IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Appellant,
vs.
HQ METRO, LLC, AN ARIZONA LIMITED LIABILITY COMPANY; PROJECT ALTA, LLC, A NEVADA LIMITED LIABILITY COMPANY; PROJECT ALTA II, LLC, A NEVADA LIMITED LIABILITY COMPANY PROJECT ALTA III, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND PROJECT ALTA LIQUIDATING TRUST U/A/D 12/31/09, BY AND THROUGH MARK L. FINE & ASSOCIATES, A NEVADA CORPORATION, INDIVIDUALLY AND AS TRUSTEE,
Respondents.

Case No. 71877

APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable Ronald J. Israel, District Judge
District Court Case No. A-13-681632-C

APPELLANT'S OPENING BRIEF

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JURISDICTIONAL STATEMENT

This Court has jurisdiction under NRAP 3A(b)(1), because the district court's order entered on November 9, 2016, apportioning a condemnation award under NRS 37.115 to Respondent, HQ Metro, LLC (HQ Metro), was a final judgment. Notice of entry of the order apportioning the condemnation award was served on November 9, 2016. (8 App. 1714-15) Clark County filed a timely notice of appeal on November 29, 2016 (8 App. 1719-20), within thirty days of service of the order as provided in NRAP 4(a).

ROUTING STATEMENT

This case is presumptively retained by the Supreme Court under NRAP 17(a)(11), because it raises as a principal issue a question of statewide public importance. The principal issue is the determination of what event constitutes the taking, at which time the right to compensation vests, for purposes of apportioning a $775,000 condemnation award to either the vendor or purchaser of the affected real property. This case does not fall within any of the categories of the cases listed in NRAP 17(b) as presumptively assigned to the Court of Appeals.

STATEMENT OF THE ISSUE PRESENTED

Did the district court err in construing this Court's decisions in Argier v. Nevada Power Company, 114 Nev. 137, 952 P.2d 1390 (1998), and Buzz Stew, LLC v. City of No. Las Vegas, 131 Nev. Adv. Op. 1, 341 P.3d 646 (2015), to

conclude the taking occurred and the right to compensation vested upon entry of the order for immediate occupancy rather than upon NV Energy's physical entry for construction of its transmission line project?

STATEMENT OF THE CASE

This is an eminent domain action filed on May 10, 2013, by Nevada Power Company ("NV Energy") to acquire easements needed for a transmission line project ("Project") to be built across the headquarters of the Las Vegas Metropolitan Police Department ("LVMPD") at 400 S. Martin Luther King Boulevard, Las Vegas, Nevada (the "Property"). (1 App. 0002-03, 0016-17) Prior to trial, the parties stipulated that just compensation for the easements was $850,000, with $75,000 to be paid to LVMPD as the Property's occupant, and the remaining $775,000 ("Remaining Proceeds") would be apportioned by the district court under NRS 37.115. (7 App. 1527-28) The parties' stipulation provided for entry of a final order of condemnation transferring the easements to NV Energy for its Project, and preserving any rights of appeal of the district court's apportionment award. (7 App. 1527-28, 8 App. 1573-74)

The district court granted the motion to apportion the Remaining Proceeds to HQ Metro (8 App. 1654-56), based on the partial summary judgment previously entered in HQ Metro's favor. (7 App. 1465-67)

STATEMENT OF FACTS

In this eminent domain action, NV Energy acquired a ±16,861 square foot permanent easement and a ±36,863 square foot temporary construction easement needed for construction of its Project affecting the south and east parking and landscaped areas of the Property. (8 App. 1571-73)

NV Energy filed its Verified Complaint in Eminent Domain ("Complaint") on May 10, 2013, naming Clark County as a defendant due to its interest as tenant being shown in a Memorandum of Lease and Purchase Option recorded in the Office of the Clark County Recorder on September 2, 2009 ("Memorandum of Lease"). (1 App. 0011) The lease dated December 2, 2008 ("Lease"), between Respondents Project Alta, LLC and Project Alta II, LLC, as landlords, and Clark County, as tenant, provided for the development and 30-year lease of ±370,500 square feet of office space and a parking garage on the ±13.76-acre parcel for sublease to LVMPD. (5 App. 0866, 4 App. 0776) The Lease contained an option allowing Clark County to purchase the Property for fair market value on the third anniversary of the date on which LVMPD commenced operations on the Property, which was deemed to be July 1, 2014. (5 App. 0866, 4 App. 0788-89, 5 App. 0869-70)

