

## **Exhibit 3**

## **Exhibit 3**

1 Case No. 14-CV-01304

2 Dept. No. Senior Judge

3 The undersigned hereby affirms this  
4 document does not contain a social security  
5 number.

6  
7 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF LYON

9 COMSTOCK RESIDENTS ASSOCIATION,  
10 JOE McCARTHY,

11 Plaintiffs/Petitioners,

12 vs.

13 LYON COUNTY BOARD OF COMMISSIONERS  
14 et al;

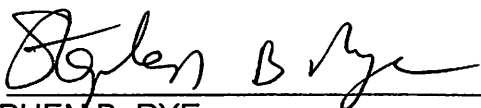
15 Defendants/Respondents,

16 **NOTICE OF ENTRY OF ORDER**

17 Please take notice that the Court entered its Order Denying Petition for Writ of  
18 Mandamus on June 14, 2016. A copy of the Order is attached hereto.

19 DATED this 14<sup>th</sup> day of June, 2016.

20 STEPHEN B. RYE  
21 DISTRICT ATTORNEY

22 By:   
23 STEPHEN B. RYE  
24 DISTRICT ATTORNEY  
25 31 South Main Street  
26 Yerington, NV 89447  
27 775-463-6511

28 Attorney for Respondent/Defendant  
Lyon County Board of Commissioners

Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 14<sup>th</sup> day of June, 2016, a copy of the foregoing Notice of Entry of Order and Order was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

Luke Andrew Busby, Esq.  
216 East Liberty St.  
Reno, NV 89501

Dated this 14<sup>th</sup> day of June, 2016.

  
Employee

**FILED**

Case No. 14-CV-01304  
Dept. IV

2016 JUN 14 AM 9:35

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Victoria Tovar DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\*\*\*

COMSTOCK RESIDENT ASSOCIATION  
AND JOE McCARTHY,

**ORDER DENYING  
PETITION**

Petitioners,

vs.

LYON COUNTY BOARD OF  
COMMISSIONERS et al.

Defendant.

On November 30, 2015, the Petitioner, Comstock Residents Association ("CRA"), filed a Writ of Mandamus requesting this Court to compel Lyon County Commissioners to be in compliance with the provisions of Nevada's Public Records Act ("NPRA"). On January 4, 2016, Respondents, Lyon County, filed a Response. On April 14, 2016, the Court held a Hearing on the matter and took the issue under submission

**FACTUAL BACKGROUND**

CRA brings this action to compel the Lyon County Board of County Commissioners to comply with their nondiscretionary duty under the NPRA in response to a request for all records related to Comstock Mining Inc's. ("CMI") application with Lyon County. Petitioner contends Lyon County refuses to produce responsive public records created or received in the course of their public duties located on individual commissioner's private electronic devices.

1 CMI filed an application with Lyon County to change land use designations zoning within Silver  
2 City from more urban to more rural, to allow mining exploration. The County held a public meeting and  
3 heard hours of testimony before granting the application.

4 CRA contends during the County's review of CMI's application, the commissioners and other  
5 members of Lyon County communicated with CMI representatives through their personal devices.

6 CMI also contends that Lyon County Commissioner, Vita Keller, communicated with CMI using  
7 her personal devices because the record is absent with regard to her last minute proposal during the  
8 hearing. She has admitted that these conversations took place.

9 On February 11, 2014, Petitioners submitted to the Lyon County Board of County Commissions  
10 and Lyon County staff, a request for all public records pursuant to the NPRA related to CMI's  
11 Application for Master Plan Amendment and Zoning change. The request included disclosure of all  
12 records of communication regarding CMI's application, to or from the Lyon County Commissioners and  
13 CMI representatives, regardless of whether such communication occurred on devices owned by Lyon  
14 County or personally by the Lyon County Commissioners.

15 Lyon County responded to the Petitioner's demand by disclosing all of the records relating to the  
16 CMI application. Lyon County did not disclose private cell phone and e-mail records owned by the  
17 commissioners. Lyon County explained the commissioners do not retain county issued cell phones.  
18 Private cell phone and e-mail records, personally owned by the commissioners, are not maintained by  
19 Lyon County.

20 It should be noted the request made by the Petitioners has language that includes the employees of  
21 Lyon County, not just the Commissioners.

