



ORIGINAL

FILED

DEC 06 2018
Electronically Filed
TAMARA S. PERO
DIST. CLERK
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

RODNEY ST. CLAIR,

Petitioner,

vs.

JASON KING, P.E., Nevada State
Engineer, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES,

Respondent.

NOTICE OF APPEAL

Notice is hereby given that Jason King, P.E., the State Engineer, in his capacity as the Nevada State Engineer, Department of Conservation and Natural Resources, Division of Water Resources (hereafter "State Engineer"), by and through counsel, Nevada Attorney General Adam Paul Laxalt and Deputy Attorney General James N. Bolotin, hereby appeals to the Nevada Supreme Court from this Court's Order granting Petitioner's Motion for Attorneys' Fees, entered by this Court on November 26, 2018. Notice of Entry of Order was served on November 29, 2018. A copy of said Notice of Entry of Order is attached hereto as Exhibit 1.

///

///

///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED this 5th day of December, 2018.

By:

CERTIFICATE OF SERVICE

Paul G. Taggart, Esq.
Timothy D. O'Connor, Esq.
TAGGART & TAGGART LTD
108 North Minnesota Street
Carson City, Nevada 89703

-2-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	Notice of Entry of Order	16

EXHIBIT 1

EXHIBIT 1

FILED

2018 DEC -3 PM 12:22

TAMI RAE SPENCER
DIST. COURT CLERK

1 CASE NO.: CV 20, 112

2 DEPT. NO.: 2

3
4
5
6 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF HUMBOLDT

8 ***

9 RODNEY ST. CLAIR,

10 Petitioner,

11 vs.

12 JASON KING, P.E., Nevada State Engineer,
13 DIVISION OF WATER RESOURCES,
14 DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,

15 Respondent.

NOTICE OF ENTRY OF ORDER

16
17 PLEASE TAKE NOTICE that on November 26, 2018, the above-entitled Court entered its Order
18 Granting Motion for Attorneys' Fees in the above-captioned matter, a copy of which is attached hereto
19 as Exhibit 1.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

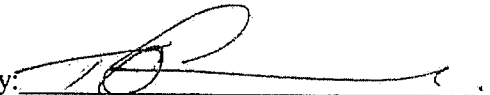
Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 - Telephone
(775) 883-9900 - Facsimile

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 29 day of November, 2018.

TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 – Telephone
(775) 883-9900 – Facsimile

By: 
PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
TIMOTHY D. O'CONNOR, ESQ.
Nevada State Bar No. 14098
Attorneys for Petitioner

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 – Telephone
(775) 883-9900 – Facsimile

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date, I served, or caused to be served, a true and correct copy of the foregoing as follows:

[X] By U.S. POSTAL SERVICE, by depositing for mailing in the United States Mail, with postage prepaid, an envelope containing the foregoing document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

James N. Bolotin, Esq.
Nevada Attorney General's Office
100 North Carson Street
Carson City, Nevada 89701
Attorney for Respondent

The Hon. Steven R. Kosach
P.O. Box 1950
Reno, NV 89505

DATED this 29th day of November, 2018.



Employee of TAGGART & TAGGART, LTD.

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775)882-9900 - Telephone
(775)883-9900 - Facsimile

EXHIBIT INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit Number

Description

Page Count

1. Order Granting Motion for Attorneys' Fees

11

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775)883-9900 -- Telephone
(775)883-9900 -- Facsimile

EXHIBIT 1

EXHIBIT 1

FILED

2018 NOV 26 PM 2:50

CLERK OF DISTRICT COURT

1 CASE NO.: CV 20, 112

2 DEPT. NO.: 2

3

4

5

6

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

7

8

9 RODNEY ST. CLAIR,

10

Petitioner,

11

vs.

12

JASON KING, P.E., Nevada State Engineer,
DIVISION OF WATER RESOURCES,
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,

13

14

15

Respondent.