NV Energy's Complaint also named HQ Metro as the record owner, LVMPD as a tenant pursuant to an unrecorded lease, and the four Project Alta Respondents

as parties who NV Energy believed had an interest in the Property pursuant to the Memorandum of Lease or other recorded documents.[1] (1 App. 0003-05)

Soon after the filing of the Complaint, the parties negotiated the terms of a stipulation for an order permitting NV Energy to occupy the easement areas on the Property to construct the Project pursuant to NRS 37.100(2). (3 App. 0683-0715) The district court entered the Order for Immediate Occupancy on October 15, 2013 ("Occupancy Order"). (3 App. 0683, 0689, 0680-81) The Occupancy Order was conditioned on NV Energy depositing $281,000, representing the value of the permanent and temporary construction easements, including any severance damages, as appraised by NV Energy. (3 App. 0684) The Occupancy Order permitted NV Energy to occupy the areas of both the permanent and temporary construction easements, but NV Energy delayed exercising its rights under the

[1] Nothing filed by Respondents in the district court explained the nature of the interest in the Property held by the four Project Alta entities (Project Alta, LLC; Project Alta II, LLC; Project Alta III, LLC; and Project Alta Liquidating Trust U/A/D 12/31/09), other than admissions in their answers that they all held interests in the Property at the time of filing of the original and amended complaints. (3 App. 0669-70, 7 App. 1519-20) On December 30, 2015, the four Project Alta entities moved collectively with HQ Metro for summary judgment arguing entitlement to the condemnation proceeds as "Landowners" (4 App. 0721, 0725), but the district court's order granting partial summary judgment identified only HQ Metro, as "the owner of the subject property at the time of the initiation of the permanent construction easement in October 2013 . . ." (7 App. 1466) Thereafter, the sole Respondent moving for apportionment was HQ Metro. Because all five Respondents were referred to collectively as "Prior Owners" in key documents filed in the district court, Clark County will continue referring to all five Respondents as "Prior Owners."

Occupancy Order for about 14 months until it entered into possession of the Property to commence construction of its Project on January 8, 2015. (7 App. 1366) NV Energy's construction of the transmission line project concluded on May 11, 2015. (7 App. 1366)

In the meantime, after the Occupancy Order was entered, but before NV Energy entered the Property to construct the Project, Clark County closed escrow on the purchase of the Property on October 28, 2014, having paid $205,000.000. (5 App. 0867) Both the purchase and sale agreement and the deed were silent as to who was entitled to the compensation due on account of the easement encumbrances and the Project. (5 App. 0867) In the arbitration case filed to determine the purchase price, the Prior Owners relied on a 2013 appraisal by Tio S. DiFederico, MAI, concluding the fair market value of the Property was $225,000,000. (5 App. 0866, 0892-1041) This 2013 DiFederico report makes no reference to, nor deduction for, the future transmission line or the permanent easement. (5 App. 0892-1041) Yet in the context of this litigation, the same appraiser concluded in an appraisal report dated November 14, 2014, that the compensation due for acquisition of the easements sought in this case and severance damages to the remainder due to construction of the Project was $1,517,500. (5 App. 1099-1101)

The dates of the five events most relevant to this appeal are:

Date	Event	Reference
5/10/2013	Plaintiff's Verified Complaint in Eminent Domain is filed	1 App. 0002
10/15/2013	Occupancy Order is entered	3 App. 0682-0715
10/28/2014	Clark County's deed from Prior Owners is recorded	Tarr Declaration 5 App. 0867, 1086-94
1/8/2015	NV Energy enters the Property to start construction on the Project	Thom Declaration 7 App. 1366
5/11/2015	NV Energy completes construction of the Project	Thom Declaration 7 App. 1366

In late 2015 and early 2016, Clark County and Prior Owners filed cross motions for summary judgment to establish, among other things, which of them was entitled to the compensation due from NV Energy for the permanent easement needed for the Project. (4 App. 0720-0854, 5 App. 0855-1104, 6 App 1105-1296) The district court entered its order granting partial summary judgment in favor of Prior Owners on February 25, 2016 ("Partial Summary Judgment Order"). (7 App. 1465-69) The Partial Summary Judgment Order contains only one short paragraph explaining the basis for the district court's ruling:

> The first issue: who is entitled to damages under the permanent construction easement. The Court FINDS that HQ Metro, LLC, is entitled to damages because HQ Metro, LLC, was the owner of the subject property at the time of the initiation of the permanent construction easement in October 2013; not Clark County who purchased the property in 2015.[2] (7 App. 1466)

[2] The district court was mistaken in referring to the permanent easement as solely a "construction" easement and as to the 2015 date of Clark County's purchase of the

Based on a global settlement of the amount of compensation due for the easements between NV Energy and all defendants asserting an interest in the Property, the district court entered a Judgment and Final Order of Condemnation on September 20, 2016 ("Stipulated Order"), condemning the easements in favor of NV Energy and requiring NV Energy to deposit with the Clerk of the Court an additional $569,000, in addition to the $281,000 previously deposited, representing total just compensation due of $850,000. (8 App. 1570-1603) The Stipulated Order required the Clerk to pay $75,000 of the $850,000 deposited to LVMPD, as the tenant/occupant of the Property, as compensation due for the temporary construction easement. (8 App. 1573) The Stipulated Order deferred decision under NRS 37.115 as to apportionment of the Remaining Proceeds, representing compensation due for the permanent easement, as between Clark County as owner of the Property since October 28, 2014, and Prior Owners as owners of the Property prior to October 28, 2014. (8 App. 1573-74)

The district court thereafter apportioned the $775,000 to HQ Metro in the Order entered February 25, 2016 ("Apportionment Order"), from which Clark County appeals. (8 App. 1710-12) The district court based its Apportionment Order

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Property, which was actually in 2014. Additionally, the district court's reference to "initiation of the permanent construction easement in October 2013" appears to be an imprecise reference to entry of the Occupancy Order in October 2013.

on the Partial Summary Judgment Order, stating that the "request to apportion the remaining funds is consistent with [the Partial Summary Judgment Order]," and "[the district court] will not change its decision regarding partial summary judgment . . . and that the decision contained therein STANDS." (8 App. 1711)

SUMMARY OF ARGUMENT

Both the United States and Nevada Constitutions provide for just compensation where there is a *taking* of private property. *See* U.S. CONST. amend. V; NEV. CONST. art. 1, §§ 8(6) & 22. Under *Argier* and *Buzz Stew*, it is the owner of the property at the time of the taking who is entitled to the compensation. 114 Nev. at 139, 952 P.2d at 1391; 131 Nev. Adv. Op. at 10, 341 P.3d at 650. As successfully argued to this Court by Argier, the "taking occurs at the point of *physical occupation* of the subject property." (Emphasis added) 114 Nev. at 139, 952 P.2d at 1391. As shown by undisputed evidence in the record, Clark County owned the Property when NV Energy entered the Property to construct the Project.

In apportioning the Remaining Proceeds to HQ Metro, the district court misread this Court's decisions in *Argier* and *Buzz Stew* by concluding that entry of an order for occupancy under NRS 37.100(2),[3] without any physical occupation, constitutes a taking under the Nevada and United States Constitutions.

[3] NRS 37.100(2) provides:

The determining factor frequently cited by courts throughout the United States when deciding whether a taking has occurred and when the right to compensation has vested is whether the condemnor's actions have progressed past the point at which it may no longer abandon the proceedings. *Bank of America v. City of Glendale*, 4 Cal. 2d 477, 487, 50 P.2d 1035, 1039 (Cal. 1935); *In re Twelfth Ave. South*, 132 P. 868, 869 (Wash. 1913); *Griffith v. Drainage District*, 166 N.W. 570, 571 (Iowa 1918); *Lafontaine's Heirs v. Lafontaine's Heirs*, 107 A.2d 653, 658 (Md. 1953). None of these courts were persuaded that an interlocutory order effected a taking.