### 22 23 QUESTION PRESENTED

24 Should the Court compel the Lyon County commissioners to disclose their personal e-mail and  
25 cell phone records to CRA relating to the CMI application?  
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5 The Petitioners argue the NPRA applies to all "public records" regardless of the means of  
6 creation. According to the Petitioners, the provisions of NRS § 239.010 requires a broad interpretation  
7 that any elected official who uses his/her personal devices to conduct public business must disclose the  
8 records created as "public records." The Petitioners cite to Nevada case law stating the Nevada Supreme  
9 Court has instructed that all governmental entities public books and public records must remain open to  
10 the public, unless "otherwise declared by law to be confidential." NRS 239.010. The purpose of this  
11 statute is to promote a transparent governmental entity.

12 The Petitioners assert the NPRA defines a "governmental entity" as an elected or appointed  
13 official of this State. NRS § 239.005. Thus the plain language of the NPRA defines "governmental  
14 entity" to include elected officers of a political subsidiary. Id.

15 The Petitioners assert this is a straight forward interpretation of the statute. They argue Lyon  
16 County's interpretation allows public officials to conduct public business on their personal devices,  
17 thereby avoiding compliance with the statute. The Petitioners assert that the language of the statute  
18 compels Lyon County Commissioners to disclose their personal cell phone and e-mail records. The  
19 Petitioners state when a statute is plain and unambiguous, the Court must give the language its ordinary  
20 meaning. Nevada State Democratic Party v. Nevada Republican Party, 256 P.3d 1, 4 (2011). The  
21 Petitioners then contend the Court should disregard the Respondents claim that the administrators, or the  
22 county office, do not possess such records. The Petitioners state the NPRA does not make any distinction  
23 between an administrator's office records and the records of elected officials.

24 The Petitioners cite to other jurisdictions holdings that individual records are public records.

25 Lyon County makes the following arguments. The Respondents assert private e-mail and cell  
26 phone records of elected officials are not "public records" because: (1) they are not "public records"  
27 under the NRPA; (2) privacy interests weigh against disclosure; (3) practical limitations preclude the  
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1 Court from declaring all records "public records"; (4) the records are confidential under the deliberative  
2 process privilege.

3 The Respondents stipulate that: NRS chapter 239 requires all books and "public records" of a  
4 governmental entity be open for inspections; the provisions of the NPRA are designed to promote  
5 governmental accountability; nondisclosure is the exception to the general rule; and elected officials fall  
6 under the provisions of the NPRA. However, the Respondents state the issue is whether the specific  
7 information requested is "public record."

8 The Respondents first argue private cell phone and email records are not "public records" under  
9 the NPRA because: a) "public records" must be paid for with public money; b) the records sought are not  
10 open to public inspection; c) the records are not in control of the Commissioners or County; d) the  
11 communications are not official actions, and are not required by law to be public; and e) Nevada law does  
12 not support that the requested documents be defined as "public records."

13 The Respondents argue the NPRA does not define "public record." The Respondents cite to the  
14 Nevada Administrative Code which defined "public record" as "a record of a local governmental entity  
15 that is created, received or kept in the performance of a duty and paid for with public money." However,  
16 this definition was repealed in October of 2014. The Respondents argue at the time of the request it was  
17 clear what a "public record" was. Further, private e-mails and cell phones of the Lyon County  
18 Commissioners are not paid for with public money. Therefore, they are not "public records."

19 The Respondents state the Commissioners are entitled to rely on the law as it existed at the time.  
20 Ruling in the alternative creates a burden on the government which does not exist.

21 The Respondents assert "public records" must be left open at all times for inspection by the  
22 public. The Respondents argue private cell phone and/or e-mail records are not "public records" because  
23 they are not on the books thus not open for inspection. The Respondents further claim that interpreting  
24 the statute this way would require all "private" records of a government official to be subject to the  
25 NPRA rendering an absurd result.

26 The Respondents cite to NRS § 239.010(4) which states an officer or employee who has legal  
27 custody or control of a record shall not refuse to provide a copy. The Respondents claim the specific  
28 information requested is not in the office's control, thus they are not required to produce that information.



1 The Respondents argue notes or any communication between the Commissioners with clients or  
2 other parties do not fall under the provisions of NAC § 239.101. The statute states an office or  
3 department of a local governmental entity is defined as an “office, department, board, commission,  
4 committee, agency or any other subdivision of a local government entity where records and made  
5 received or kept.” NAC § 239.061. “Non-record materials” is any other documentation that does not  
6 serve as the record of an official action of a local governmental entity. NAC § 239.051. The Respondents  
7 argue private e-mail and cell phone records cannot be records because holding that they are render any  
8 notes or communication of any Lyon County employee as a “public record.”

9 In support of this claim, the Respondents cite to a string of Nevada cases, which does not answer  
10 the question of private e-mail accounts or private cell phones. They state the Petitioners are asking the  
11 Court to do something that has not been done in Nevada before. The Respondents claim such a question  
12 should be left to the legislature to decide.

