

IN THE SUPREME COURT OF THE STATE OF NEVADA

MINERAL COUNTY; AND WALKER
LAKE WORKING GROUP,

Appellants

VS.

LYON COUNTY, CENTENNIAL
LIVESTOCK; BRIDGEPORT
RANCHERS; SCHROEDER GROUP;
WALKER RIVER IRRIGATION
DISTRICT; STATE OF NEVADA
DEPARTMENT OF WILDLIFE; AND
COUNTY OF MONO, CALIFORNIA,

Respondents.

No. 75917
Electronically Filed
Dec 03 2018 02:36 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

MOTION OF NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB,
WESTERN RESOURCE ADVOCATES, NATIONAL WILDLIFE
FEDERATION AND NEVADA WILDLIFE FEDERATION FOR LEAVE TO
FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

Natural Resources Defense Council, Sierra Club, Western Resource
Advocates, National Wildlife Federation and Nevada Wildlife Federation (“*amici*”)
respectfully submit this motion pursuant to Rule 29 of the Nevada Rules of Appellate
Procedure seeking leave to file the proposed brief *amicus curiae* in support of
appellants being filed in this case simultaneously with this motion.

The U.S. Court of Appeals for the Ninth Circuit previously granted two of the present *amici*, Natural Resources Defense Council and Sierra Club, leave to file an *amicus* brief in this case in support of neither side. In that brief Natural Resources Defense Council and Sierra Club urged the Ninth Circuit to certify to this Court a question about how the Nevada public trust doctrine relates to the Nevada system of appropriative water rights. The Ninth Circuit has now certified the question to this Court of whether the Nevada public trust doctrine applies to appropriative water rights and, if so, to what extent. In addition, as a result of an amended order, the Ninth Circuit has certified to this Court the additional question of whether, if the public trust doctrine applies and allows for reallocation of appropriative rights, such a reallocation of pre-existing rights constitutes a compensable taking under the Nevada Constitution. This Court has accepted both of these certified questions.

Amici (Natural Resources Defense Council and Sierra Club, now joined by Western Resource Advocates, National Wildlife Federation and Nevada Wildlife Federation) seek leave to file a brief *amicus curiae* in support of appellants to address the merits of the certified questions. *Amici* urge the Court to recognize that the longstanding Nevada public trust doctrine applies to appropriative water rights and to provide guidance harmonizing the public trust doctrine with the Nevada system of appropriative water rights. In addition, *amici* urge the Court to determine, for

multiple different reasons, that there is no basis for finding a “judicial taking” in this case.

The Natural Resources Defense Council (“NRDC”) is a non-profit environmental organization with more than 380,000 members nationwide, including more than two thousand members in Nevada. NRDC’s purpose is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends. NRDC works to restore the integrity of the elements that sustain life — air, land, and water — and to defend endangered natural places. The organization seeks to establish sustainability and good stewardship of the Earth as central ethical imperatives of human society and strives to protect nature in ways that advance the long-term welfare of present and future generations.

For more than three decades, NRDC has advocated for the protection of the nation’s waterways and wildlife, including ensuring enforcement of state and federal laws that protect important waterbodies for fisheries habitat and advancing application and interpretation of the public trust doctrine.

NRDC also works to protect the water resources of the western United States and Nevada in non-litigation settings. For example, in 2007, NRDC published “In Hot Water: Water Management Strategies to Weather the Effects of Global Warming” (<https://www.nrdc.org/sites/default/files/hotwater.pdf>). Pat Mulroy,

then-General Manager of the Southern Nevada Water Authority, wrote a foreword to "In Hot Water," noting that

"[t]he accompanying report and recommendations, and the conference that led to them, represent a first step toward addressing . . . the broad potential water management impacts of climate change, the many existing climate-related activities of water managers around the West, and a full range of recommendations for water managers and staff to consider as they incorporate global warming into the planning and management of their agencies."

NRDC brings substantial knowledge and experience pertinent to this case and to the legal issues in this case. For these reasons, NRDC will be of assistance to the Court.

The Sierra Club is a national nonprofit organization with 64 chapters and over 3.5 million members and supporters, and with over 6000 members in the Toiyabe Chapter in the State of Nevada and the eastern Sierra, dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and to restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives.

The Sierra Club's interest in this case and the legal issues raised by this case stems from its longstanding efforts to preserve Walker Lake, including by presenting testimony at Congressional hearings on the biological, cultural, and recreational values and critical needs of Walker Lake. The Sierra Club also has conducted numerous tours of the Walker River-to-Walker Lake ecosystem for its members who

recreate at Walker Lake, the public, the media, and state and local officials. Thus, the Sierra Club brings substantial knowledge and experience pertinent to this particular case that will be of assistance to the Court.