Another factor cited by the courts, including the Nevada Supreme Court, in deciding whether the vendor or purchaser is entitled to a condemnation award is whether a discount was paid for the property. *Argier*, 114 Nev. at 140, 952 P.2d at 1392; *Brooks Inv. Co. v. Bloomington*, 232 N.W.2d 911, 918 (Minn. 1975); *In re Twelfth Ave. South*, 132 P. at 869; *Griffith v. Drainage District*, 166 N.W. at 570.

> The plaintiff may move the court or a judge thereof at any time after the commencement of suit, on notice for such time as the court or judge may direct to the defendant if the defendant is a resident of the county or has appeared in the action, otherwise by serving a notice directed to the defendant on the clerk of the court, for an order permitting the plaintiff to occupy the premises sought to be condemned, pending the entry of judgment, and to do such work thereon as may be required for the easement, fee or property rights sought, according to its nature.

There is no evidence in this record of a discount in the purchase price paid by Clark County.

ARGUMENT

Standard of Review

This Court should review the district court's Apportionment Order under a *de novo* standard, because it was expressly based on the district court's prior entry of partial summary judgment. This Court reviews a grant of summary judgment *de novo*. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 732, 121 P.3d 1026, 1029, 1031 (2005). The pleadings and evidence must be viewed in the light most favorable to the nonmoving party. *Wood*, 121 Nev. at 732, 121 P.3d at 1029.

Review under a *de novo* standard is also appropriate when reviewing the district court's construction of NRS 37.115.[4] *Clark County v. Sun State Properties, Ltd.*, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003). However, even if this Court were to deem the apportionment of a condemnation award as an equitable proceeding, this Court's review under NRS 37.115 should still be *de novo*. *State ex rel. Dept. of*

[4] NRS 37.115 states,

> Where there are two or more estates or divided interests property sought to be condemned, the plaintiff is entitled to have the amount of the award for such property first determined as between plaintiff and all defendants claiming any interest therein. The respective rights of such defendants in and to such award shall be determined by the court, jury, or master in a later and separate hearing in the same proceeding and the amount apportioned by order accordingly.

Transp. v. Weston Inv. Co., 896 P.2d 3, 7-8 (Or. App. 1995). Additionally, because this case turns on when a taking occurred, which is a question of law, *de novo* review is appropriate. *See City of Las Vegas v. Cliff Shadows Prof. Plaza, LLC*, 293 P.3d 860, 866, 129 Nev. Adv. Op. 2 (2013), *citing McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 661, 137 P.3d 1110, 1121 (2006).

I. Under *Argier* and *Buzz Stew*, Clark County is Entitled to the Remaining Proceeds as the Owner When NV Energy Entered into Physical Possession to Construct the Project

In *Argier*, the Nevada Supreme Court held that the right to compensation vested in Argier who owned the property when the power company entered into possession of his property. 114 Nev. at 141, 952 P.2d at 1393. In deciding in Argier's favor, this Court accepted his argument "that the taking occurs at the point of *physical occupation* of the subject property." (Emphasis added) *Id.* at 139, 952 P.2d at 1391. The *Argier* decision leaves no ambiguity that the taking occurs and the right to compensation vests when the condemning agency actually enters into possession of the property, rather than when the court enters an order allowing for occupancy. *Id.* at 140-42, 952 P.2d at 1391-93.

Quoting from the leading treatise on eminent domain, the *Argier* Court stated, "[I]f the land is sold after condemnation proceedings have been instituted but before the *punctum temporis* of the taking, the purchaser, and not the vendor, is entitled to

the compensation."[5] *Id.* at 139, 952 P.2d at 1391(quoting 3 Julius Sackman, Nichols on Eminent Domain § 5.04[4]). In this context, Nichols describes the *punctum temporis* as the time at which the right of the public to the land and the right of the owner to the compensation become vested. 3 Julius Sackman, Nichols on Eminent Domain at § 5.04[4].

In determining that the *punctum temporis* of the taking occurs at the point of physical occupation of the property, the *Argier* Court cited to United States Supreme Court and other authorities. *See, e.g.*, *United States v. Dow*, 357 U.S. 17, 27, 78 S.Ct. 1039, 1047 (1958)(the government appropriates property and the right to compensation vests "on the date that it enter[s] into physical possession under order of the District Court"); *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 831, 107 S.Ct. 3141, 3145 (1987)(where governmental action has caused a permanent physical occupation of the land, the Court has consistently found a taking to the extent of the occupation); *Yee v. City of Escondido*, 503 U.S. 519, 527, 112 S.Ct. 1522, 1528 (1992)(the government effects a taking when it requires the landowner to submit to the physical occupation of her land).