13 The Respondents make their sixth argument that privacy interest weigh against disclosure. They  
14 cite to NRS § 241.015 which states the Nevada Open Meeting Law permits private conversation about  
15 county business by less than a majority of its members. They assert this could have a chilling effect on  
16 citizens who wish to exercise their constitutional right and talk to their representatives.

17 Finally, the Respondents claim the records are confidential pursuant to the deliberative process  
18 privilege. DR Partners v. Bd. of Cty. Comm'rs of Clark Cty., 116 Nev. 616, 619, 6 P.3d 465, 467 (2000).

### 19 20 CONCLUSIONS OF LAW AND FACT

21 The Court agrees with the Respondent’s arguments regarding this matter. The Court concludes  
22 that the Petitioners are asking for records which are not paid for with public money. Specifically they are  
23 requesting the Lyon County Commissioner’s private cell phone and e-mail records. These record are  
24 created by a third party phone and internet provider paid for by the Commissioner’s private accounts.  
25 Thus, the records in question where not paid for with public money which tends to show that these record  
26 are not public.

27 Further, the Court agrees the records sought are not open to public inspection. Any member of the  
28 public could inspect the records at the County Commissioner’s office. However, not even the County



1 Commissioner employees themselves can inspect the Commissioner's personal records. In addition the  
2 records sought are not in control of the public agencies.

3 The Court also agrees the records sought are not official actions of the County. Thus the  
4 Petitioners are seeking all communications between the Lyon County Commissioner's and members of  
5 the public. Such a request is beyond the provisions of the NPRC.

6 Finally, The Court does not believe it has authority to order personal information of the Lyon  
7 County Commissioners be disclosed to the Petitioners. There are multiple privacy concerns which the  
8 Court is concerned with. Such an action must be clearly supported by law which the Court finds it is not.  
9 If the legislature intended the provisions of the NPRC to have such reaching consequences, then the  
10 Court concludes the Legislature could have easily included language supporting such an assertion.

11 The Court is aware that this holding may cause public employees to skirt the provisions of the  
12 NPRC by conducting business on their private devices. Such a concern is for the Legislature to address.

13  
14 Therefore, good cause appearing, the Petitioner's Petition is **DENIED**

15  
16 Dated this 10<sup>th</sup> day of June, 2016.

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20 SENIOR DISTRICT COURT JUDGE  
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Lyon County District Attorney's Office  
31 S. Main St.  
Yerington, NV 89447

DATED: This 14<sup>th</sup> day of June, 2016.

7

**Exhibit 2**

**Exhibit 2**

Case No. 14-CV-01304

JOHN L. MARSHALL  
SBN 6733  
570 Marsh Avenue  
Reno, Nevada 89509  
Telephone: (775) 303-4882  
Attorney Petitioners Comstock  
Residents Association, Gayle Sherman, Joe  
McCarthy

2014 OCT 24 PM 3:29

JANIS SCHUMME  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Andrea Anderson

IN THE THIRD JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA  
IN AND FOR LYON COUNTY

COMSTOCK RESIDENTS ASSOCIATION,  
GAYLE SHERMAN, JOE MCCARTHY

Petitioners,

v.

LYON COUNTY BOARD OF  
COMMISSIONERS

Respondents,

PETITION FOR WRIT OF MANDATE

I. INTRODUCTION

I. Petitioners Comstock Residents Association ("CRA") members, Gayle Sherman and Joe McCarthy are residents of the Comstock including Silver City, Lyon County, Nevada. CRA brings this lawsuit to compel the Lyon County Board of County Commissioners to comply with their nondiscretionary duty under Nevada's Public Records Act in response to a request for all records related to Comstock Mining Inc. (CMI). The County Commissioners refused to



1 produce responsive public records created or received in the course of their public duties on  
2 individual Commissioners' private electronic devices.

## 3 **II. PARTIES**

4 2. Petitioner CRA is a not-for-profit organization incorporated in Nevada and through  
5 its members appeared at appropriate public hearings and objected to the CMI's application to  
6 allow mining uses within Silver City. Members of CRA live, work, recreate and/or commute in  
7 the Comstock Historic District (CHD) in general and more specifically in Silver City.  
8

9 3. Petitioner Gayle Sherman lives in Silver City at 100 Grant Street. Ms. Sherman  
10 first purchased her home in 1976 and lived there for many years until she had to sell her home  
11 to pay for her son's college education. Ms. Sherman repurchased her old home in 2001.  
12

13 4. Petitioner Joe McCarthy and his wife Ann purchased land from 2003 to 2006 and  
14 built their Silver City home in 2006 and have been living there since 2007. Prior to purchasing  
15 their land and building their house, Mr. and Ms. McCarthy diligently researched the applicable  
16 land uses allowed within Silver City and specifically determined that mining was not a  
17 permitted use on lands within Silver City now owned by CMI.

