

IN THE SUPREME COURT OF THE STATE OF NEVADA

MINERAL COUNTY; and WALKER)
LAKE WORKING GROUP,)
)
Appellants,)
)
vs.)
)
LYON COUNTY; CENTENNIAL)
LIVESTOCK; BRIDGEPORT)
RANCERS; SCHROEDER GROUP;)
WALKER RIVER IRRIGATION)
DISTRICT; STATE OF NEVADA)
DEPARTMENT OF WIDLIFE;)
and COUNTY OF MONO,)
CALIFORNIA,)
)
Respondents.)

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Elizabeth A. Brown
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Case No. 75917

UNOPPOSED MOTION FOR EXTENSION OF TIME

Appellants Mineral County and Walker Lake Working Group, by and through undersigned counsel, respectfully move the Court to modify the briefing schedule set by the Court in its December 27, 2018, and February 22, 2019, *Orders* by extending the date on which Appellants' Reply Brief is due from May 13, 2019, until June 26, 2019. This Motion is made pursuant to NRAP 26(b)(1)(A) and NRAP 31(b)(3), and is supported by the attached Memorandum of Points and Authorities. Counsel for all parties to this appeal, and the Nevada State Engineer and the Walker River Paiute Tribe, have been contacted and stated that they do not oppose this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND FACTUAL SUMMARY

On July 18, 2018, the Court accepted a question of Nevada law certified to it by the United States Court of Appeals for the Ninth Circuit,¹ and set a briefing schedule as follows: Appellants were to have 30 days from the date of the July 18, 2018, *Order* in which to file their Opening Brief; Respondents were to have thirty days from service of the Opening Brief in which to file Answering Briefs; and Appellants were to have 20 days from the date of service of the last filed Answering Brief in which to file their Reply Brief. *Order Accepting Certified Question and Directing Briefing* at 2 (July 18, 2018). Thereafter, on August 8, 2018, the Court granted the parties' *Joint Motion for Modification of Briefing Schedule* and set briefing deadlines as follows: Opening Briefs would be due September 24, 2018; Answering Briefs would be due November 26, 2018; and Reply Briefs would be due December 28, 2018. After a second question of Nevada law was certified by the Ninth Circuit,² on September 7, 2018, the Court

¹ The first accepted certified question of state law is as follows: "Does the public trust doctrine apply to rights already adjudicated and settled under the doctrine of prior appropriation and, if so, to what extent?" *Order Accepting Certified Question and Directing Briefing* at 2 (July 18, 2018).

² The second accepted certified question of state law is as follows: "If the public trust doctrine applies and allows for reallocation of rights settled under the doctrine of prior appropriation, does the abrogation of such adjudicated or vested rights constitute a "taking" under the Nevada Constitution requiring payment of just

issued its *Order Accepting Second Certified Question and Modifying Briefing Schedule*, and ordered that Opening Briefs in this case were due on November 26, 2018, Answering Briefs were due 60 days after that date, and Reply Briefs were due 30 days after the filing of Answering Briefs.

After Mineral County and Walker Lake Working Group filed their Opening Brief on November 26, 2018, counsel for the Nevada State Engineer contacted the parties to propose a modification to the briefing schedule to accommodate the State Engineer's request for an extension of time to file its Amicus Brief, as outlined in the *Joint Motion for Extensions of Time* filed November 30, 2018. The extensions proposed in that Joint Motion gave the State Engineer until January 25, 2019, in which to file his Amicus Brief. The Joint Motion also requested an extension of the deadline for Answering Briefs until 60 days following the filing of the State Engineer's Amicus brief, and an extension of the deadline for the Reply Brief to 60 days following the filing of Answering Briefs.

On December 27, 2018, the Court issued an *Order* partially granting the parties' *Joint Motion for Extensions of Time*. The December 27 *Order* set the deadline for the State Engineer's Amicus Brief for January 25, 2019, and further set the deadline for Answering Briefs for 60 days following the filing of the State

compensation?" *Order Accepting Second Certified Question and Modifying Briefing Schedule* (Sept. 7, 2018).

Engineer's Amicus Brief. The Court later clarified the due date for Answering Briefs by an *Order* dated February 22, 2019, which set an Answering Brief deadline for April 12, 2019.

