

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.)

Electronically Filed
Aug 15 2019 02:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 75917

ON CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANSWERING BRIEF OF
RESPONDENT MONO COUNTY, CALIFORNIA

JERRY M. SNYDER, NV BAR #6830
LAW OFFICE OF JERRY M.
SNYDER
429 West Plumb Lane
Reno, NV 89509
Telephone: (775) 449-5647
*Attorneys for Lyon County, Centennial
Livestock, County of Mono, California*

JASON CANGER¹, CA BAR #296596
OFFICE OF THE COUNTY
COUNSEL OF MONO COUNTY
452 Old Mammoth Road, Suite 308
Mammoth Lakes, CA 93546
Phone: (760) 924-1712
*Attorneys for County of Mono,
California*

¹ 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

TABLE OF CONTENTS

	Page
STATEMENT OF ISSUES	1
IDENTITY OF RESPONDENT	1
STATEMENT OF CASE	2
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. MONO COUNTY JOINS THE POSITION AND ARGUMENTS OF RESPONDENTS LYON COUNTY, CENTENNIAL LIVESTOCK, AND SCHROEDER GROUP THAT THE NEVADA PUBLIC TRUST DOCTRINE DOES NOT AUTHORIZE REALLOCATION OF WATER RIGHTS ADJUDICATED IN JUDICIAL DECREES	3
II. WHILE MONO COUNTY DOES NOT JOIN IN THE REMAINDER OF THE ARGUMENTS CONTAINED IN THE ANSWERING BRIEF OF RESPONDENTS LYON COUNTY, CENTENNIAL LIVESTOCK, AND SCHROEDER GROUP, MONO COUNTY’S DECISION NOT TO JOIN IN THOSE ARGUMENTS SHOULD NOT BE CONSTRUED AS OPPOSITION.....	4
CONCLUSION	5

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).

TABLE OF AUTHORITIES

	Page
Federal Cases	
<i>Illinois Central R.R. Co. v. Illinois</i> 146 U.S. 387 (1892).....	3
<i>Mineral County, et al. v. Walker River Irrigation District, et al.</i> 900 F.3d 1027 (9th Cir. 2018)	1,2
State Cases	
<i>Lawrence v. Clark County</i> 127 Nev. 390 (2011)	3
<i>National Audubon Society v. Superior Court</i> 658 P.2d 709 (Cal. 1983)	3

STATEMENT OF ISSUES

In *Mineral County, et al. v. Walker River Irrigation District, et al.*, 900 F.3d 1027 (9th Cir. 2018), the United States Court of Appeals for the Ninth Circuit certified the following questions to this Court:

1. Does the public trust doctrine apply to rights already adjudicated and settled under the doctrine of prior appropriation and, if so, to what extent?
2. 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 compensation?

IDENTITY OF RESPONDENT

The respondent on this brief is Mono County, a county in and political subdivision of the State of California, which is the county where the Walker River originates and exits California. Respondent has water rights in the Walker River under the Walker River Decree. For convenience, respondent will hereinafter be referred to as “Mono County.”

STATEMENT OF THE CASE

Mono County adopts the statement of facts and procedural history set forth by the United States Court of Appeals for the Ninth Circuit in its certification order. *Mineral County*, 900 F.3d at 1028-1031.

SUMMARY OF ARGUMENT

The argument presented by Mono County in this brief consists principally of a joinder in certain arguments raised in the answering brief filed in this action by Mono County's co-respondents, Lyon County, Nevada; Centennial Livestock, California; and Schroeder Group, Nevada (collectively, "Lyon County Respondents"). Mono County joins, in its entirety, Section I of the Argument of Lyon County Respondents' answering brief that, in general, asserts the State of Nevada's public trust doctrine does not authorize the reallocation of water rights adjudicated in judicial decrees, such as the Walker River Decree. Mono County does not join Section II of the Argument of Lyon County's Respondents' Answering Brief, and takes no position, on the Ninth Circuit's second certified question related to whether the Nevada public trust doctrine, if construed as authorizing reallocation of adjudicated water rights, would result in a taking of property under the Constitution of the State of Nevada. In a separate part of this Answering Brief, Mono County explains its decision not to join Section II of the Argument of Lyon County Respondents' answering brief and that its decision

should be construed neither as a tacit endorsement of nor as an objection to the position that the Lyon County Respondents have taken in Section II of the Argument of their answering brief.