In *Dow*, the United States Supreme Court left no doubt that the taking occurred and the right to compensation vested upon physical possession for the

[5] In its footnote citing to Black's Law Dictionary (4th ed. 1950), this Court defined the term *punctum temporis* as "A point of time; an indivisible period of time; the shortest space of time; an instant."

purpose of construction rather than upon entry of an order for immediate possession. 357 U.S. at 19, 78 S.Ct. at 1042-43. This distinction was made clear by the court, as shown in this excerpt:

> As requested in the petition, the District Court ordered the United States into the "immediate possession" of this strip. Within the next ten days the United States *entered into physical possession and began laying the pipe line through the tract*.

Id. (Emphasis added)

Similarly, in *Buzz Stew*, this Court recently held that a former owner had failed to establish that a taking occurred while it owned the property, and thus, any provision in the sales contract purportedly retaining the right to proceeds from a future condemnation action, reserved no property interest. 341 P.3d at 650. Citing to *Argier*, the Court stated, "[t]akings claims lie only with the party who owned the property at the time the taking occurred." *Id*.

Likewise, the compensation due in this case for the permanent easement vested in Clark County who owned the Property on January 8, 2015, when NV Energy entered into possession to construct the Project. There is no evidence in the record below that the $205,000,000 purchase price paid by Clark County for the Property was discounted due to any taking by NV Energy. On the contrary, when DiFederico appraised the Property for the Prior Owners in 2013, he concluded the Property was valued at $225,000,000, without any mention of or reduction for the easements or the Project. Yet, one year later he prepared a report concluding that

the compensation due for the easements and severance damages to the remainder was $1,517,500.

II. Because NV Energy Had the Right to Abandon the Proceedings After Entry of the Occupancy Order, No Taking Occurred and No Right to Compensation Vested Until NV Energy Entered the Property to Construct its Project

Case law from other jurisdictions uniformly supports Clark County's argument that it is entitled to the remaining compensation by reference to the point at which abandonment of the condemnation case is no longer possible. In *Bank of America v. City of Glendale*, the California Supreme Court reasoned that an interlocutory decree, similar to the district court's Occupancy Order, was not determinative in establishing who was entitled to a condemnation award, because the City of Glendale had the right to abandon the action after entry of the interlocutory decree. 4 Cal. 2d at 487, 50 P.2d at 1039. In ruling in favor of the purchaser of the property, the Court stated,

> The deeds under which the City of Glendale justifies its payment of said award to [the purchaser] . . . were all executed after the date of said interlocutory judgment and long prior to payment of said award and during the time when the city could have voluntarily abandoned said proceedings and dismissed the condemnation action. None of said deeds, as we have seen, contained any reservation of or any reference to said award. The law seems to be well settled, at least outside of this state, that a deed executed under those conditions conveys and transfers to the purchaser the right to the award.

Id. 4 Cal. 2d at 482, 50 P.2d at 1037.

The Washington Supreme Court came to a similar conclusion ruling in favor of the purchaser in *In re Twelfth Ave. South*. 132 P. at 869. In that case, the conveyance was made after the verdict and before payment into court of the compensation due for damages to adjacent land by the change of grade of certain streets by the City of Seattle. *Id.* In focusing on the point at which abandonment was still possible, the court stated,

> [T]he person owning the land at the time the right to take or damage it became irrevocable in the city should be entitled to the compensation for such damage. Prior to that time, both the right to take or damage and the obligation to pay for that right are inchoate, uncertain and contingent, and may never mature. An abandonment of the condemnation by the city would defeat the one and abort the other. Where the conveyance of the land pending condemnation is by deed without reservation, *the only certain and just rule is that the money to be paid for the right to take or damage the property shall be paid to the person or persons owning the property or having an interest therein at the time when the condemnation has reached that point of completion where it is not subject to abandonment*, and when the right to the compensation becomes an enforceable demand against the condemner.

