adoption of Nevada's mechanic's lien statutes, the
27 District Court concluded that NRS 444.520 was ambiguous, and held that
28

1
2 NRS 444.520 must be interpreted to incorporate all of the procedural
3 requirements related to notice, perfection and foreclosure of a mechanic's
4 lien, to the extent that NRS 444.520 was silent on these issues. 2 PA 381-
5
6 99. However, the District Court's analysis was in error because (1) NRS
7 444.520 is not ambiguous using the plain language rule of construction, (2)
8 the District Court cannot expand upon or insert "new" requirements into
9 statutes that the Legislature has not included even if the statute is silent on
10 an issue, and (3) NRS 444.520 is constitutional as enacted and does not
11 need additional notice requirements.
12
13

14 **A. NRS 444.520(3) IS NOT AMBIGUOUS.**

15 NRS 444.520 is not ambiguous using the plain language rule of
16 statutory construction. However, the District Court found that NRS
17 444.520(3) was ambiguous because it does not name the specific
18 mechanic's lien statute whose provisions are incorporated into NRS
19 444.520(3).⁶ 2 PA 391. This finding was in error because NRS 444.520(3)
20 only incorporates the mechanic's lien statute that "provide[s] for
21 foreclosure of mechanics' liens." There is only one statute that provides
22 for foreclosure of mechanics' liens. *See* NRS 108.239. Thus, NRS
23
24
25
26

27 ⁶ The District Court's interpretation also means that NRS 318.197
28 (improvement distinct liens) and NRS 244A.549 (waste water liens) are
also ambiguous.

1
2 444.520 is not ambiguous merely because it does not specifically call out
3 NRS 108.239 but instead specifically references this statute.

4 A court interprets clear and unambiguous statutes by giving effect to
5 plain and ordinary meaning of the statute's words. Williams v. United
6 Parcel Servs., 129 Nev. ___, ___, 302 P.3d 1144, 1147 (2013). When a
7 statute is unambiguous, this Court "do[es] not resort to other sources, such
8 as legislative history, in ascertaining that statute's meaning." Id. "[T]here
9 is no room for construction" of an unambiguous statute; thus, this Court is
10 "not permitted to search for its meaning beyond the statute itself."
11 Sandpointe Apts., 129 Nev. at ___, 313 P.3d at 858 (internal quotations
12 omitted).

13
14 The District Court also ignored the plain meaning of the
15 Legislature's use of the word "foreclosure." Again, NRS 444.520(3)
16 clearly states that a garbage lien "may be **foreclosed** in the same manner as
17 provided for the **foreclosure** of mechanics' liens." (Emphasis added).
18 Thus, by its terms, NRS 444.520(3) limits the mechanic's lien statutes to
19 those dealing solely with **foreclosure—not notice and not perfection—**
20 **solely foreclosure.**

21
22 "Foreclosure" has a plain and ordinary meaning. See In re Resort at
23 Summerlin Litig., 122 Nev. 177, 182, 127 P.3d 1076, 1079 (2006) ("If a
24
25
26
27
28

1
2 statutory phrase is left undefined, this court will construe the phrase
3 according to its plain and ordinary meaning.”). “Foreclosure” is defined as
4 “[a] legal proceeding to terminate a mortgagor’s interest in property,
5 instituted by the lender . . . either to gain title or force a sale in order to
6 satisfy the unpaid debt secured by the property.” *Foreclosure*, Black’s
7 Law Dictionary (10th ed. 2014). This definition clearly limits
8
9 “foreclosure” to actual **foreclosure proceedings**.

10
11 Again, NRS 108.239 is the only statute in NRS Chapter 108 that
12 contains the requirements for “a foreclosure proceeding” of a mechanic’s
13 lien. Therefore, NRS 444.520(3) clearly and unambiguously incorporates
14 NRS 108.239 when it states that garbage liens “may be foreclosed in the
15 same manner as provided for the foreclosure of mechanics’ liens.”
16
17

18 NRS 108.239 then defines the exact foreclosure process is as
19 follows. First, a mechanic’s lien may be foreclosed by filing a complaint
20 for judicial foreclosure. NRS 108.239(1). Then, once the complaint is
21 filed, the garbage company must also file a lis pendens, publish the notice
22 of foreclosure once a week for three weeks, and personally serve any other
23 lien claimants and the landowner with a copy of the notice and a written
24 statement of the facts constituting the lien and the amounts and dates
25 thereof. NRS 108.239(2). Once service of the lien foreclosure action has
26
27
28

1
2 been made on all lien claimants of record and the landowner, the court can
3 proceed to determine the validity and amount of the lien and order that the
4 property be “sold in satisfaction of all liens.” NRS 108.239(7), (10). This
5 is the exact process that the Nevada Legislature envisioned when it said
6 that garbage liens may be foreclosed upon using the mechanic’s lien
7 foreclosure process.
8
9