18 5. Defendant Lyon County Board of Commissioners is the governing body of a  
19 subdivision of the State of Nevada and pursuant to NRS Chapter 278 possesses the authority  
20 and responsibility to regulate land use for the benefit of the public within Lyon County, Nevada.  
21 Defendant Lyon County Board of Commissioners is composed of individual members Bob  
22 Hastings (District 1), Vida Keller (District 2), Ray Fierro (District 3), Joe Mortenson (District  
23 4), Virgil Arellano (District 5). These members are sued in their official capacity.  
24  
25

## 26 **III. BACKGROUND**

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1           6.       CMI owns or controls mining claims on lands within the Silver City townsite or  
2 adjacent thereto that prior to January 2, 2013 could not be mined under the applicable Lyon  
3 County Master Plan and zoning provisions. In August 2013, CMI applied to Lyon County to  
4 change the land use designations and zoning within Silver City from more urban to more rural  
5 which would allow industrial uses, such as mining, which heretofore had been prohibited.

6           7.       CMI, a mining company, filed its 2013 Application in order to mine the property,  
7 stating the application was for “the purpose of pursuing continued mineral exploration,  
8 development and the economic mining potential of the subject property.”

9           8.       The citizens of Silver City overwhelmingly opposed CMI’s 2013 Application.  
10 Approximately 75 percent of the 146 registered voters in Silver City oppose CMI’s 2013  
11 Application and signed a petition to that effect.

12           9.       Lyon County has created a system of town advisory councils to provide input of  
13 the directly affected communities on issues of concern.

14           10.      In September 2013, the Silver City Advisory Council considered CMI’s 2013  
15 Application and unanimously voted to recommend that it be denied.

16           11.      Upon receipt of CMI’s 2013 Application, Lyon County Planning Department staff  
17 began to analyze it and compare it to the policies and guidance contained in the 2010 Master  
18 Plan.

19           12.      In addition, Petitioners completed a thorough legal, planning, environmental,  
20 economic and historical evaluation of CMI’s 2013 Application. Petitioners submitted their final  
21 collated expert report to Lyon County. The final report established not only consistency of  
22 Lyon County’s many prior decisions on the same question, but also inconsistency, and adverse  
23 economic, environmental, and social impacts of CMI’s proposed industrial uses within Silver  
24 City.

1           13.     Upon an exhaustive review of the CMI's 2013 Application and Petitioners' final  
2 report, Lyon County's professional planning staff recommended that CMI's application be  
3 denied, based on the following considerations:

4               a.     Industrial land uses requested by the application were in conflict with  
5 multiple 2010 Master Plan policies.

6               b.     No change in conditions has occurred to justify so altering the longstanding  
7 land use designations within Silver City.

8               c.     The proposed reduction in density would make needed town infrastructure  
9 improvements less likely.

10              d.     As envisioned by the 2010 Master Plan, a land use change of such a  
11 magnitude should be considered, if at all, during the development of the Silver City Community  
12 Plan.  
13

14           14.     Lyon County originally agendized CMI's 2013 Application for October 8, 2013.

15           15.     After CMI received Lyon County planning staff's Staff Report recommending  
16 denial of CMI's 2013 Application, Petitioners are informed and believe that CMI contacted  
17 upper level Lyon County management and held a meeting attended by both members of the  
18 Planning Commissioners and BOC and the Lyon County Manager. Lyon County has never  
19 disclosed what was discussed at this meeting.  
20

21           16.     A large number of Silver City residents attended the October 8, 2013 Planning  
22 Commission meeting.  
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24           17.     After the Planning Commission had already approved its agenda for the day, while  
25 keeping the public at the meeting for more than an hour, CMI and Lyon County staff announced  
26 that they had agreed to seek a continuance to the next Planning Commission meeting in  
27 November. Although CMI and Lyon County both had advance knowledge of their proposed  
28

1 request, neither party alerted Silver City residents or their representatives of the likely  
2 continuance of the hearing for which residents travelled to Yerington to participate in.

3 18. November 12, 2013, the Lyon County Planning Commission held a public hearing  
4 on CMI's 2013 Application.

5 19. Both Commissioner Hastings and Keller attended the November 2013 Planning  
6 Commission during the hearing on CMI's 2013 Application.