16

17

THIS MATTER comes before the Court on Petitioner RODNEY ST. CLAIR's ("St. Clair") July 2, 2018, Motion for Attorneys' Fees (hereinafter "Motion"). Respondent, JASON KING, P.E. Nevada State Engineer, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES ("State Engineer") filed his Opposition to Motion for Attorneys' Fees on July 16, 2018. St. Clair filed his Reply in Support of Motion for Attorneys' Fees on July 23, 2018. Oral argument was held on October 19, 2018, with both parties appearing. Having considered the arguments contained in the papers and presented at oral argument, the Court hereby grants St. Clair's Motion. St. Clair is awarded attorney's fees requested in the Motion, and additional attorney's fees incurred in preparation and argument of the Motion, pursuant to NRS 18.010(2)(b) due to the State Engineer's claims maintained throughout the instant litigation without reasonable ground.

27

28

DISCUSSION AND BACKGROUND

1 St. Clair owns real property in Humboldt County, Nevada, that was purchased in August 2013.
2 St. Clair filed a Proof of Appropriation to prove that he owned a vested groundwater right which existed
3 on his property when he purchased the property (hereinafter the "Vested Right"). On November 8,
4 2013, St. Clair filed a change application to change the point of diversion of the vested water right to a
5 new well. The State Engineer issued Ruling 6287 on July 25, 2014, finding that the Vested Right was
6 valid, and the right did exist on St. Clair's property, but, without holding a hearing and without evidence
7 of intent to support the claim, that the Vested Right had been abandoned by the previous owner.¹ St.
8 Clair subsequently appealed the State Engineer's Ruling 6287 to this Court.
9

10 During the litigation before this Court, the State Engineer took multiple positions that
11 unnecessarily raised the expenses being incurred by St. Clair, without reasonable ground. On July 3,
12 2015, St. Clair filed a Request for Judicial Notice with the district court, requesting that the district court
13 review legal briefs and prior State Engineer decisions. The State Engineer did not file a timely
14 opposition to St. Clair's request, thereby waiving any objection to the request. Nevertheless, five months
15 later, without leave of Court or stipulation of counsel, the State Engineer filed his untimely Opposition
16 to St. Clair's Request for Judicial Notice. This late filing was in clear opposition to DCR 13(3). St.
17 Clair timely filed his Reply to the State Engineer's Opposition. The Court, after consideration of all
18 arguments and timeliness of filings, found it proper to take judicial notice of the documents requested
19 by St. Clair.

20 After initial oral argument on the merits of the abandonment matter, this Court found that the
21 State Engineer had no evidence to support the claim of abandonment. This Court found that the State
22 Engineer clearly violated Nevada law by relying only on non-use evidence while wholly ignoring the
23 element of intent – a necessary and pivotal requirement for abandonment. As such, this Court ruled for
24 St. Clair, specifically noting that "abandonment in Nevada is defined as the relinquishment of the right
25 by the owner with the intention to forsake and desert it."² Continuing, the Court explained that "if
26 there's only evidence of non-use, that's not good enough."³ Ultimately, the State Engineer demonstrated
27

28 ¹ Ruling 6287.

² January 5, 2016, Hearing Transcript, p. 79:21-23.

³ *Id.*, p. 80:20-21.

1 no argument, nor did he put forth any case law, which would suggest that the clear Nevada law is not
2 applicable in the instant matter.

3 St. Clair was then directed to draft a proposed order for this Court, and confer with the State
4 Engineer's office prior to submitting the order, as "it is common practice for Clark County district courts
5 to direct the prevailing party to draft the court's order."⁴ When the parties could not come to an
6 agreement on the proposed order, both parties' orders were submitted to this Court for consideration.
7 The State Engineer then objected to the proposed order, filing a 78-page, six-exhibit document with the
8 district court, despite having his order submitted in conjunction with St. Clair's proposed order. St.
9 Clair filed a response to the objection, and another hearing was eventually held on the matter of the
10 proposed order. This Court, after hearing the State Engineer's objections and St. Clair's responses,
11 found that St. Clair's order accurately reflected this Court's findings and overruled the State Engineer's
12 objections.