10 Accordingly, the District Court’s decision must be reversed because
11 444.520 is not ambiguous and does not require wholesale adoption of
12 Nevada’s mechanic’s lien statutes that deal with notice and perfection of a
13 mechanic’s lien because the garbage lien is perfected under an entirely
14 different statutory instruction. See NRS 444.520(4) (detailing the process
15 of making a garbage lien “effective”).
16
17

18 **B. THE DISTRICT COURT CANNOT IMPOSE**
19 **ADDITIONAL REQUIREMENTS INTO THE**
20 **STATUTORY TEXT OF NRS 444.520.**

21 Reversal is warranted because (1) the District Court erred by
22 expanding upon NRS 544.520’s statutory language to include additional
23 notice and perfection requirements, (2) the District Court’s imposition of
24 additional requirements is contrary to the legislative history, (3) the District
25 Court’s holding is contrary to the rules of statutory interpretation, and (4)
26 other courts interpreting identical statutes reject the District Court’s
27
28

1
2 interpretation. Each of these points is discussed in further detail below.

3 **1. The District Court Erred In Expanding Upon NRS**
4 **444.520's Statutory Language to Include Additional**
5 **Notice and Perfection Requirements.**

6 The District Court found that NRS 444.520 should be interpreted “to
7 state that the garbage lien may apply the mechanic’s liens statutes that
8 address procedural requirements not already governed by NRS 444.520.” 2
9 PA 393. The District Court then expressly incorporated NRS 108.226,
10 which requires garbage companies to send out a notice of the lien within 90
11 days of the delinquency, and NRS 108.2275, which permits a homeowner
12 to request a hearing to contest the lien. *Id.* at 394-95. Neither of these two
13 mechanic’s lien statutes are referenced in NRS 444.450. Because NRS
14 444.450 does not include the 90 day notice obligation or the request for
15 hearing contained in the mechanic’s lien statutes, the District Court said
16 this silence allowed the Court to incorporate these obligations from the
17 mechanic’s lien statutes. 2 PA 393.

18 However, the District Court ignored that when a statute is silent on
19 an issue, **“it is not the business of th[e] court to fill in alleged legislative**
20 **omissions based on conjecture as to what the legislature would or**
21 **should have done.”** *McKay v. Bd. of Cnty. Comm’rs*, 103 Nev. 490, 492,
22 746 P.2d 124, 125 (1987) (emphasis added). The District Court’s duty in
23
24
25
26
27
28

1 interpreting NRS 444.520 “does not include expanding upon or modifying
2 the statutory language because such acts are the Legislature’s function.”
3
4 Williams, 129 Nev. at ____, 302 P.3d at 1147 (2013). Therefore, “a court
5 should not add to or alter the language to accomplish a purpose not on the
6 face of the statute or apparent from permissible extrinsic aids such as
7 legislative history or committee reports.” State Indus. Ins. Sys. v.
8 Bokelman, 113 Nev. 1116, 1122, 946 P.2d 179, 183 (1997) (internal
9 quotations and alterations omitted).

10
11
12
13 NRS 444.520(3)’s language only incorporates the mechanic’s lien
14 statutes that apply to the manner of “foreclosure.” NRS 108.239 is the only
15 statute in NRS Chapter 108 that contains the manner of foreclosing on a
16 mechanic’s lien. By interpreting NRS 444.520 to include all procedural
17 statutes related to mechanics’ liens, the District Court impermissibly
18 expanded upon the language of the statute to accomplish a purpose not
19 present from the face of the statute.⁷ Accordingly, the District Court’s
20 decision should be reversed.

21
22
23
24 ⁷ Furthermore, the District Court ignored that 444.520(4) provides the
25 statutory framework for the “effectiveness” of the garbage lien and
26 subsection (2) provides for the enforcement process. Nothing contained in
27 this statute allows the District Court to incorporate mechanic’s lien law
28 regarding notice, perfection and dispute of a recordation of a lien. *See*
NRS 444.520(4).

1
2 **2. The District Court’s Imposition of Additional**
3 **Requirements Is Contrary to the Legislative History.**

4 The District Court’s holding is contrary to all rules of statutory
5 construction. First, as set forth above, NRS 444.520(3) is not ambiguous;
6 therefore, the District Court erred in considering the legislative history of
7 this statute. In re Cay Clubs, 130 Nev. ___, ___, 340 P.3d 563, 568
8 (2014) (“We do not look to other sources, such as legislative history, unless
9 a statutory ambiguity requires us to look beyond the statute’s language to
10 discern the legislative intent.”). But, even if NRS 444.520 were
11 ambiguous, the legislative history does not support the District Court’s
12 holding.
13
14
15

16 **a. The Legislature Specifically Declined to Adopt**
17 **Any Additional Requirements From NRS**
18 **Chapter 108 Into NRS 444.520.**

19 The language at issue in this petition was added to NRS 444.520(3)
20 in 2005, by Senate Bill 354. What the District Court failed to address is
21 that the language contained in this statute was adopted from the identical
22 language that existed and was employed in NRS 318.197.⁸ NRS
23