Western Resource Advocates (“WRA”) is a not-for-profit organization dedicated to protecting the West’s land, air, and water. WRE helps communities restore rivers, protect aquatic ecosystems, and reduce water pollution through environmentally sustainable management of the West’s scarce water resources. WRA has invested substantial time and resources advocating for sustainable water use practices in Nevada, as well as the protection and preservation of the Colorado River and the Great Basin’s waterways and terminal lakes. WRA maintains an office and three full-time employees in Carson City, Nevada.

In this case, WRA seeks to advance its mission to protect and preserve the important ecological and recreational values of Nevada’s surface waterways and terminal lakes, including Walker Lake. WRA has significant experience and expertise in matters that are relevant to this Court’s consideration of the certified questions. Accordingly, WRA’s participation as *amicus curiae* will aid this Court.

The National Wildlife Federation (NWF) is a national not-for-profit membership organization dedicated to the protection of the environment and natural resources, including water and aquatic resources. Founded in 1936, NWF is a member-supported nonprofit conservation, advocacy, and education organization.

NWF has more than six million members, partners, and supporters nationwide, and has affiliate organizations in fifty-one states and territories, including Nevada where its affiliate is the Nevada Wildlife Federation. NWF's mission is to educate, mobilize, and advocate to preserve and strengthen protection for wildlife and wild places. Among other things, this includes advocating for the protection of public trust resources and adequate water supply for wildlife to thrive.

The Nevada Wildlife Federation (NvWF) is Nevada's oldest non-profit conservation organization dedicated to sustaining Nevada's natural resources for wildlife through conservation, preservation, and education. NvWF was founded in 1950 by hunters, fishermen and other outdoor enthusiasts as a leading voice on issues that affect Nevada's wildlife, wetlands, lakes, streams, forests, public lands, and mountain ranges. NvWF is an affiliate of the National Wildlife Federation. NvWF has been actively engaged in Walker Lake issues for over two decades.

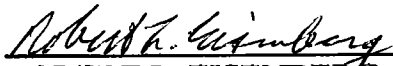
Counsel representing the *amici curiae*, John D. Echeverria, is a Professor of Law at Vermont Law School where he teaches, among other subjects, water resources law and property law. He has published numerous scholarly articles on western water issues. In addition, he has authored numerous *amicus curiae* briefs filed in other cases involving western water issues. *See e.g., United States v. Hage*, 810 F3d 712 (9th Cir. 2016); *Casitas Munic. Water Dist. v. United States*, 708 F/3d 1340 (Fed. Cir. 2013). Accordingly, *amicus* counsel has relevant experience and

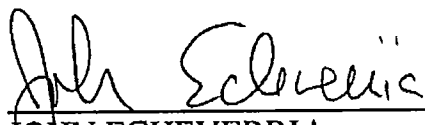
expertise that should be of assistance to the Court in resolving this case. John D. Echeverria is a member in good standing of the Bar of the District of Columbia, and is filing a motion pursuant to Court Rule 29 seeking permission to appear before the Court in this case.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the court grant them leave to file the brief amicus curiae being filed with the Court simultaneously with this motion.

DATED: Dec. 3, 2018


ROBERT L. EISENBERG
(Nevada Bar #0950)
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, NV 89519
Phone: 775-786-6868
rle@lge.net


JOHN ECHEVERRIA
(*Pro Hac Vice* application pending)
c/o Vermont Law School
164 Chelsea Street
South Royalton, VT 05068
Phone: 802-831-1386
jecheverria@vermontlaw.edu

COUNSEL FOR AMICI CURIAE

CERTIFICATE OF SERVICE

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date the foregoing was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Sean A. Rowe
Simeon M. Herskovits
Stephen B. Rye
Jerry M. Snyder
Roderick E. Walston
Steven G. Martin
Therese A. Ure
Gordon H. DePaoli
Adam Paul Laxalt
Bryan L. Stockton
Tori Sundheim

I further certify that on this date I served copies of the foregoing, postage prepaid, by U.S. Mail to:

Stacey Simon
Stephen M. Kerins
Office of the County Counsel
County of Mono
P.O. Box 2415
Mammoth Lakes, CA 93546

Dale Ferguson
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511

Roderick E. Walston
Steven G. Martin
Best Best & Kriegr LLP
2001 N. Main Street, Suite 390
Walnut Creek, CA 94596

DATED: Dec. 3, 2018

Chela Simon