13 The State Engineer appealed the matter to the Nevada Supreme Court, maintaining the same
14 argument rejected by this Court – that St. Clair's Vested Right was abandoned based solely on non-use.
15 The Nevada Supreme Court upheld this Court's ruling, finding in relevant part that "there is not clear
16 and convincing evidence" that the Vested Right was ever abandoned.⁵ The Nevada Supreme Court
17 concluded that "the State Engineer misapplied Nevada law by presuming abandonment *based on nonuse*
18 *evidence alone.*"⁶

19 The Nevada Supreme Court also upheld this Court's decisions on both the Request for Judicial
20 Notice and St. Clair's proposed order. The Nevada Supreme Court ruled, as this Court did, that "the
21 State Engineer failed to preserve [the objection] with its opposition filed five months after St. Clair's
22 request for judicial notice."⁷ The Nevada Supreme Court also found that this Court had a hearing on the
23 issue of St. Clair's proposed order, after which "the district court found [the State Engineer's] objections
24 unpersuasive."⁸ The Nevada Supreme Court noted that the district court did not "neglect[] its duty to
25 make factual findings."⁹

26 ⁴ *King v. St. Clair*, 134 Nev. Adv. Op. 18, 8, 414 P.3d 314, 318 (2018).

27 ⁵ *St. Clair*, 134 Nev. Adv. Op. 18 at 7, 414 P.3d at 317.

28 ⁶ *St. Clair*, 134 Nev. Adv. Op. 18 at 8, 414 P.3d at 318.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

1 Upon completion of the appellate process, and after ensuring that he was a prevailing party, St.
2 Clair filed the Motion for Attorney's Fees before this Court. In the Motion St. Clair requested fees on
3 the basis of NRS 18.010(2)(b), arguing that the State Engineer, throughout the litigation, maintained a
4 position without reasonable ground relating to 1) the claims of abandonment of the Vested Right, 2) the
5 Request for Judicial Notice, and 3) this Court's proposed order process. St. Clair argued that the State
6 Engineer's meritless claims, motions, and objections unreasonably added to the cost of the litigation,
7 and St. Clair should not be held to suffer the burden of that cost alone. After briefing and a hearing on
8 the matter, in which both parties were present and put forth argument, this Court found that attorney's
9 fees were warranted in this matter due to the State Engineer's groundless claims, meritless objections,
10 and untimely motions. This Court finds that the State Engineer's maintenance of a claim without
11 reasonable ground demonstrates an appropriate situation for an award of attorneys' fees pursuant to NRS
12 18.010(2)(b).

13 STANDARD OF REVIEW FOR ATTORNEY'S FEES

14 Under NRS 533.450 parties feeling aggrieved from a decision of the State Engineer are allowed
15 to seek judicial review of the decision before a district court.¹⁰ "[T]he practice in civil cases applies" to
16 judicial reviews of a State Engineer decision.¹¹ The district court has discretion under NRS
17 18.010(2)(b), found in Title 2 of the Nevada Statutes, entitled "Civil Practice," to award attorney's fees
18 upon a finding that a party maintained a claim "without reasonable ground."¹² Additionally, NRS
19 18.010(2)(b) mandates that a Court "shall liberally construe the provisions of this paragraph in favor of
20 awarding attorney's fees in all appropriate situations."¹³

21 A review of Nevada Supreme Court rulings demonstrates that "for purposes of an award of
22 attorney's fees pursuant to NRS 18.010(2)(b), a claim is groundless if the allegations in the complaint .
23 . . are not supported by any credible evidence at trial."¹⁴ Further, unlike NRS 18.010(2)(a), NRS
24 18.010(2)(b) is clear that attorneys' fees can be granted "[w]ithout regard to the recovery sought . . ."
25 and therefore a monetary recovery is not a prerequisite. The Nevada Supreme Court has also visited
26

27 ¹⁰ NRS 533.450.

¹¹ NRS 533.450(8).

¹² NRS 18.010(2)(b).

¹³ NRS 18.010(2)(b).

¹⁴ *Bobby Berasini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1354, 971 P.2d 383, 387 (1998).