24 _____
25 ⁸ When a statute is ambiguous, this Court may consider analogous statutory
26 provisions. Nev. State Democratic Party v. Nev. Republican Party, 127
27 Nev. ___, ___, 256 P.3d 1, 5 (2011). NRS 318.197 is an analogous statute
28 because its language is identical and because NRS Chapter 318 governs
public health and safety by promoting the organization of districts to
regulate sanitation, water, and public health. See NRS 318.015 (“It is

1
2 318.197(2), states, in relevant part:

3 [U]ntil paid, all rates, tolls or charges constitute a perpetual lien on
4 and against the property served **A perpetual lien must be**
5 **foreclosed in the same manner as provided by the laws of the**
6 **State of Nevada for the foreclosure of mechanics' liens**

7 (Emphasis added). An analysis of the legislative history of NRS 318.197
8 conclusively establishes that the District Court's reasoning was incorrect.

9 Specifically, in 1977 the Legislature considered whether NRS
10 318.197 should be amended to include language to be recorded and notice
11 must be given to the homeowners like a mechanic's lien before the lien
12 could become valid. *See* Hearing on A.B. 165 before Assem. Comm. on
13 Gov. Affairs, 59th Reg Session (February 14, 1977), Exhibit 2.⁹ The
14 proponents of this amendment argued as support that "chapter 108, the
15 general statutory lien law also requires for notice and recording before a
16 lien is enforceable." *Id.* **However, the Legislature rejected this**
17 **proposed amendment.** Stated another way, the Legislature has already
18 rejected the District Court's interpretation of NRS 444.520 when
19
20
21
22

23 hereby declared as a matter of legislative determination that the
24 organization of districts . . . will serve a public use and will promote the
25 health, safety, prosperity, security and general welfare of the inhabitants
26 thereof").

27 ⁹Notably, in 1977, NRS 318.197 was being amended to add a subpart that
28 is virtually identical to the notice requirements set forth in NRS
444.520(4). *Compare* NRS 318.197(9).

1 considering the almost identical language contained in NRS 318.197.
2
3 Conclusively demonstrating the Legislature's rejection of the imposition of
4 mechanic's lien notice and perfection requirements, this proposed
5 amendment seeking to require such obligations is literally crossed out on
6 the Bill Guide. Id.
7

8
9 To sum up this history, the 1977 Legislature, in amending NRS
10 318.197(2), containing the exact language contained in NRS 444.520(2),
11 expressly refused to adopt the exact additional requirements from NRS
12 Chapter 108 that the District Court has imposed by judicial fiat into NRS
13 444.520(3). Therefore, the District Court's decision has already been
14 rejected by relevant and applicable analogous legislative history.
15
16

17 **b. The Legislative History of NRS 444.520 Does**
18 **Not Support the District Court's Holding.**

19 In addition to the legislative history of an analogous statute, the
20 legislative history of NRS 444.520(3) also does not support the District
21 Court's holding because nothing in that history indicates that the
22 Legislature intended to adopt additional notice requirements into that
23 statute. The discussion of mechanics' liens only arose in the context of an
24 actual foreclosure as follows:
25
26

27 Assemblyman Horne: These are the types of liens where you can
28 effectuate a sale of property. It's a type of lien where, once the

1
2 property is conveyed, there is notice saying that people, in a certain
3 order, will get paid out of the proceeds of the sale; is that correct?

4 Jennifer Lazovich: **It operates in the same way as a mechanic's**
5 **lien.** The ultimate step could take place; foreclosure proceedings
6 could be brought forward

7 Hearing on S.B. 354 before Assem. Comm. on Health and Human Servs.,
8 73rd Reg. Session (May 20, 2005) (Emphasis added). Nowhere in the
9 legislative history is there any discussion of incorporating all of the
10 requirements of the mechanic's lien statutes into NRS 444.520(3).
11

12 The history that the District Court focused upon was the
13 Legislature's concern that homeowners be given notice of the lien prior to
14 foreclosure when these liens may arise from a renter's failure to pay
15 garbage fees. 2 PA 386-87. However, the Legislature adequately
16 addressed this concern by requiring that notice be given to the owner of
17 record (i.e., not the tenant) and that the lien be recorded. *See* NRS
18 444.520(4). Of note, the requirements of NRS 444.520(4) are the identical
19 requirements contained in NRS 318.197(9), which requirements were
20 enacted in 1977. Accordingly, NRS 444.520(4) provides that the
21 landowner be provided with actual notice by mail as well as receiving
22 constructive notice by the recordation of the lien. Adaven Mgmt., Inc. v.
23 Mountain Falls Acquisition Corp., 124 Nev. 770, 781, 191 P.3d 1189, 1196
24
25
26
27
28

1
2 (2008) (“Because CFB complied with the recordation requirements,
3 Adaven had constructive notice . . .”).

