

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. )

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Aug 15 2019 02:56 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 75917

**UNOPPOSED MOTION OF MONO COUNTY, CALIFORNIA**  
**TO FILE ANSWERING BRIEF**

Respondent County of Mono, California (“Mono County”), by and through its undersigned counsel, respectfully moves the Court for leave to file an Answering Brief after the April 12, 2019, deadline specified in the briefing schedule set by the Court in its February 22, 2019, *Order*. 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 amici 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,<sup>1</sup> and set a briefing schedule as follows: Appellants were to have 30 days from the date of the July 18, 2018, *Order* to file their Opening Brief; Respondents were to have 30 days from service of the Opening Brief to file Answering Briefs; and (2) Appellants were to have 20 days from the date of service of the last filed Answering Brief 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,<sup>2</sup> on September

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<sup>1</sup> 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).

<sup>2</sup> 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

7, 2018, the Court 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, 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

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constitute a "taking" under the Nevada Constitution requiring payment of just 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. Accordingly, at this time, 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 (December 27, 2018). On April 22, 2019, Mineral County and Walker Lake Working Group filed an *Unopposed Motion for Extension of Time*, requesting an additional 45 days beyond the original 30 days to file a Reply Brief, or June 26, 2019. Mineral County and Walker Lake Working Group contacted all parties to this appeal, as well as the Nevada State Engineer and the Walker River Paiute Tribe, and counsel for each stated that they do not oppose Appellants' *Unopposed Motion for Extension of Time*. The Court is currently reviewing Mineral County's and Walker Lake Working Group's motion.

## II.

### ARGUMENT

Pursuant to NRAP 26(b)(1)(A), “[f]or good cause, the court may extend the time prescribed by these Rules or by its order to perform any act, or may permit an act to be done after that time expires.” Similarly, where good cause is shown, the Court may permit an extension of time to file a brief pursuant to NRAP 31(b)(3)(B).<sup>3</sup> The Court has defined “good cause” to mean “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)). For the following reasons, Mono County asserts good cause exists to grant this Motion for leave to file its Answering Brief the April 12, 2019, deadline specified in the briefing schedule set by the Court in its February 22, 2019, *Order*.

On March 19, 2019, three weeks prior to the April 12, 2019, deadline for Respondents to file Answering Briefs, Mono County’s county administrative officer gave notice of her resignation. The resignation was a surprise to the Mono County Board of Supervisors, the County Counsel’s Office, and county managers. While all departments were required to adjust quickly, no department was more impacted by the resignation than the County Counsel’s Office, which was called

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<sup>3</sup> In pertinent part, NRAP 31(b)(3)(B) provides: “The court will grant an initial motion for extension of time for filing a brief only upon a clear showing of good cause.”

upon to adjust immediately its priorities and workload to assume certain administrative responsibilities so that core county functions continued without interruption. At the same time, the County Counsel's Office was also tasked with conducting a search for an interim county administrative officer, identifying an executive search firm to commence the recruitment of a permanent replacement, and coordinating all of these activities with the Board of Supervisors, other county staff, and the public.

At the time the county administrative officer announced her resignation, the Mono County Counsel's Office had reviewed the questions certified by the United States Court of Appeals for the Ninth Circuit but had not briefed the Board of Supervisors. Specifically, the Mono County Counsel's Office had not yet discussed with the Board of Supervisors whether to prepare an answering brief that responded to both questions, only one of the questions (and if so, which one), or neither of the questions. Previously, in its 2016 brief to the United States Court of Appeals for the Ninth Circuit, Mono County, on the direction of the Board of Supervisors, joined the public trust doctrine argument of Respondents Lyon County and Centennial Livestock but declined, as a governmental entity, to take a position on the takings issue. Since the United States Court of Appeals for the Ninth Circuit decision in July 2018, however, the composition of the Mono County Board of Supervisors has changed. Accordingly, the Mono County Counsel's

Office planned to again brief the Board of Supervisors and receive any new direction at the end of March 2019. However, those plans were disrupted by the resignation of the county administrative officer announced in late March. Consequently, the Mono County Counsel's Office did not have the opportunity to brief and receive direction from the Board of Supervisors on this matter until April 17, 2019, five days following the April 12, 2019, deadline of the Court's February 22, 2019, *Order*.