1 this question and concluded that subsection (b) did allow for attorneys' fees for nonmonetary
2 judgments.¹⁵ In reviewing this statute, the Nevada Supreme Court held that "NRS 18.010 provides no
3 time limits for motions for attorney's fees. Absent a specific statutory provision governing the time
4 frame in which a party must request attorney's fees, the timeliness of such requests, we conclude, is a
5 matter left to the discretion of the trial court."¹⁶ As such, district courts have discretion to determine
6 "[w]hether a motion for attorney's fees is timely."¹⁷

7 ANALYSIS

8 I. The State Engineer Maintained A Claim Against St. Clair's Request For Judicial Notice 9 Without Reasonable Ground.

10 On June 2, 2015, St. Clair requested that this Court take notice of several public documents. The
11 State Engineer did not timely object to the request. Five months later, however, on November 17, 2015,
12 the State Engineer filed an opposition without leave of Court or stipulation by St. Clair. Under DCR
13 13(3), any party opposing a motion is required to file and serve the opposition within 10 days after
14 service of the motion. St. Clair incurred attorneys' fees in responding to the State Engineer's untimely
15 filing. Because the filing was five months late, filed without leave of Court, and filed without a
16 stipulation by St. Clair, this Court finds the filing and the arguments made therein were brought without
17 reasonable ground. St. Clair is therefore awarded attorneys' fees associated with the State Engineer's
18 late opposition.

19 II. The State Engineer Maintained A Claim Against St. Clair's Proposed Order Without 20 Reasonable Ground.

21 St. Clair was ordered to prepare an order after prevailing before this Court. Requesting draft
22 orders from the prevailing party is a "common practice for Clark County district courts."¹⁸ After the
23 parties could not come to an agreement on the language to be included in the proposed order, this Court
24 accepted and reviewed both the State Engineer and St. Clair's proposed orders. The State Engineer also
25 contacted the Court separately and made its concerns about the proposed order known to the Court. This
26

27 ¹⁵ *Key Bank of Alaska v. Donnels*, 106 Nev. 49, 787 P.2d 382 (1990).

¹⁶ *Farmers Ins. Exch. v. Pickering*, 104 Nev. 660, 662, 765 P.2d 181, 182 (1988).

¹⁷ *Davidson v. Steffens*, 112 Nev. 136, 139, 911 P.2d 855, 857 (1996).

28 ¹⁸ *St. Clair*, 134 Nev. Adv. Op. 18 at 8, 414 P.3d at 318 (citing EDCR 1.90(a)(5) ("[A] judge or other judicial officer shall order the prevailing party to prepare a written judgment and findings of fact and conclusions of law.")).

1 Court held an additional hearing on the proposed order matter, in which this Court overruled each of the
2 State Engineer's objections. Ultimately, this Court found that St. Clair's proposed order was accurate,
3 accepted St. Clair's proposed order as drafted, and executed that order. Because the positions relating
4 to the proposed order that the State Engineer maintained were without reasonable ground in light of the
5 proceedings, St. Clair is awarded attorneys' fees associated with the State Engineer's objections to the
6 proposed order.

7 This Court finds that it would be against public policy to allow the State Engineer to maintain
8 unreasonable groundless claims and litigation positions, and have St. Clair pay attorneys' fees to defend
9 against the claims, only to allow the State Engineer to remain unaccountable for the attorneys' fees
10 incurred. This Court finds that the first consideration to be made in considering motions for attorneys'
11 fees is to look at what the movant spent, and then look at the non-movant and see what they spent. Here,
12 St. Clair spent \$41,881.25, plus additional fees in preparation and argument for the instant motion
13 totaling \$8,143.75, and the State Engineer was represented by the Attorney General's Office. This Court
14 finds in its discretion that the State Engineer's actions and litigation positions taken in the instant case
15 qualify as an "appropriate situation to punish for and deter"¹⁹ such groundless positions, because "such
16 claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious
17 claims and increase the costs of engaging in business and providing professional services to the
18 public."²⁰ In short, St. Clair would not have expended tens of thousands of dollars on this matter had
19 the State Engineer followed otherwise clear Nevada law and past State Engineer practice. St. Clair was
20 put in an unfair position, and the State Engineer should compensate him for the attorneys' fees spent on
21 countering the State Engineer's groundless arguments.