4
5 Furthermore, the District Court’s myopic view fails to recognize that
6 the “fairness” that drove the amendments to NRS 444.520 was not the
7 “fairness” to homeowners, but the fairness to the garbage companies who
8 are the recipients of the lien rights. As the proponents of 444.452
9 explained, the purpose of the garbage lien is to protect garbage collectors
10 who are “required to pick up your garbage whether the bills are getting
11 paid by whoever lives there or not.” Hearing on S.B. 354 before Senate
12 Comm. on Gov. Affairs, 73rd Reg. Session (April 6, 2005). The garbage
13 collectors wanted “to pursue the unpaid bills, since the garbage companies
14 are required to pick up the garbage no matter what happens.” Id. The
15 Legislature specifically **agreed** with the garbage companies and stated that
16 “[t]he only way this is going to work is the owner of the property will have
17 to ultimately address the lien, even if he had a tenant in violation.” Id.

18
19 The fairness consideration—that was ignored by the District Court—
20 is that it is unfair to require garbage collectors to continue picking up
21 garbage when they are not getting paid. That is why the Legislature gave
22 them a perpetual lien to protect them from harm. Therefore, garbage
23 collectors are given a lien that is perpetual against the property and which

1
2 the garbage company can foreclose upon should they elect to do so.

3 Because a failure to abide by these “new” and additional statutory
4 requirements imposed by the District Court can result in the forfeiture of
5 the lien, the District Court’s holding does not further the purpose and intent
6 of NRS 444.520 which is to assist garbage companies to get their liens
7 paid. Instead, the District Court’s ruling achieves the exact opposite result
8 and imposes new barriers and new time restrictions upon the garbage lien
9 that the Nevada Legislature did not contemplate or desire to impose. In
10 addition, requiring garbage companies to follow these “new” additional
11 steps created by the District Court imposes additional costs and burdens on
12 garbage collection companies that already have a problem being
13 compensated for the services they are obligated to provide by law in the
14 first place.¹⁰

15
16 The District Court’s holding will force garbage companies to change
17 the manner in which they operate business and will institute an entirely
18 new structure for the creation and enforcement of a garbage lien that the
19 Nevada Legislature did not intend. The District Court expressly

20
21
22
23
24
25
26 ¹⁰Again, the District Court’s interpretation also affects NRS 318.197
27 (perpetual liens for services in a general improvement district) and
28 244A.549(2) (perpetual lien for service charges for sewage and
wastewater).

1
2 acknowledged this, when it held that Waste Management was required to
3 send out a notice of lien, which would force the garbage company to
4 “impose a shorter billing cycle” than the billing cycles already in place. 2
5
6 PA 396. It is suggested that, in this instance, the decision on how an
7 industry should conduct its business in Nevada is clearly best left to
8 Nevada’s Legislature, and not the courts of this State.
9

10 **3. The District Court’s Holding is Contrary to the**
11 **Rules of Statutory Construction.**

12 The District Court’s incorporation of all procedural mechanic’s lien
13 statutes is again directly contrary to the rules of statutory interpretation.
14 Specifically, the District Court erred in holding that garbage companies are
15 required, under NRS 108.226, to send out a notice of a lien within 90 days
16 of the delinquency. 2 PA 396. This requirement is not contained in NRS
17
18 444.520(4).
19

20 NRS 444.520(4) sets forth specific requirements for notice and
21 perfection of a garbage lien. This statute requires that notice be: (1)
22
23 “[m]ailed to the last known owner at the owner’s last known address,” (2)
24 “[d]elivered to the county recorder,” and (3) “[i]ndexed in the real estate
25 index.” NRS 444.520(4). Nowhere in the statute is there a time limitation
26
27 for when this notice must be provided.
28

1
2 Nevada law is clear “that a provision which specifically applies to a
3 given situation will take precedence over one that applies only generally.”
4 Nev. Power Co. v. Haggerty, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999)
5 (internal quotations omitted). Because NRS 444.520 specifically governs
6 garbage liens, the District Court erred in interposing requirements from the
7 **general** mechanic’s lien statutes into the **specific** garbage lien statute.
8
9

10 Finally, when NRS 444.520(4) was enacted, NRS 108.226 was
11 already in existence. “[T]his [C]ourt assumes that when enacting a statute,
12 the Legislature is aware of related, statutes.” Double Diamond v. Second
13 Jud. Dist. Ct., 131 Nev. ___, ___, 354 P.3d 641, 644 (2015). Therefore, the
14 Legislature could have chosen to include the 90-day notice requirement
15 found in mechanic’s lien statutes but it did not do so. The fact that the
16 Legislature did not impose this obligation is clear evidence that the
17 Legislature **did not** intend to require garbage companies to submit notice
18 of the lien within 90 days of any delinquency.
19
20
21

22 Similarly, the District Court erred in concluding that NRS 108.2275
23 applies to garbage liens. 2 PA 394. Again, NRS 108.2275 was also in
24 effect at the time that NRS 444.520 was amended, and the Legislature
25 could have chosen to include a similar dispute process. It did not.
26
27

28 This is because the landowner would have a right to contest any

1
2 foreclosure process given that the garbage company would have to initiate
3 a judicial foreclosure process. *See* NRS 108.239. That process provides
4 for an opportunity by the landowner to dispute and challenge the garbage
5 lien. *Id.*

7 In addition, any person affected under a lien or other real property
8 instrument already has an adequate remedy under NRS 30.040. NRS
9 30.040(1) permits a homeowner to ask the court to expunge a wrongful
10 lien. Thus, like NRS 108.2275, NRS 30.040 provides the property owner a
11 right to challenge a garbage lien in district court. However, unlike NRS
12 108.2275, NRS 30.040 does not include additional burdensome
13 requirements that apply specifically to mechanics' liens (which are not
14 garbage liens). Accordingly, the District Court's order must be reversed.

