

No. 75917

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

MINERAL COUNTY, et al.,
Appellants

vs.

LYON COUNTY, et al.,
Respondents.

ON CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Case No. 15-16342

MOTION OF *AMICUS CURIAE* LAW PROFESSORS FOR LEAVE TO FILE
BRIEF IN SUPPORT OF APPELLANTS

Pursuant to Nevada Rule of Appellate Procedure 29, University of Nevada,
Las Vegas, William S. Boyd School of Law Professor Bret Birdsong and the
professors listed in the appendix to this motion (collectively, “Proposed Amici”)
respectfully request leave to file the accompanying brief in support of Appellants’
Opening Brief.

The questions at issue in this proceeding have been accepted by this Court on certification from the United States Court of Appeals for the Ninth Circuit. That court previously granted several of the present Proposed Amici leave to file an amicus brief in this case in support of Appellants Mineral County and Walker Lake Working Group. In their brief before the Ninth Circuit, amici law professors argued that the federal district court erred in treating the public trust doctrine as new in Nevada law and in misconceiving the relationship between takings and water law. Alternatively, amici suggested that the Ninth Circuit certify the relevant issues to the Nevada Supreme Court. The Ninth Circuit has now certified two questions to this Court regarding: (1) whether the Nevada public trust doctrine applies to adjudicated appropriative water rights and, if so, to what extent; and (2) whether the application of the public trust doctrine to adjudicated water rights to allocate water to Walker Lake constitutes a taking. Proposed Amici believe that their brief will be helpful to the Court in answering these certified questions

Proposed Amici are professors and scholars who teach, research, and write on water and property law. Proposed Amici teach courses that cover the public trust doctrine, prior appropriation of water, and the constitutional issue of takings of property. As a group, Proposed Amici have decades of experience studying and teaching water and property law and have published numerous books and articles about those areas, including leading casebooks. Many also have written articles,

books, and other scholarly works specifically about the public trust doctrine, western water law and the federal takings clause. On the basis of their expertise and collective experience, Proposed Amici can inform the Court about the relationships among takings doctrine, the public trust doctrine, and prior appropriation of water. Those relationships are, of course, the central focus of the certified questions before the Court in this case.

Proposed Amici are joined and represented by their undersigned counsel, Bret Birdsong, Professor of Law at the William S. Boyd School of Law at the University of Nevada, Las Vegas. Professor Birdsong teaches, among other subjects, water law, including Nevada water law, and has written and/or edited articles and book chapters involving water and other natural resources. He has been assisted in the preparation of this brief by students as part of the law school's Thomas and Mack Legal Clinic. Professor Birdsong is a member in good standing of the Nevada State Bar.

For the foregoing reasons, Proposed Amici respectfully request that the Court grant leave to file the brief amicus curie being filed with the Court simultaneously with this motion.

DATED: December 6, 2018

/s/ Bret C. Birdsong
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Appendix List of Amici Law Professors
(institutional names for identification purposes only)

Adell L. Amos
Associate Dean and Clayton R. Hess Professor of Law
University of Oregon, School of Law

Reed D. Benson
Dickason Endowed Professor of Law
Chair, Natural Resources & Environmental Law Program
University of New Mexico School of Law

Bret C. Birdsong (author and counsel)
Professor of Law
William S. Boyd School of Law
University of Nevada, Las Vegas

Michael C. Blumm
Jeffery Bain Faculty Scholar & Professor of Law
Lewis and Clark Law School

Michelle Bryan
Professor of Law
University of Montana, Alexander Blewett, III, School of Law

Robin Kundis Craig
James I. Farr Presidential Endowed Professor of Law
The University of Utah S.J. Quinney College of Law

Holly Doremus
James H. House and Hiram H. Hurd Professor of Environmental Regulation
University of California, Berkeley School of Law

Harrison C. Dunning
Professor of Law Emeritus
University of California, Davis School of Law

Richard M. Frank
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University of California, Davis School of Law

Eric Freyfogle
Research Professor and Swanlund Chair Emeritus
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Mark Squillace
Raphael J. Moses Professor of Natural Resources Law
University of Colorado Law School

Sandra Zellmer
Professor and Director of Natural Resources Clinics
University of Montana, Alexander Blewett, III, School of Law

CERTIFICATE OF SERVICE

I hereby certify that the MOTION OF *AMICUS CURIAE* LAW PROFESSORS FOR LEAVE TO FILE BRIEF IN SUPPORT OF APPELLANTS was filed electronically with the Nevada Supreme Court on the 6th day of December, 2018. Electronic Service of the MOTION OF *AMICUS CURIAE* LAW PROFESSORS FOR LEAVE TO FILE BRIEF IN SUPPORT OF APPELLANTS shall be made in accordance with the Master Service List as follows:

Stephen B. Rye
Adam Laxalt
Simeon Herskovits

Bryan Stockton
Gordon DePaoli

Jerry M. Snyder
Therese Ure

I further certify that on the 6th day of December, 2018, I served, via USPS first class mail, a complete copy of the MOTION OF *AMICUS CURIAE* LAW PROFESSORS FOR LEAVE TO FILE BRIEF IN SUPPORT OF APPELLANTS on the following attorneys of record who are not registered for electronic service:

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/s/ Bret C. Birdsong
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