7 20. After hearing hours of public testimony, the Planning Commission adopted the  
8 recommendation of its professional staff and recommended – by a 5 to 1 vote – that the BOC  
9 deny CMI's application.

10 21. Lyon County agendized CMI's 2013 Application to be heard by the BOC at its  
11 January 2, 2014 meeting.

12 22. At the beginning of the January 2, 2014 meeting, Commissioner Keller announced  
13 she had a new action for consideration by the BOC. Commissioner Keller indicated she had  
14 contacted BOC members and CMI to discuss her proposal. Although Commissioner Keller  
15 characterized the new proposal as a "compromise" offered on behalf of the Silver City  
16 residents, she never contacted any representative of the Silver City Town Board or concerned  
17 residents to discuss the new alternative.

18 23. On January 1, 2014, Commissioner Keller and her husband, a CMI employee, met  
19 privately with BOC Chair Joe Mortensen and the Lyon County Manager. Petitioners are  
20 informed and believe that Commissioner Keller, her husband, Commissioner Mortensen and the  
21 County Manager then met with CMI's CEO and its consultant. Despite meeting the day before  
22 with CMI's CEO and its consultant, Commissioner Keller informed the public during the  
23 January 2 meeting that she had only been working with CMI's consultant.



1       24.     Commissioner Keller has had extensive contacts with CMI. Commissioner Keller  
2 refused to meet with representatives of Silver City despite repeated invitations.

3       25.     After public comment, the BOC held an abbreviated discussion consistent with  
4 their constrained view of the allowable impacts to consider and voted, 4 to 1 to overturn the  
5 Silver City Advisory Council, its professional planning staff recommendation, and the  
6 recommendation of its Planning Commission, and grant Commissioner Keller's new amended  
7 CMI 2013 Application.  
8

9       26.     CRA members, who include many Silver City residents, and Gayle Sherman and  
10 Joe McCarthy will be adversely affected by the BOC's approval of the CMI's revised 2013 in  
11 the following ways:

12           a.     Petitioners did not receive prior notice and an opportunity to prepare for  
13 the actual application acted on by the BOC on January 2, 2014.  
14

15           b.     Petitioners were excluded from communications between BOC members  
16 that would otherwise have been public.

17           c.     CMI's existing mineral exploration in Silver City and surface mining in  
18 the adjacent Lucerne Pit. CMI's past and present exploration and mining activities cause  
19 degraded visual conditions, loud industrial noises within a quiet residential area, dust and dirt  
20 on roads and in the air, and increased traffic on nearby roads including trucks and other  
21 industrial equipment. The change in land use designations and zoning from prohibiting  
22 industrial uses such as mining in Silver City will likely cause these present adverse effects to  
23 increase.  
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25           d.     The change in land use designations and zoning from prohibiting  
26 industrial uses such as mining to allowing it under a special use permit will reduce the value of  
27 Petitioners' property.  
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1           e.       Surface mining, made possible by the change in land use will exacerbate  
2 and accelerate the destruction of the CHD. Road building, cuts and fills, trenching, drill pads,  
3 and subsequent associated surface mining activities, as noted by the National Park Service  
4 individually and cumulatively degrade the unique character of the CHD. In addition, the noise  
5 associated with the proposed activities will substantially alter the character of the CHD. As  
6 CRA members have testified, the construction, drilling and other activities associated with  
7 CMI's past and current mineral exploration and mining have significantly altered the aural  
8 landscape in the CHD and efforts to attenuate have proven unsuccessful.

10           f.       Mining operations can generate dust from mining and mineral processing  
11 operations and associated truck traffic, releasing particulates, nitrous oxide, sulfur dioxide, and  
12 carbon monoxide from the equipment used to mine and process ore minerals. These emissions  
13 can generate smog and other forms of air pollution that may impact local air quality. Mine  
14 sites can also have increased concentrations of specific metals and salts in water used in – or  
15 runoff from – mine sites. Acid mine drainage is a phenomenon that can occur when rock  
16 containing sulfides is exposed to air and water. The water can become acidic and often carries  
17 elevated levels of toxic metals. Acid mine drainage occurs most frequently in association with  
18 metals mines [such as gold and silver mines] and can affect water quality. Pit lakes, another  
19 water quality concern during and after mine closure, are created when mining is completed in a  
20 pit and dewatering pumps are turned off, allowing groundwater to flow back into the pit.  
21 Similar concerns about the acidity and concentration of heavy metals in these water bodies  
22 arise in association with metals mines. Changes in water quality and quantity can affect not  
23 only human health but also wildlife habitat and ecosystem health. Environmental impact  
24 assessment processes often intensively focus on bio-diversity issues in Nevada, and as a  
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1 consequence, operating plans require significant dedication to design of mitigation and  
2 management efforts.