18 **4. Other Courts Interpreting Identical Statutes Reject**
19 **The District Court's Interpretation.**

20 Colorado has rejected the District Court's interpretation in
21 interpreting an identical statute.¹¹ In North Washington Water and
22 Sanitation District v. Majestic Savings and Loan Association, 594 P.2d
23 599, 600 (Colo. App. 1979), the court interpreted a Colorado statute
24
25

26
27 ¹¹ Strangely, the District Court relied upon these decisions in its order,
28 however, the District Court reached a completely opposite holding than the
very cases upon which the court relied. 2 PA 397.

1 providing that sewage fees “shall constitute a perpetual lien against the
2 property served, and any such lien may be foreclosed in the same manner
3 as provided for by the laws of the State of Colorado for the foreclosure of
4 mechanics’ liens.” The Colorado Court of Appeals rejected the argument
5 that the water district was required to comply with the procedural
6 mechanic’s lien statutes regarding perfection of a lien in order to properly
7 foreclose on a sewage lien. Id. at 600.

8
9 In Skyland Metropolitan District v. Mountain West Enterprises, 184
10 P.3d 106, 116 (Colo. App. 2007), the Colorado Court of Appeals again
11 rejected the argument that the phrase “foreclosure of mechanics’ liens” in
12 Colorado’s statute required the water district to comply with the
13 mechanic’s lien law’s statutory notice procedures. The court reasoned that
14 “[t]he purpose of the statutory notice of intent is to perfect a valid lien,” but
15 that the sewage lien was “in the nature of taxes,” and, therefore, already
16 perfected. Id. Accordingly, the court held that “because the districts’ liens
17 were perpetual and perfected, service of the notice of intent was
18 unnecessary to preserve the lien.” Id.

19
20 These interpretations should be adopted by this Court. Like the
21 courts in Colorado, the Nevada Attorney General also believes that garbage
22 fees may be considered taxes and treated as such. *See* 99-24, Op. Atty.

1
2 Gen. 125, 1-2 (1999). Specifically, the Nevada Attorney General has
3 opined that counties may, pursuant to NRS 318.201, “impose landfill user
4 fees” charged pursuant to NRS 444.520 “on the tax roll.” Id.
5

6 NRS 444.520(4) imposes notice requirements for garbage companies
7 or others seeking to place a lien for unpaid garbage fees on property.
8

9 Under the reasoning set forth above, because fees levied under NRS
10 444.520(1) are taxes, the perpetual lien under NRS 444.520(3) should be
11 considered perfected and no additional steps should be taken once the
12 notice requirements of NRS 444.520(4) are met. Accordingly, the District
13 Court’s decision must be reversed as there should not be any further notice
14 or perfection obligations imposed in order to establish a valid garbage lien.
15
16

17 **C. NRS 444.520 IS CONSTITUTIONAL AS ENACTED.**

18 WTS argued that NRS 444.520 is unconstitutional because it
19 deprives WTS of its property without notice and the opportunity to be
20 heard. 1 PA 35. “The Fourteenth Amendment protects individuals against
21 the deprivation of liberty or property by the government without due
22 process.” State v. Eighth Judicial Dist. Ct., 118 Nev. 140, 153-54, 42 P.3d
23 233, 242 (2002). The District Court concluded that NRS 444.520 is
24 constitutional **only if** it is construed to include all of the procedural
25 requirements of NRS Chapter 108. 2 PA 395.
26
27
28

1
2 However, due process is satisfied where a party is given notice and
3 the opportunity to be heard. Browning v. Dixon, 114 Nev. 213, 217, 954
4 P.2d 741, 743 (1998). Because NRS 444.520 provides notice and the
5 opportunity to be heard, neither WTS nor the District Court are correct that
6 this statute is unconstitutional if the additional statutory requirements from
7 NRS Chapter 108 are not imposed into it.
8
9

10 **1. NRS 444.520 Is Not Unconstitutional Because It**
11 **Creates a Perpetual Lien.**

12 WTS also argued that NRS 444.520 is unconstitutional because it
13 permits a lien to be recorded on property without providing the homeowner
14 a method to dispute that lien. 1 PA 35. The District Court found that by
15 incorporating NRS 108.2275 into NRS 444.520(3), a homeowner would
16 then have a method to dispute the lien. 2 PA 395. Neither of these
17 positions have any merit.
18
19