22 **III. The State Engineer Maintained Claim of Abandonment Against St. Clair Without**
23 **Reasonable Ground.**

24 The rules of civil practice apply to judicial review taken under NRS 533.450.²¹ NRS
25 18.010(2)(b) is a rule of civil practice, and dictates when attorney's fees may be awarded. Under that
26 statute, attorney's fees may be granted when a claim is maintained without reasonable ground.²² NRS

27 ¹⁹ NRS 18.010(2)(b).

28 ²⁰ *Id.*

²¹ NRS 533.450(8).

²² NRS 18.010(2)(b).

1 18.010(2)(b) further mandates that this Court is required to "liberally construe the provisions of this
2 paragraph in favor of awarding attorney's fees in all appropriate situations." A claim is groundless under
3 NRS 18.010(2)(b) "if the allegations in the complaint . . . are not supported by any credible evidence at
4 trial."²³

5 Here, throughout the district court and Nevada Supreme Court litigation, the State Engineer was
6 unable to point to any evidence whatsoever to support his claim of abandonment. The State Engineer
7 relied only on non-use evidence which, under clear Nevada law, is not adequate. The State Engineer
8 brought forth no evidence of intent to abandon, which is a required element to maintain a claim of
9 abandonment. This fact was recognized by this Court after the district court proceedings in its order,²⁴
10 and recognized again at the Nevada Supreme Court in its ruling.²⁵ Notably, the State Engineer never
11 submitted evidence of intent to abandon the vested water right, and relied only on nonuse evidence. The
12 State Engineer had a history of correctly implementing and analyzing the law of abandonment in
13 Nevada, yet erroneously pursued his abandonment claim against St. Clair based solely on nonuse
14 evidence. As there was no evidence to support a claim of abandonment, St. Clair is entitled to recover
15 reasonable attorneys' fees incurred in defending against a claim maintained without reasonable ground.

16 The State Engineer made a series of arguments as to why St. Clair should not be awarded
17 attorneys' fees pursuant to NRS 18.010(2)(b). Each argument was unpersuasive. First, the State
18 Engineer argued that NRS 533.450(7), which limits costs against the State Engineer should additionally
19 limit attorney's fees against the State Engineer. However, the State Engineer recognized in his argument
20 that NRS 533.450 "does not include a provision for awarding attorney fees, but includes a provision
21 regarding the recovery of costs, as in civil cases."²⁶ In Nevada, attorney fees are not considered costs.²⁷
22 Because "the principle of statutory construction [] 'the mention of one thing implies the exclusion of
23 another,'"²⁸ this Court cannot find that the State Engineer is exempt from paying attorneys' fees in
24 appropriate situations.

25
26 ²³ *Bobby Berosini, Ltd.*, 114 Nev. at 1354, 971 P.2d at 387.

27 ²⁴ See April 22, 2016, Order Overruling State Engineer's Ruling 6287, CV 20, 112, at 12:13-14.

28 ²⁵ *St. Clair*, 134 Nev. Adv. Op. 18 at 7, 414 P.3d at 317.

²⁶ Opposition to Motion for Attorneys' Fees at 7:20-22 (emphasis added).

²⁷ *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 287, 890 P.2d 769, 776 (1995).

²⁸ *Rural Tel. Co. v. Pub. Utils. Comm'n*, 133 Nev. Adv. Op. 53 at 5, 398 P.3d 909, 911 (2017) (quoting *Sonia F. v. Eighth Jud. Dist. Court*, 125 Nev. 495, 499, 215 P.3d 705, 708 (2009)).