3 g. The change in land use to rural versus urban densities will it more difficult  
4 for infrastructure improvement for Silver City that would improve the citizens' quality of life.

5 27. The Nevada Public Records Act ("NPRA") (NRS Chapter 239) provides the  
6 public the right to inspect and copy public records created and held by government entities. In  
7 relevant part, the NPRA defines a "government entity" as "(a) An elected or appointed officer  
8 of this State or of a political subdivision of this State; (b) An institution, board, commission,  
9 bureau, council, department, division, authority or other unit of government of this State,  
10 including, without limitation, an agency of the Executive Department, or of a political  
11 subdivision of this State . . . ." NRS 239.005(a), (b).

12 28. On February 11, 2014, Petitioners submitted to the Lyon County Board of County  
13 Commissioners and Lyon County staff a request for all public records pursuant to the NPRA  
14 and related to CMI's Application for Master Plan Amendment and Zoning Change (PLZ-13-  
15 0050, 0051), including but not limited to all records of communication regarding CMI to or  
16 from the Commissioners regardless of whether they occurred on devices owned by the County  
17 or the Commissioners.

18 29. Lyon County Commissioners utilized private email and cellular phones to  
19 communicate with each other, staff and members of the public including CMI and its  
20 representatives, regarding CMI's activities in Lyon County, including CMI's application  
21 considered by Lyon County on January 2, 2014.

22 30. Lyon County responded to Petitioners' NPRA request and provided, *inter alia*,  
23 copies of phone records, emails and other records in electronic form as long as those records  
24 were created and or stored on county-owned and controlled equipment.

1           31.     Lyon County refused to provide any record created or stored by an individual  
2 County Commissioner, stating: "Lyon County does not provide cellular phones for the County  
3 Commissioners, and as such, Lyon County does not maintain any of those records and they are  
4 not public records pursuant to NRS Chapter 239."

5  
6                                   **FIRST CAUSE OF ACTION**

7                                   **(Violation of NPRA)**

8           32.     Petitioners re-allege and incorporate by reference Paragraphs 1 through 31  
9 inclusive, of this Petition, as if fully set forth below.

10          33.     On February 11, 2014, Petitioners served upon Lyon County BOC members a  
11 NPRA request for public records regarding CMI.

12          34.     On April 25, 2014, Lyon County denied Petitioners' NPRA request as to those  
13 records held by individual Lyon BOC members, asserting these records were not public records  
14 within the meaning of the NPRA.

15          35.     Because the NPRA obligates "governmental entities" – defined to include  
16 individual county commissioners – to preserve and produce records made in the course of their  
17 official duties, Lyon County BOC violated the NPRA by not producing all public records  
18 responsive to Petitioners' NPRA request.

19          36.     The NPRA also requires Lyon County to provide Petitioners with the basis for  
20 withholding any public record as privileged.

21          37.     Based on information and belief, Lyon County has withheld public records public  
22 but in violation of the NPRA failed to provide Petitioners with any basis for withholding public  
23 records.

24          38.     The NPRA authorizes members of the public to bring an action to compel the  
25 production of public records where a governmental entity has refused to comply with NPRA  
26 requirements.

27          39.     Petitioners therefore request this Court order the Lyon County BOC to respond to  
28 Petitioners' NPRA request.



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**REQUEST FOR RELIEF**

WHEREFORE, as a result of the approval of the revised CMI 2013 Application,  
Petitioners request judgment in their favor as follows:

1. That the Court declare that Lyon County BOC violated the NPRA by failing to produce all public records responsive to CRA's NPRA request;
2. That the Court issue a Writ of Mandate directing the Lyon County BOC to produce all public records pursuant to CRA's NPRA request regardless of whether of the revised 2013 Application is null and void;
3. ForPetitioners costs associated with this action;
4. To the extent permitted by law, for an award of reasonable attorneys' fees; and,
5. For such other and further relief as the Court may deem just and proper.

Dated: October 24, 2014.