20 NRS 444.520(4) requires that notice of the lien be sent to the
21 homeowner of record, and recorded by the county recorder in the register
22 of deeds. Thus, there is no issue with notice as actual and constructive
23 notice are provided to the landowner. The fact that NRS 444.520 is silent
24 regarding a specific dispute process does not render it unconstitutional, and
25 does not require that NRS 108.2275 be read into that statute. Any person
26
27
28

1
2 affected under a lien or other real property instrument has a legal right to
3 dispute the lien under NRS 30.040 and this statute permits a homeowner to
4 ask the court to expunge a wrongful lien. Thus, NRS 30.040 affords a
5 person the opportunity to be heard for liens arising under NRS 444.520. In
6 addition, should the lien be enforced, a complaint to foreclose will have to
7 be filed with a court, thereby providing the landowner with another
8 opportunity to contest the lien should they elect to do so. Thus, there is no
9 need to incorporate additional dispute resolution requirements found in
10 NRS 108.2275 into NRS 444.520's framework.

11
12
13
14 **2. The Foreclosure Process for NRS 444.520(3)**
15 **Comports with Due Process.**

16 In addition, following the foreclosure process set forth in NRS
17 444.520(3), this statute comports with due process because it requires that a
18 judicial foreclosure take place. Under NRS 108.239, a mechanic's lien
19 may be foreclosed by filing a complaint for judicial foreclosure. NRS
20 108.239(1). Once the complaint is filed, the garbage company must file a
21 lis pendens and post notice of the foreclosure. NRS 108.239(2). The court
22 can then determine whether the property should be judicially foreclosed,
23 and order that the property "be sold in satisfaction of all liens." NRS
24 108.239(7), (10). This is the same process that may be followed for
25
26
27
28

1
2 foreclosure of a garbage lien, pursuant to NRS 444.520(3)'s unambiguous
3 language. Accordingly, homeowners are afforded both notice and the
4 opportunity to be heard. Therefore, NRS 444.520 is constitutional as
5 enacted.
6

7 **III. THE DISTRICT COURT ERRED IN HOLDING THAT A**
8 **GARBAGE LIEN FORECLOSURE IS SUBJECT TO A TWO-**
9 **YEAR STATUTE OF LIMITATION.**

10 The District Court erred in holding that any foreclosure of a garbage
11 lien must be brought within two years from the date that the lien was
12 recorded. 2 PA 396-98. Reasoning that these liens operate like taxes, the
13 District Court relied upon this Court's holding in State v. Yellow Jacket
14 Silver Min. Co., 14 Nev. 220 (1872), to conclude that statutory limitations
15 periods apply to tax liens. Id. at 396-97. However, because NRS
16 11.255(2) now clearly exempts any action to foreclose real property
17 brought for the benefit of the State, no statute of limitation can apply to
18 foreclosures brought pursuant to NRS 444.520(3). Alternatively, should
19 this Court disagree, the only applicable statute of limitations is the three-
20 year period set forth in NRS 11.190(3)(a), which begins to run from the
21 date of the last missed fee payment.
22
23
24
25

26 ///
27
28

1
2 **A. NO STATUTE OF LIMITATIONS APPLIES TO**
3 **FORECLOSURES UNDER NRS 444.520(3).**

4 The District Court erred in holding that a garbage lien is subject to
5 the two-year statute of limitations set forth in NRS 11.190(4)(b). 2 PA
6 396-98. To reach this holding, the District Court relied upon Wasson v.
7 Hogenson, 583 P.2d 914 (Colo. 1978), in which the Colorado Supreme
8 Court held that fees assessed under Colorado's identical sewage statute
9 "are not taxes in the strict sense of the term," but are, "like special
10 assessments, in the nature of taxes." Id. at 917. The court reasoned that
11 these fees are essentially taxes because they arise from the police power of
12 the municipality to protect the general health, welfare and interests of their
13 citizens, and are, therefore, assessed for the benefit of the state. Id. at 918.

14 Similarly, the Nevada Legislature has confirmed that the Legislature
15 intends to regulate "the collection and disposal of solid waste in a manner
16 that will . . . [p]rotect public health and welfare." NRS 444.440(1). The
17 Nevada Attorney General also believes that garbage fees may be
18 considered taxes and treated as such. *See* 99-24, Op. Atty. Gen. 125, 1-2
19 (1999). Thus, the fee assessed in NRS 444.520 is also in the nature of a
20 tax.
21

22 However, the District Court erred in relying on State v. Yellow
23
24
25
26
27
28

1
2 Jacket Silver Min. Co., 14 Nev. 220 (1879) because the statute on which
3 that case based its holding has long since been amended. In this very early
4 opinion, the Nevada Supreme Court held that a complaint for back taxes
5 was subject to the four-year statute of limitation found in NRS 11.190's
6 predecessor. Id. at 228-29. The Court relied upon a former statute – C.L.
7 1034 – which stated:
8
9

10 The limitations prescribed in this act shall apply to actions brought in
11 the name of the state, or for the benefit of the state, in the same
12 manner as to actions by private parties.