1 Second, the State Engineer argued that *Fowler*,²⁹ *Wrenn*,³⁰ and *Zenor*³¹ each prohibit an award
2 of attorney's fees under NRS 18.010(2)(b) in a judicial review action. These cases are inapplicable for
3 numerous reasons. First and foremost, none of these cases involve NRS 533.450 appeals, and are limited
4 to appeals made under NRS 233B or NRS 616. The substantial difference between NRS 533.450 and
5 other statutes is that NRS 533.450 authorizes the "practice in civil cases" including NRS 18.010.³²
6 Additionally, the Nevada Supreme Court has limited awards of attorney's fees in NRS 233B cases
7 because NRS 233B includes specific limiting language stating that "the provisions of this chapter are
8 the *exclusive* means of judicial review . . ." ³³ The applicable statute at hand, NRS 533.450, , includes
9 no such limiting provision. Finally, the State Engineer is specifically exempt from the provisions of
10 NRS 233B, making the State Engineer's lineage of case law inapplicable here.³⁴

11 Third, the State Engineer's arguments relating to the fact that St. Clair's claims were not
12 monetary in nature do not have any impact on recovery under NRS 18.010(2)(b). NRS 18.010(2)(b) is
13 clear that attorneys' fees can be granted "[w]ithout regard to the recovery sought . . ." and therefore a
14 monetary recovery is not a prerequisite.³⁵ The Nevada Supreme Court has explained that subsection (b)
15 did allow for attorneys' fees for nonmonetary judgments in proper situations.³⁶

16 Finally, the State Engineer argued that any attorneys' fees that were expended based on the
17 Nevada Supreme Court litigation are not warranted. NRS 18.010(2)(b) is silent with respect to
18 attorneys' fees on appeal. Further, Nevada law appears to be silent on the matter. Recently, the Nevada
19 Supreme Court relied on other jurisdictions' interpretations of fee shifting statutes to find that appellate
20 fees can be granted.³⁷

21 The State Engineer's conduct regarding the abandonment claim warrants attorney's fees in this
22 matter. The State Engineer maintained an unsupported claim of abandonment, and despite his office's
23 knowledge of the requirements of the claim, proceeded with the claim against St. Clair anyway. This
24

25 ²⁹ *State, Dep't of Human Res., Welfare Div. v. Fowler*, 109 Nev. 782, 858 P.2d 375 (1993).

³⁰ *State Indus. Ins. Sys. v. Wrenn*, 104 Nev. 536, 539, 762 P.2d 884, 886 (1988).

26 ³¹ *Zenor v. State, Dep't of Transp.*, 134 Nev. Adv. Op. 14, 412 P.3d 28 (2018).

³² NRS 533.450(8).

27 ³³ *Fowler*, 109 Nev. at 785, 858 P.2d at 377 (emphasis added).

³⁴ NRS 233B.039(j).

28 ³⁵ NRS 18.010(2)(b).

³⁶ *Key Bank of Alaska*, 106 Nev. 49, 787 P.2d 382.

³⁷ *In re Estate and Living Trust of Miller*, 125 Nev. 550, 216 P.3d 239 (2009).

1 Court finds that the State Engineer's maintenance of its claim against St. Clair was without reasonable
2 ground, and it would be manifestly unjust to require a litigant to expend attorney's fees defending against
3 such a claim without reimbursement. As such, the Court finds it proper to award St. Clair attorney's
4 fees:

5 States with fee-shifting rules or statutes similar to Nevada's have held they
6 apply to appellate fees. Additionally, nothing in the language of NRCP
7 68 and NRS 17.115 suggests that their fee-shifting provisions cease
8 operation when the case leaves trial court. We therefore hold that the fee-
shifting provisions in NRCP 68 and NRS 17.115 extend to fees incurred
on and after appeal.³⁸

9 Similarly, nothing in the language of NRS 18.010 suggests that its fee-shifting provisions cease
10 operation when the case leaves district court. The State Engineer cites to *Bd. of Gallery of History, Inc.*
11 *v. Datecs Corp.*³⁹ for the proposition that fees on appeal cannot be granted pursuant to NRS 18.010(2).
12 With seemingly competing rulings on this issue, the Court finds that the more recent controlling law,
13 and the law with the more beneficial public policy to this case, is to allow fees for the appellate process
14 under NRS 18.010(2). This approach maintains the legislature's mandate of "liberally constru[ing] the
15 provisions of [NRS 18.010(2)(b)] in favor of awarding attorney's fees in all appropriate situations."⁴⁰
16 This approach additionally follows more recent Nevada case precedent.