Respectfully submitted,

By 

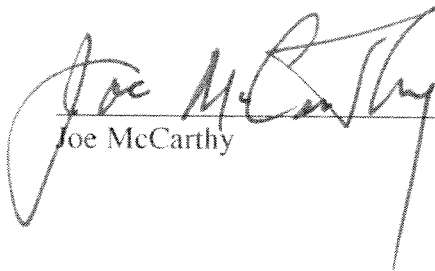
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Attorney for Petitioners CRA, Gayle Sherman, Joe  
McCarthy

**AFFIDAVIT/VERIFICATION**

I, Joe McCarthy, a member of the Board of Directors of Petitioner CRA and a named Petitioner, have read the foregoing Petition and know the contents thereof; that the contents thereof were prepared with the assistance and advice of counsel for CRA. The contents of the Petition, subject to inadvertent or undiscovered errors, are based upon and therefore limited by the records and information still in existence, presently recollected and thus far discovered in the course of preparation of this Petition, are true to the best of my knowledge, information and belief. I reserve the right to make any changes in the contents of this Petition if it appears at any time that omissions or errors have been made or that more accurate information becomes available.

Dated: October 24, 2014.

  
\_\_\_\_\_  
Joe McCarthy

## **Exhibit 1**

## **Exhibit 1**

# John L. Marshall

ATTORNEY AT LAW

570 Marsh Avenue  
RENO, NV 89509

Telephone:  
(775) 303-4882

johnmarshall@charter.net

February 11, 2014

Via Electronic Mail

Lyon County Board of County Commissioners  
and Lyon County Staff  
Jeff Page, Lyon County Manager  
27 South Main Street  
Yerington, Nevada 89447

Re: Public Records Request, Comstock Mining Inc. Application for Master Plan  
Amendment and Zoning Change (PLZ-13-0050, 0051)

To Whom It May Concern:

I do hereby make a public records request pursuant to Nevada Revised Statutes  
Chapter 239 on Lyon County Board of County Commissioners and Lyon County Staff.

Specifically, I request access to any and all records related to Comstock Mining Inc.  
Application for Master Plan Amendment and Zoning Change (PLZ-13-0050, 0051). This  
request includes, but is not limited to, any and all records of communications between  
Comstock Mining Inc., ("CMI") and members of the Lyon County Board of County  
Commission and Lyon County Staff, including but not limited to phone recordings, emails,  
internal documents and communications, notes, and any and all other related documents  
in the possession of you subject to disclosure under Nevada's public records law. These  
records also include records of all records of communications between CMI and you  
regardless of whether the communication occurred on private or public devices.

If you need further clarification on the request, please let me know. Please let me  
know if there are any required fees for the reproduction of the documents requested and I  
will provide payment in advance as required. Also, please let me know in advance of any  
search or copying if the fees will exceed \$100.



If you would prefer to respond electronically, please feel free to email the response to the email address contained above.

Thank you for your assistance in this matter.

Sincerely,



John L. Marshall  
Attorney for Comstock Residents Association

cc: Steve Rye, Lyon County District Attorney Office



Luke Andrew Busby, Esq.  
Nevada State Bar No. 10319  
216 East Liberty St.  
Reno, NV 89501  
775-453-0112  
luke@lukeandrewbusbyltd.com  
*Attorney for the Appellants*

Electronically Filed  
Jul 08 2016 02:21 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

COMSTOCK RESIDENTS  
ASSOCIATION, JOE MCCARTHY,

Appellant(s),

Vs.

LYON COUNTY BOARD OF  
COMMISSIONERS

Respondent(s).  
\_\_\_\_\_ /

CASE No. 70738

**DOCKETING STATEMENT**

COMES NOW, Appellants Comstock Residents Association and Joe McCarthy,  
and hereby file the following Docketing Statement in the above captioned matter.

1. Judicial District: Third

Department: Assigned Senior Judge

County: Lyon

Judge: Honorable Steven R. Kosach

2. Attorney filing this docketing statement:

Luke Andrew Busby  
Nevada State Bar No. 10319  
216 East Liberty St.  
Reno, NV 89501  
775-453-0112

Client: Comstock Residents Assn. and Joe McCarthy

3. Attorneys representing respondents:

Steven B. Rye  
Lyon County District Attorney  
31 S. Main Street  
Yerington, NV 89447  
Tel: (775) 463-6511

Client: Lyon County Board of County Commissioners

4. Nature of disposition below:

Order denying Petition for a Writ of Mandate upholding Lyon County's determination to deny a public records request of Comstock Residents Association.

5. Does this appeal raise issues concerning any of the following (child custody, venue, termination of parental rights):

No.

6. Pending and prior proceedings in this court:

None.

7. Pending and prior proceedings in other courts:

*Comstock Residents Association, et al., v. Lyon County Board of County Commissioners, Nevada*

1 Supreme Court Appeal No. 68433. This is a pending appeal of Lyon County's grant of  
2  
3 Comstock Mining Inc.'s application to change the longstanding and repeatedly re-adopted  
4 Master Plan and zoning to allow industrial mining uses within Silver City and Comstock  
5 Historic District/Virginia City National Historic Landmark.