In its December 27 *Order* the Court declined to extend the deadline for the Reply Brief at that time. Therefore, pursuant to the Court's September 7, 2018, *Order Accepting Second Certified Question and Modifying Briefing Schedule*, the Reply Brief is due 30 days after the filing of Answering Briefs, or May 13, 2019. However, in its December 27, 2018, *Order*, the Court noted that Mineral County and Walker Lake Working Group could renew their request for an extension of the deadline for filing their Reply Brief after the filing of Answering Briefs if they deemed it necessary. *Order*, at 2 (Dec. 27, 2018). Appellants now move this Court for an extension because, in light of the large number of briefs to which Appellants must respond and the four and a half months since Appellants' Opening Brief was filed that the Respondents and their supporting Amici have had to prepare their briefs, Appellants respectfully consider an extension necessary for their Reply Brief.

II. LEGAL DISCUSSION

Pursuant to NRAP 26(b)(1)(A), "[f]or good cause, the court . . . may permit an act to be done after the time expires." NRAP further provides that "[t]he court will grant an initial motion for extension of time for filing a brief only upon a clear

showing of good cause.” NRAP 31(b)(3)(B). Good Cause has generally been defined as “a ‘substantial reason; one that affords a legal excuse.’” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (citing *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)).

The United States Court of Appeals for the Ninth Circuit certified two questions of law to this Court for decision. The questions certified to the Nevada Supreme Court by the Ninth Circuit Court of Appeals are of enormous import to the parties, their respective constituents, and to the State of Nevada as a whole. Thus, it is critical that each party be afforded the opportunity to fully and adequately brief the issues.

As a result of the State Engineer’s extension and the subsequent clarification of the modified briefing schedule in the Court’s February 22, 2019, *Order*, Respondents and supporting Amici were given roughly four and a half months to respond to Mineral County and Walker Lake Working Group’s Opening Brief instead of the originally scheduled 60 days. On top of those Answering Briefs, over half a dozen Amicus briefs in support of Respondents have been filed, to which Mineral County and Walker Lake Working Group also need to respond. In addition, counsel for Mineral County and Walker Lake Working Group have a major briefing deadline in a separate matter that falls in close proximity to the current May 13, 2019, deadline for their Reply Brief in this case.

An extension of time is requested for Mineral County and Walker Lake Working Group's Reply Brief to avoid prejudice resulting from the substantial extension requested by and granted to all other parties. Because the State Engineer's Amicus brief raised arguments in opposition to Appellants' positions, to which Appellants must respond, because the Respondent Parties and supporting Amici had significant additional time to prepare their many briefs and develop additional challenges to the Opening Brief, and because of the number of issues and arguments raised in the multiple briefs filed by Respondents and Amici, Mineral County and Walker Lake Working Group request a deadline of June 26, 2019, in which to file their Reply Brief in order to provide Appellants with a fair and reasonable opportunity to reply to all of the Answering and Amicus Briefs that have been filed in opposition to Appellants' Opening Brief.

Mineral County and Walker Lake Working Group assert that this Motion is sought in good faith, not for the purpose of delay, and that good cause exists to grant the motion. Counsel for Mineral County and Walker Lake Working Group are aware of no prejudice to any party resulting from the requested extension. Counsel for all parties, and the State Engineer and Walker River Paiute Tribe, have been contacted and do not oppose this motion.

III. CONCLUSION

For the reasons set forth above, Appellants Mineral County and Walker Lake Working Group respectfully assert that the requested extension of time requested herein is reasonable and warranted in this matter. As such, Appellants Mineral County and Walker Lake Working Group respectfully request that the Court extend the deadline for filing their Reply Brief to June 26, 2019.

Respectfully submitted this 22nd day of April, 2019,

/s Simeon Herskovits

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*Attorneys for Appellants Mineral County, Nevada
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Advocates for Community and Environment, and that on this 22nd day of April, 2019, I served a copy of the foregoing **UNOPPOSED MOTION FOR EXTENSION OF TIME**, by electronic filing to:

Gordon DePaoli
K. Kevin Benson
Brett C. Birdsong
Robert L. Eisenberg
Aaron D. Ford
Steven G. Martin
Nhu Q. Nguyen

Stephen B. Rye
Jerry M. Snyder
Bryan L. Stockton
Tori N. Sundheim
Therese A. Ure
Roderick E. Walston
Wes Williams, Jr.

I further certify that on the 22nd day of April, 2019, I served, via USPS first class mail, a complete copy of the foregoing **UNOPPOSED MOTION FOR EXTENSION OF TIME** on the following attorneys of record who are not registered for electronic service:

Stacey Simon, Acting County Counsel
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/s/ Iris Thornton