ARGUMENT

I. MONO COUNTY JOINS THE POSITION AND ARGUMENTS OF RESPONDENTS LYON COUNTY, CENTENNIAL LIVESTOCK, AND SCHROEDER GROUP THAT THE NEVADA PUBLIC TRUST DOCTRINE DOES NOT AUTHORIZE REALLOCATION OF WATER RIGHTS ADJUDICATED IN JUDICIAL DECREES

Mono County joins, in their entirety, the positions stated in Section I (subsections I.A., I.B., I.C., I.D., I.E., and I.F.) of the answering brief filed by the Lyon County Respondents, insofar as the Lyon County Respondents argue (i) generally, that the public trust doctrine of the State of Nevada does not authorize the reallocation of water rights adjudicated in judicial decrees, such as the Walker River Decree; and (ii) more specifically, that under the public trust doctrine, the states hold navigable waters and underlying lands in trust for the public and that each state is responsible for determining its own public trust responsibilities; that in *Lawrence v. Clark County*, 127 Nev. 390 (2011), this Court held that Nevada's public trust doctrine is based on the Nevada Constitution and statutes and the U.S. Supreme Court's decision in *Illinois Central R.R. Co. v. Illinois*, 146 U.S. 387 (1892), and that these principles require that the State of Nevada regulate water in the public interest rather than private interests; that Nevada's Constitution and

statutes do not authorize reallocation of adjudicated water rights; that the public trust doctrine principles established by the U.S. Supreme Court in *Illinois Central R.R. Co. v. Illinois* do not authorize reallocation of water rights in judicial decrees; that the decisions of other state courts, including the California Supreme Court's decision in *National Audubon Society v. Superior Court*, 658 P.2d 709 (Cal. 1983), do not support Appellants Mineral County's and Walker Lake Working Group's public trust arguments; and that Nevada's public trust doctrine does not authorize reallocation of water rights in the State of California for the benefit of public trust uses or responsibilities in the State of Nevada.

II. WHILE MONO COUNTY DOES NOT JOIN IN THE REMAINDER OF THE ARGUMENTS CONTAINED IN THE ANSWERING BRIEF OF RESPONDENTS LYON COUNTY, CENTENNIAL LIVESTOCK, AND SCHROEDER GROUP, MONO COUNTY'S DECISION NOT TO JOIN IN THOSE ARGUMENTS SHOULD NOT BE CONSTRUED AS OPPOSITION

Mono County has decided not to join in the portions of Lyon County Respondents' answering brief that focus on the applicability and operation of the Nevada Constitution (i.e., II.A., II.B., II.C., II.D., II.E., and II.F.). Generally, those portions address the question of whether an application of the public trust doctrine to authorize reallocation of water rights established under the Walker River Decree would result in an unconstitutional taking of property or a deprivation of due process under the Nevada Constitution. Mono County's decision to take no position on these issues in this case should not be construed as either a tacit

opposition to or tacit endorsement of the positions of the Lyon County Respondents, or any other respondent, in this case. Mono County reserves until a future date its right to state a position on these issues or any of them should it become necessary or desirable to do so in this Court or any other federal or state court.

CONCLUSION

For the foregoing reasons, the Court should hold that Nevada's public trust doctrine does not authorize reallocation of water rights adjudicated in judicial decrees, including the Walker River Decree.

Date: _____, 2019

Jerry Snyder, NV Bar No. 6830
429 W. Plumb Lane
Reno, NV 89509
Tel.: (775) 449-5647
*Attorneys for Respondent Mono County,
California*

Date: August 6, 2019

Jason Canger, CA SBN 296596
Office of the Mono County Counsel
452 Old Mammoth Road, Suite 308
P.O. Box 2415
Mammoth Lakes, CA 93546
Tel.: (760) 924-1700
*Attorneys for Respondent Mono County,
California*

CERTIFICATE OF COMPLIANCE (RULE 28.2)

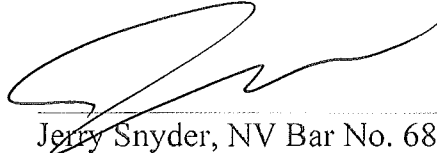
1. The undersigned attorneys hereby certify that this brief complies with the formatting (paper size, line spacing, margins, and page number) requirements of NRAP 32(a)(4); the typeface requirements of NRAP 32(a)(5); and the type style requirements of NRAP 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

2. The undersigned attorneys 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-point or more, and contains 976 words.

3. Finally, the undersigned attorneys certify that they have read this appellate brief, and to the best of their knowledge, information and belief, it is not frivolous or interposed for any improper purpose. The undersigned attorneys 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 and volume number, if any, of the transcript or appendix which the matter relied on is to be found. The undersigned attorneys understand that they 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.

Date: 8/15, 2019



Jerry Snyder, NV Bar No. 6830
429 W. Plumb Lane
Reno, NV 89509
Tel.: (775) 449-5647

*Attorneys for Respondent Mono County,
California*

Date: August 6, 2019



Jason Canger, CA SBN 296596
Office of the Mono County Counsel
452 Old Mammoth Road, Suite 308
P.O. Box 2415
Mammoth Lakes, CA 93546
Tel.: (760) 924-1700

*Attorneys for Respondent Mono County,
California*

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 **ANSWERING BRIEF OF RESPONDENT MONO COUNTY, CALIFORNIA** 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 _____ day of August, 2019, I served, via USPS first class mail, a complete copy of the foregoing **ANSWERING BRIEF OF RESPONDENT MONO COUNTY, CALIFORNIA** 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