13 Id. at 229.

14 C.L. 1034 no longer exists. It has been replaced by NRS 11.255
15 which states there is now no statute of limitations applicable to unpaid
16 taxes and specifically exempts actions to recover **real property** from any
17 limitation period. Specifically, NRS 11.255 provides:
18

19 Except as provided in NRS 11.030 and NRS 11.040,¹² **there shall be**
20 **no limitation of actions brought in the name of the State, or for**
21 **the benefit of the State, for the recovery of real property.**

22 Id. (Emphasis added).

23 Therefore, the District Court erred in relying upon Yellow Jacket
24 because NRS 11.255(2) specifically exempts the foreclosure of garbage
25

26
27 ¹² These statutes concern property disputes dealing with letters patent
28 granted by the state, and are not relevant to this legal proceeding.

1
2 liens from any statute of limitations period.¹³ A foreclosure is an action for
3 recovery of real property, and foreclosure of garbage liens are clearly done
4 to benefit the State by promoting general health and safety. No statute of
5 limitations should apply to these perpetual liens.
6

7 The Colorado Courts also agree. In North Washington Water &
8 Sanitation District v. Majestic Savings & Loan Association, 594 P.2d 599,
9 601 (Colo. App. 1979), the Colorado Court of Appeals held that a statute of
10 limitations “**is inconsistent** with the statutory language that ‘(u)ntil paid
11 all . . . charges shall constitute a perpetual lien on and against the property
12 served.’” (Emphasis added). Similarly, here, any limitations period is
13 inconsistent with NRS 444.520(3)’s language providing for a “perpetual”
14 lien. Accordingly, no statute of limitations applies to foreclosure
15 proceedings initiated under NRS 444.520(3).
16
17
18

19
20 **B. SHOULD THIS COURT DISAGREE, THEN GARBAGE**
21 **LIENS ARE GOVERNED BY A THREE-YEAR**
22 **STATUTE OF LIMITATIONS.**

23 Should this Court disagree, then garbage lien foreclosure actions
24 would be governed by the three-year limitations period set forth in NRS
25

26 ¹³ Stated another way, the District Court erred in relying upon an
27 interpretation of a long-since repealed statute for analytical support when
28 the current version of the statute does not contain any statute of limitation
on collection of taxes by foreclosure upon real property.

1
2 11.190(3)(a). The District Court concluded that the appropriate limitations
3 period was the two-year period set forth in NRS 11.190(4)(b) for
4 “forfeitures.” 3 PA 398. This holding is in error because a foreclosure is
5 not a forfeiture.
6

7 “Forfeiture” is defined as “[t]he divestiture of property without
8 compensation,” in which “[t]itle is instantaneously transferred to another.”
9 Black’s Law Dictionary (10th Ed. 2014). In contrast, title is not instantly
10 transferred in a foreclosure because that remedy requires the foreclosure
11 sale to be consummated. For this reason, courts overwhelmingly recognize
12 that “[f]orfeiture and foreclosure are two very different and distinct
13 remedies.” Heisel v. Cunningham, 491 P.2d 178, 180 (Idaho 1971); *see*
14 *also* Frazier v. Jackson, 641 P.2d 64, 66 (Or. Ct. App. 1982) (“Oregon
15 courts have traditionally distinguished between forfeiture and strict
16 foreclosure[.]”).
17
18
19
20

21 Instead, Waste Management’s right to foreclose upon WTS’s
22 property would be founded on WTS’s statutory liability for payment of
23 garbage fees arising under NRS 444.520(1). Thus, it is governed by the
24 three-year limitation period governing claims based upon statutory
25 liabilities. NRS 11.190(3)(a). This period is computed from the date of the
26 “last transaction or the last item charged or last credit given.” NRS
27
28

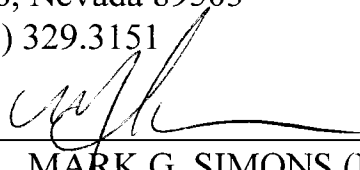
1
2 11.200 (emphasis added). Thus, the limitations period begins to run from
3 the date of the *last* late payment for garbage fees.

4
5 **CONCLUSION**

6 For the foregoing reasons, this Court should reverse the District
7 Court's order and remand for further proceedings. NRS 444.520(3) is not
8 ambiguous because it clearly and unequivocally only incorporates the
9 provisions of NRS 108.239. Any additional notice or perfection
10 requirements are not properly imposed into NRS 444.520. Furthermore,
11 NRS 444.520 is constitutional as enacted because the notice and
12 foreclosure processes already included in that statute provide a homeowner
13 with sufficient notice and an opportunity to be heard. Finally, because
14 these garbage liens are essentially taxes, no statutory limitation period
15 applies to the foreclosure of these liens pursuant to NRS 11.255(2). The
16 District Court's order must be reversed.

17
18
19
20
21 DATED this 9th day of June, 2016.