17 **IV. St. Clair's Motion Was Timely.**

18 No mention of time frames to file a motion is contained in NRS 18.010, leaving such a
19 determination of timeliness to the district court's discretion.⁴¹ Indeed, the Nevada Supreme Court has
20 instructed that "[a]bsent a specific statutory provision governing the time frame in which a party must
21 request attorney's fees, the timeliness of such requests, we conclude, is a matter left to the discretion of
22 the trial court."⁴² In *Pickering*, the Court determined that it was proper for a party seeking attorney's
23 fees to make such a request upon completion of the appellate process, "as soon as he was assured that
24 he was the prevailing party within the meaning of NRS 18.010(2)."⁴³

25
26 ³⁸ *Id.* (internal quotations omitted).

27 ³⁹ 116 Nev. 286, 288, 994 P.2d 1149, 1150 (2000).

28 ⁴⁰ NRS 18.010(2)(b).

⁴¹ NRS 18.010; see also *Pickering*, 104 Nev. at 662, 765 P.2d at 182.

⁴² *Pickering*, 104 Nev. at 662, 765 P.2d at 182.

⁴³ *Id.*

1 St. Clair filed his Motion after he completed the appellate process and ensured he was a
2 prevailing party. This Court, after hearing argument, determined within its discretion that it would hear
3 the Motion given the facts and circumstances of the case. St. Clair during the hearing argued that the
4 State Engineer was not prejudiced by the timing of the filing. The State Engineer made no claims or
5 showing of unfairness, surprise, or prejudice.

6 The State Engineer further argued that NRCP 54(d)(2) should bar a request for attorneys' fees
7 under NRS 18.010. This logic was flawed for multiple reasons. First, NRCP 54(d)(2)'s 20-day timeline
8 for filing a motion does not bind NRS 18.010. In *Pickering*, a similar argument was made to limit an
9 NRS 18.010 motion based on NRCP 59(e). The Nevada Supreme Court declined to extend a time limit
10 imposed by NRCP 59(e) to NRS 18.010, citing to *White v. New Hampshire Department of Employment*
11 *Security*, which held "we do not think that application of Rule 59(e) to [attorney's] fee requests is either
12 necessary or desirable to promote finality, judicial economy, or fairness."⁴⁴ Here, similar logic prevails.
13 The timelines given in NRCP 52(d)(2) are no more necessary or desirable to promote finality, judicial
14 economy, or fairness as those included in NRCP 59(e). Additionally, St. Clair was diligent in seeking
15 fees, making his Motion shortly after completion of the appellate process and ensuring that he was a
16 prevailing party. Therefore, the Court finds that the Motion was made in a timely manner.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

⁴⁴ *Id.*

CONCLUSION

IT IS HEREBY ORDERED that St. Clair's Motion for Attorneys' Fees is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that the State Engineer shall reimburse St. Clair for his attorneys' fees in the amount of \$50,025.00.

IT IS HEREBY FURTHER ORDERED that the State Engineer shall forward the amount of \$50,025.00 directly to TAGGART & TAGGART, LTD., counsel for St. Clair, at 108 North Minnesota Street, Carson City, Nevada, 89703 within thirty (30) days from service of this order, unless otherwise ordered by this Court or a Court of competent jurisdiction.

IT IS SO ORDERED.

DATED this 20 day of November, 2018.


DISTRICT COURT JUDGE

Respectfully submitted by:

TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 – Telephone
(775) 883-9900 – Facsimile

By: /s/ Timothy D. O'Connor
PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
TIMOTHY D. O'CONNOR, ESQ.
Nevada State Bar No. 14098
Attorneys for Petitioner



ORIGINAL

FILED

DEC 06 2018

TAMI RAE SPERO
DIST. COURT CLERK

Case No. CV 20,112

Dept. No. 2

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

RODNEY ST. CLAIR,

Petitioner,

vs.

JASON KING, P.E., Nevada State
Engineer, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES,

Respondent.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Jason King, P.E., in his official capacity as the Nevada State Engineer, the Nevada Department of Conservation and Natural Resources, Division of Water Resources.