Id. (Emphasis added)

In *Griffith v. Drainage District*, the Iowa Supreme Court ruled that the condemnation award belonged to the purchaser, because the drainage ditch was constructed after the sale when the condemnor was no longer at liberty to abandon the proceedings, despite an award having been fixed and paid to the vendor. 166 N.W. at 571. In ruling for the purchaser, the court stated,

> [M]aking the award gave the then owner no present rights, because the condemnor was at liberty to abandon the proposed improvement after it had fixed the amount that should be allowed for damages.

Id.

In *Lafontaine's Heirs v. Lafontaine's Heirs*, the court remanded the case for a determination of which party owned the property at the time the road was constructed across the affected property. 107 A.2d at 658. Again, the court relied on whether title had passed before or after the condemnor lost the right to abandon the proceedings. *Id.* at 657.

These cases are persuasive in Nevada because NRS 37.180(1) gives condemnors the right to abandon the proceedings "at any time after filing the complaint and before the expiration of 30 days after final judgment by serving on defendant and filing in court a written notice of abandonment. . . ." Here, NV Energy was entitled to abandon the proceedings any time after entry of the Occupancy Order, but not after construction of the Project, when Clark County's right to compensation had vested.

III. Apportionment of the Remaining Proceeds to HQ Metro Results in a Loss to Clark County and a Windfall to HQ Metro

There is no evidence or argument in the record of any discount or reduction in the $205 million purchase paid by Clark County due to the encumbrance of the permanent easement or construction of the Project. In fact, the 2013 DiFederico appraisal at $225 million failed to even mention the pending condemnation case. (5

App. 0892-1041) Under these circumstances, Clark County suffers a loss and HQ Metro receives a windfall if HQ Metro is allowed to keep the Remaining Proceeds.

In *Argier*, this Court was concerned about such a loss and windfall, citing to *Brooks Inv. Co. v. Bloomington*, 232 N.W.2d at 918 (Minn. 1975). 114 Nev. at 140, 952 P.2d at 1392. In *Brooks*, it was the original owner who was deprived of possession prior to the sale when the city built a street across his property, so the original owner was entitled to the compensation award. 232 N.W.2d at 920. In so holding, the *Brooks* court reasoned,

> If the rule were otherwise, the original owner of damaged property would suffer a loss and the purchaser of that property would receive a windfall. Presumably, the purchaser will pay the seller only for the real property interest that the seller possesses at the time of the sale and can transfer. In this case that was the real estate less the street unlawfully taken by the city.

Id. at 918. The same rationale applies to Clark County's purchase, and had the taking occurred before close of escrow on October 28, 2014, there would have been a discount for the taking.

In *In re Twelfth Ave. South*, in addition to its focus on the point at which abandonment was still possible, the Washington Supreme Court was also persuaded to rule in the purchaser's favor by the fact there was no discount in the purchase price due to the pending condemnation proceeding. 132 P. at 869.

In ruling for the purchaser of property on which a ditch was subsequently constructed by a drainage district, the Iowa Supreme Court was unpersuaded that the

condemnation award had been subtracted from the purchase price as urged by the seller. *Griffith v. Drainage District*, 166 N.W. at 570. As shown in the record before the district court in the instant case, there is no evidence of any discount in the purchase price paid by Clark County.

CONCLUSION

Clark County has shown that the district court erred in its reading of *Argier* and *Buzz Stew* by apportioning the Remaining Proceeds to HQ Metro who suffered no taking during its ownership of the Property. The *Argier* decision is clear that the taking occurs at "the point of physical occupation" of the property. 114 Nev. at 139, 952 P.2d at 1391. Here, Clark County was the owner on January 8, 2015, when NV Energy entered the property to start construction of the Project. It was at this time that NV Energy was past the point at which it could abandon the Project.

Applicable case law from other jurisdictions uniformly supports Clark County in holding that the party who owns the property at the time of the taking, as evidenced by physical entry, occupation and construction of the public project, is entitled to any condemnation award. In this case, Clark County indisputably owned

the Property at the *punctum temporis* of the taking and should, therefore, be awarded the Remaining Proceeds.

DATED this 29 day of June, 2017.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally space typeface using Word 2013 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and does not exceed 19 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 29 day of June, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of June, 2017, I submitted the foregoing APPELLANT'S OPENING BRIEF for filing via the Court's e-Flex Electronic Filing System. Electronic notification will be sent to the following:

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