The Court has recognized that "the basic policy of this court is to favor a decision of each case upon the merits." *Bruno v. Schoch*, 94 Nev. 712, 713–14, 582 P.2d 796, 797 (1978) (citing *Hotel Last Frontier Corp. v. Frontier Properties, Inc.*, 79 Nev. 150, 380 P.2d 293 (1963)). "Filing a late answer is analogous to a motion to vacate a default, because the party filing the late answer receives the same opportunity to present mitigating circumstances[.]" *McMillen v. J.C. Penney Co., Inc.*, 205 F.R.D. 557, 558 (D. Nev. 2002) (internal citations omitted). "When neither this policy, nor any other significant policy is served by a decision refusing to vacate default judgment, such decision should be reversed. (*Bruno*, 94 Nev. at 714, 582 P.2d at 797 (citing *Adams v. Lawson*, 84 Nev. 687, 448 P.2d 695 (1968).) In recognition of the Court's basic policy disfavoring a default, Mono County requests the Court grant it leave to file an answering brief so that Mono County may have its arguments and positions considered in the Court's decision on the merits.

As explained above, Mono County's failure to timely file an answering brief by the April 12, 2019, deadline was neither intentional nor purposeful; rather, the Mono County Counsel's Office was working in good faith on Mono County's response by preparing to discuss and receive direction from the County Board of Supervisors on this case. The sudden and unexpected announcement of the county administrative officer's resignation unfortunately diverted the attention of this office to other pressing concerns. Moreover, granting the Motion will not prejudice any party. As explained above, Mono County's answering brief will not include new argument necessitating additional reply argument by Mineral County and Walker Lake Working Group; Mono County's answering brief will simply join Respondents Lyon County and Centennial Livestock's public trust doctrine argument. Finally, filing a late answering brief will not prejudice any party should the Court grant Mineral County's and Walker Lake Working Group's request for a 45-day extension to June 26, 2019 to file a Reply Brief.

In short, the abrupt resignation of the county administrative officer set off a chain of events that required the Mono County Counsel's Office to reprioritize its responsibilities and workload in a manner that prevented it from receiving direction on this case from the Board of Supervisors, ultimately resulting in Mono County's inability to timely prepare an answering brief by the April 12, 2019, deadline provided in the Court's *Order* dated February 22, 2019. Accordingly,



Mono County asserts that this Motion is sought in good faith, not for the purpose of delay, and that good cause and mitigating circumstances exist to grant the Motion. Further, granting this Motion is consistent with the Court's basic policy of favoring a decision of each case upon the merits. Finally, Mono County is not aware of prejudice to any party resulting from the requested leave. 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, Respondent County of Mono, California, respectfully asserts that the requested extension of time requested herein is reasonable and warranted. As such, Respondent County of Mono, California, respectfully requests that the Court grant this Motion for leave to file an answering brief<sup>4</sup> after the April 12, 2019, deadline specified in the briefing schedule set by the Court in February 22, 2019, *Order*.

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<sup>4</sup> Respondent Mono County has prepared an answering brief and is concurrently filing it with this Motion.

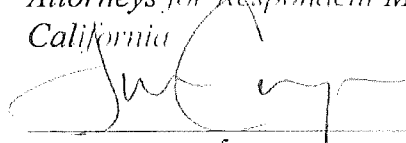
Respectfully submitted this 6th day of August, 2019,

Date: 8/15, 2019



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Date: August 6, 2019



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<sup>5</sup> Pursuant to SCR 42, Nevada counsel Jerry M. Snyder (NV BAR No. 6830) has filed a Motion to Associate with Mr. Jason Canger that includes (i) a complete Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42; (ii) a Certificate of Standing for Mr. Canger from the State Bar of California; and (iii) the State Bar of Nevada Statement Pursuant to Supreme Court Rule 42(3)(b).

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the LAW OFFICE OF JERRY M. SNYDER, and that on this \_\_\_\_\_ day of August, 2019, I served a copy of the foregoing **UNOPPOSED MOTION OF MONO COUNTY, CALIFORNIA TO FILE ANSWERING BRIEF** 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 15 day of August, 2019, I served, via USPS first class mail, a complete copy of the foregoing **UNOPPOSED MOTION OF MONO COUNTY, CALIFORNIA TO FILE ANSWERING BRIEF** on the following attorneys of record who are not registered for electronic service:

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

DATED: 8/15/19

  
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