

IN THE SUPREME COURT OF THE STATE OF NEVADA

MINERAL COUNTY; AND WALKER  
LAKE WORKING GROUP,

Appellants,

v.

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

Respondents.

Case No. 75917

Electronically Filed  
Feb 28 2020 02:42 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**EMERGENCY REQUEST**

**TO PERMIT AMICUS CURIAE  
NEVADA STATE ENGINEER  
FIVE ADDITIONAL MINUTES  
OF ARGUMENT TIME AT THE**

**MARCH 3, 2020**  
**ORAL ARGUMENT**

Amicus Curiae the Nevada State Engineer (State Engineer),<sup>1</sup> respectfully requests that this Court permit it to participate in the oral argument currently scheduled for March 3, 2020, at 11:00 a.m., and for 5 minutes of oral argument time, in addition to the time already allotted to the parties. In the alternative, the State Engineer requests that this Court permit undersigned counsel for the State entities (the State Engineer and Respondent Nevada Department of Wildlife (NDOW)) to present first among the Respondents at the oral argument. In this way, the State entities will be assured to have adequate time to fully address the Court's questions

---

<sup>1</sup> The Nevada State Engineer is part of the Nevada Department of Conservation and Natural Resources, Division of Water Resources.

for the State on the important issues of state water law presented by the Ninth Circuit's certified questions.

On Tuesday, March 3, 2020, this Court will be conducting a 60-minute oral argument, which allows each side, Appellants and Respondents, 30 minutes to present their case to the Court. The three counsel presenting argument for Respondents (representing all Respondents except for Mono County, which does not plan to participate) have reached an agreement to divide their argument time equally, giving each 10 minutes. Once it was clear that the State Engineer would also request time for argument, the State entities sought argument time from Respondents, out of the allotted 30 minutes, and/or agreement to present argument first. Counsel for Respondents did not agree, instead opting to proceed in the order in which Respondents appear on the caption.

The State Engineer is not a party to the underlying federal litigation that necessitated the certified questions in this case.<sup>2</sup> The unique posture and nature of the certified questions presented to this Court, however, means that this Court's decision will impact the State Engineer's work on behalf of Nevada. Any application of the public trust doctrine in Nevada to water rights already adjudicated and settled

---

<sup>2</sup> Indeed, it would be improper for the State Engineer to be situated as a party in the underlying case, as the agency serves as the officer of the district court and is responsible for distributing water pursuant to the Walker River Decree. NRS 533.220.

under the doctrine of prior appropriation, including potential reallocation of such vested rights, significantly implicates the State Engineer's role and responsibilities in adjudications statewide.

Under Nevada law, the State Engineer is responsible for overseeing the adjudication of vested water rights, up to and including entry of the order of determination that is ultimately affirmed or modified by a district court to become the judicial decree. *See* NRS 533.087 through NRS 533.185. During the adjudication process, the district court may also "refer the case or any part thereof for such further evidence to be taken by the State Engineer as it may direct, and may require further determination by the State Engineer, subject to the court's instructions." NRS 533.180.

Once a decree is entered, the State Engineer serves as an officer of the district court and is responsible for distributing water pursuant to the decree. NRS 533.220. Given the State Engineer's role in the adjudication process, as well as the role in the appropriation of the public's waters generally, the State Engineer has unique expertise and insight into the issues presented to this Court in the first certified question. The State Engineer's unique perspective on matters pertaining to the public's waters warrants attention in this matter during the scheduled oral argument.

It is similarly critical that NDOW be provided an amount of time equal to the other Respondents. NDOW's time should not be reduced simply because both

NDOW and the State Engineer are state agencies. NDOW is the agency of the State of Nevada charged with administering the wildlife laws of the state. NRS. §501.331. In fulfilling this critical statutory role, NDOW holds significant water rights for wildlife and other public purposes statewide. NDOW's interest as a party in the underlying case is its ownership of significant water rights in the Walker River Basin, for the benefit of wildlife and other public purposes upstream from the Walker Lake. Any redistribution of water will impact NDOW's ability to maintain these important public values. NDOW also works closely with the Walker River Basin Conservancy program to help achieve the goal to revitalize Walker Lake. Both NDOW and the State Engineer have unique, yet complementary, protectable public interests.

NDOW and the State Engineer recognize that this Court, of course, will dictate the questioning and issues it wants to address during oral argument. They also recognize that this Court's limited time must be used effectively. NDOW and the State Engineer believe, however, that allowing the Office of the Attorney General sufficient time to address questions regarding the State's public trust doctrine and other crucial issues of Nevada water law will be beneficial to the Court.

///

///

///

The State Engineer thus requests five minutes of additional oral argument time and/or permission from the Court to present the State entities' oral argument first among Respondents.

DATED this 28th day of February, 2020.

AARON D. FORD  
Attorney General

By: /s/ Heidi Parry Stern  
Heidi Parry Stern (Bar. No. 8873)  
Solicitor General  
Office of the Nevada Attorney General  
555 E. Washington Ave., Ste. 3900  
Las Vegas, NV 89101  
HStern@ag.nv.gov

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on February 28, 2020.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

I further certify that any of the participants in the case that are not registered as electronic users will be mailed the foregoing document by First-Class Mail, postage prepaid.

Sean A. Rowe Mineral County District Attorney P.O. Box 1210 Hawthorne, NV 89415 <i>Appellants Mineral County and Walker Lake Working Group</i>	Simeon M. Herskovits Advocates for Community and Environment P.O. Box 1075 El Prado, NM 87529 <i>Appellants Mineral County and Walker Lake Working Group</i>
Steven G. Martin Roderick E. Watson Best Best & Krieger LLP 2001 N. Main Street, Suite 390 Walnut Creek, CA 94596 <i>Respondents Lyon County and Centennial Livestock</i>	Jerry M. Snyder Law Office of Jerry M. Snyder 429 W. Plumb Lane Reno, NV 89509 <i>Respondents Lyon County, Centennial Livestock, and County of Mono, California</i>

**CERTIFICATE OF SERVICE, cont'd.**

Stephen B. Rye Lyon County District Attorney Old Courthouse 31 S. Main Street Yerington, NV 89447 <i>Respondent Lyon County</i>	Jason Thomas Canger Stephen M. Kerins Stacey Simon Office of the County Counsel of Mono County 452 Old Mammoth Rd, Suite 308 Mammoth Lakes, CA 93546 <i>Respondent County of Mono, California</i>
Gordon H. DePaoli Dale E. Ferguson Domenico R. DePaoli Woodburn and Wedge 6100 Neil Road, Suite 500 Reno, NV 89511 <i>Respondent Walker River Irrigation District</i>	Laura A. Schroeder Therese A. Ure Schroeder Law Offices, P.C. 10615 Double R Blvd., Suite 100 Reno, NV 89521 <i>Respondent Schroeder Group, Lyon County, and Centennial Livestock</i>

/s/ R. Carreau

An employee of the Office of the Attorney General