22 ROBISON, BELAUSTEGUI, SHARP & LOW
23 71 Washington Street
24 Reno, Nevada 89503
25 (775) 329.3151

26 By: 
27 MARK G. SIMONS (NSB #5132)
28 THERESE M. SHANKS (NSB #12890)
Attorney for Petitioners

1
2 **AFFIDAVIT OF MARK G. SIMONS IN SUPPORT OF PETITION**
3 **FOR WRIT OF MANDAMUS**

4 STATE OF NEVADA)
5 : SS
6 COUNTY OF WASHOE)

7 MARK G. SIMONS, being first duly sworn depose and state under
8 penalty of perjury, as follows:

9 1. I am over the age of 18 years and have personal knowledge of
10 the facts stated herein, except for those stated upon information and belief,
11 and as to those, I believe them to be true. I am an attorney at Robison,
12 Belaustegui, Sharp & Low, and am counsel for Petitioners Waste
13 Management of Nevada and Karen Gonzalez.
14

15 2. This Petition deals with the interpretation and application of
16 NRS 444.520(3).
17

18 3. The Court's consideration of this Petition is necessary to
19 clarify important issues of law and procedure regarding whether a garbage
20 company is required to comply with all requirements contained in NRS
21 Chapter 108 for notice, perfection and foreclosure of a mechanic's lien
22 when the garbage company seeks to record and/or foreclose upon a garbage
23 lien under NRS 444.520.
24
25
26
27
28

1
2 4. Further, this Court's consideration of this Petition would also
3 serve to resolve an area of law that appears to be generating confusion with
4 the district courts.
5

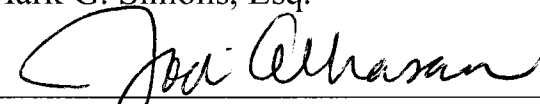
6 5. I certify and affirm that this Petition for Writ of Mandamus is
7 made in good faith and not for delay.
8

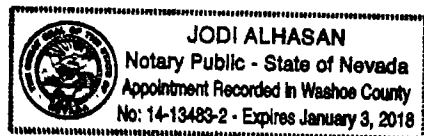
9 FURTHER AFFIANT SAYETH NAUGHT.

10 DATED this 9th day of June, 2016.
11

12 
13 MARK G. SIMONS
14

15 Subscribed and sworn to before me
16 this 9th day of June, 2016, by
17 Mark G. Simons, Esq.
18

19 
20 NOTARY PUBLIC
21



1
2 **CERTIFICATE OF COMPLIANCE**
3 **PURSUANT TO RULE 28.2**

4 1. I hereby certify that this Petition complies with the formatting
5 requirements of NRAP 32(a)(4), the typeface requirements of NRAP
6 32(a)(5), and the type style requirements of NRAP 32(a)(6) because:
7

8 This brief has been prepared in a proportionally spaced typeface
9 using Microsoft Word in 14 font and Times New Roman type.
10

11 2. I further certify that this Petition complies with the page- or
12 type-volume limitations of NRAP 32(a)(7) because, excluding the parts of
13 the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has
14 a typeface of 14 points or more, and contains 8,244 words.
15


16 3. Finally, I hereby certify that I have read this Petition, and to
17 the best of my knowledge, information, and belief, it is not frivolous or
18 interposed for any improper purpose. I further certify that this Petition
19 complies with all applicable Nevada Rules of Appellate Procedure, in
20 particular NRAP 28(e)(1), which requires every assertion in the Petition
21 regarding matters in the record to be supported by a reference to the page
22 and volume number, if any, of the transcript or appendix where the matter
23 relied on is to be found. I understand that I may be subject to sanctions in
24
25
26

27 ///
28

1
2 the event that the accompanying Petition is not in conformity with the
3 requirements of the Nevada Rules of Appellate Procedure.

4 DATED this 9th day of June, 2016.
5

6 Robison, Belaustegui, Sharp & Low
7 71 Washington Street
8 Reno, Nevada 89503

9 
10 MARK G. SIMONS (SBN 5132)
11 Attorneys for Petitioners
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 **CERTIFICATE OF SERVICE**

3 Pursuant to NRAP 25, I certify that I am an employee of ROBISON,
4 BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be
5 served a true copy of the **PETITION FOR WRIT OF MANDAMUS** on
6 all parties to this action by the method(s) indicated below:
7

- 8
9 ☒ by placing an original or true copy thereof in a sealed envelope,
10 with sufficient postage affixed thereto, in the United States mail
11 at Reno, Nevada, addressed to:

12 C. Nicholas Pereos, Esq.
13 1610 Meadow Wood Lane, Ste. 202
14 Reno, NV 89502

- 15 ☒ by personal delivery/hand delivery addressed to:

16 Honorable Connie J. Steinheimer
17 Second Judicial District Court
18 75 Court Street, Dept. 4
19 Reno, NV 89501

20
21 DATED: This 10th day of June, 2016.

22
23 
24 JODI ALHASAN