6  
7 8. Nature of the action:

8 The Appellants sought public records relating to Lyon County's grant of Comstock  
9 Mining Inc.'s application to change the longstanding and repeatedly re-adopted Master Plan  
10 and zoning to allow industrial mining uses within Silver City and Comstock Historic  
11 District/Virginia City National Historic Landmark created or received by County  
12 Commissioners or County staff on their public as well as personal electronic devices and  
13 email accounts.  
14

15 9. Issues on appeal:

16 Whether a Governmental entity may evade Nevada Public Records Act disclosure  
17 requirements by conducting official business and storing public records on personal  
18 electronic devices and/or personal email accounts;  
19

20 10. Pending proceedings in this court raising the same or similar issues:

21 None that counsel is aware.  
22

23 11. Constitutionality of Statutes:

24 Not Applicable.  
25

26 12. Other issues:

27 This appeal involves substantial issues of first impression and of public policy  
28 importance. Namely, may public officials and agency staff use personal electronic devices

1 and email accounts to conduct public business and as a result evade the disclosure  
2 requirements of Nevada Public Records Act, NRS Chapter 239?  
3

4 13. Trial:

5 No trial.  
6

7 14. Judicial disqualification:

8 Appellants do not intend to file a motion for judicial disqualification.

9 15. Date of entry of written judgment or order appeal from:

10 June 14, 2016.  
11

12 16. Date written notice of entry of judgment or order served:

13 June 14, 2016. Service affected by U.S. Mail.

14 17. If time for filing notice of appeal was tolled:

15 No.  
16

17 18. Date notice of appeal filed:

18 June 20, 2016.

19 19. Specify statute or rule governing time limit for filing notice of appeal:

20 NRAP 4(a).  
21

22 20. Specify the statute or other authority granting this court jurisdiction to review the  
23 judgment or order appealed from:

24 Pursuant to NRAP 3A(b)(1), the District Court's June 14, 2016 Order Denying  
25 Petition constituted a final judgment as it resolved all outstanding issues in the case.  
26

27 21. List all parties involved in the action in the district court:

28 a. Petitioner Comstock Residents Association

b. Petitioner Joe McCarthy

c. Respondent Lyon County Board of Commissioners.

22. Give a brief description of each party's separate claims and the trial court's disposition of each claim, and how the claim was resolved, and the date of disposition of each claim:

1. Appellant's First Cause of Action: Violation of the Nevada Records Act.

Disposition: The Appellant's Petition for a Writ of Mandate was denied.

23. The District Court's Order appealed from adjudicated all claims alleged and the rights and liabilities of all parties to the action being appealed.

24. Not Applicable.

25. Not Applicable.

26. Copies of the public records request, latest filed complaint and orders challenged, and notices of entry are attached hereto as Exhibits 1-3.

1  
2  
3 **VERIFICATION**

4 I declare under penalty of perjury that I have read this docketing statement, that the  
5 information provided in this docketing statement is true and complete to the best of my  
6 knowledge, information and belief, and that I have attached all required documents to this  
7 docketing statement.  
8

9 Name of Appellants: Comstock Residents Association, Joe McCarthy

10 Name of Counsel of Record: Luke A. Busby  
11

12 State and county where signed: Washoe County, Nevada.

13 By: Luke A. Busby Dated: July 8, 2016  
14 Luke Busby  
15 Nevada State Bar No. 10319  
16 216 East Liberty St.  
17 Reno, NV 89501  
18 775-453-0112  
19 luke@lukeandrewbusbyltd.com  
20 *Attorney for the Appellants*  
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1  
2  
3 **CERTIFICATE OF SERVICE**

4 I certify that on July 8, 2016, I served the foregoing document on the following  
5 parties via hand delivery and/or Electronic Service and/or Mail postage prepaid to:  
6

7 Steven B. Rye  
8 District Attorney  
9 31 S. Main Street  
10 Yerington, NV 89447  
11 srye@lyon-county.org

12  
13 By:   
14 Luke Busby  
15 Nevada State Bar No. 10319  
16 216 East Liberty St.  
17 Reno, NV 89501  
18 775-453-0112  
19 luke@lukeandrewbusbyltd.com  
20 *Attorney for the Appellants*  
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Exhibit List

1. Public Records Request (February 11, 2014)
2. Petition for Writ of Mandate (October 24, 2014)
3. Notice of Entry of Order and attached Order Denying Petition (June 14, 2016)