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Senior Judge Steven R. Kosach.

3. Identify each appellant and the name and address of counsel for each appellant:

a. The appellant is Jason King, P.E., in his official capacity as the Nevada State Engineer, the Nevada Department of Conservation and Natural Resources, Division of Water Resources (hereafter "State Engineer").

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

b. The attorneys for the State Engineer:

Adam Paul Laxalt, Attorney General
James N. Bolotin, Deputy Attorney General
Nevada Bar No. 13829
100 North Carson Street
Carson City, Nevada 89701-4717

4. Identify each respondent and the name and address of appellate counsel, if known, for each:

a. The respondent is Rodney St. Clair.

b. Upon information and belief, the following attorneys will represent Rodney St. Clair in the appeal:

Paul G. Taggart, Esq.
Nevada Bar No. 6136
Timothy D. O'Connor, Esq.
Nevada Bar No. 14098
Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703

5. Indicate whether any attorney identified above in response to questions 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted the attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

The attorneys identified above in response to questions 3 and 4 are licensed to practice law in Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Appellant was represented by the Office of the Attorney General before the district court.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellant is represented by the Office of the Attorney General on appeal.

///

1 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and
2 the date of entry of the district court order granting such leave:

3 Appellant did not seek leave to proceed in forma pauperis and was not
4 granted leave to proceed in forma pauperis.

5 9. Indicate the date the proceedings commenced in the district court (e.g., date
6 complaint, indictment, information, or petition was filed):

7 A petition for judicial review of State Engineer Ruling 6287 was filed on
8 August 22, 2014. The motion for attorneys' fees, at issue in this appeal, was
9 served and filed on or about June 28, 2018.

10 10. Provide a brief description of the nature of the action and result in the district
11 court, including the type of judgment or order being appealed and the relief granted
12 by the district court:

13 The State Engineer is appealing the district court's decision to grant Rodney
14 St. Clair's Motion for Attorneys' Fees in the amount of \$50,025.00.
15 Following the District Court's decision granting Rodney St. Clair's Petition
16 for Judicial Review, with Notice of Entry of Order served and filed on or
17 about April 27, 2016, and following the Supreme Court's affirmance of the
18 District Court's order, with Remittitur served and filed on or about May 4,
19 2018, Rodney St. Clair served and filed his Motion for Attorneys' Fees on or
20 about June 28, 2018. Following a full briefing on the issue from both parties,
21 and oral argument held October 19, 2018, the District Court ruled from the
22 bench, granting Rodney St. Clair's Motion for Attorneys' Fees, including the
23 additional fees incurred preparing and arguing the Motion for Attorneys'
24 Fees. That decision is being appealed by the State Engineer.

25 ///

26 ///

27 ///

28 ///

11. Indicate whether the case has previously been subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

Yes, the underlying case on the merits was previously the subject of an appeal to the Supreme Court.

JASON KING, P.E., NEVADA STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, Appellant, vs. RODNEY ST. CLAIR, Respondent, Supreme Court Case No. 70458.

12. Indicate whether this appeal involves child custody or visitation:

This appeal does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Based upon the nature of the appeal, and the arguments that will be raised therein, this case does not involve the possibility of settlement.

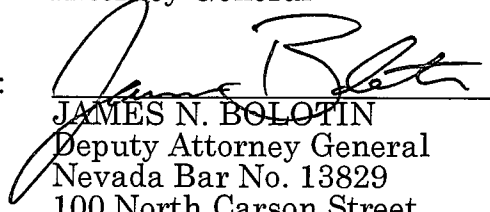
AFFIRMATION

The undersigned does hereby affirm that the preceding Case Appeal Statement does not contain the social security number of any person.

DATED this 5th day of December, 2018.

ADAM PAUL LAXALT
Attorney General

By:


JAMES N. BOLOTIN
Deputy Attorney General
Nevada Bar No. 13829
100 North Carson Street
Carson City, Nevada 89701-4717
Tel: (775) 684-1231
Fax: (775) 684-1108
Email: JBolotin@ag.nv.gov
*Attorney for Respondent,
State Engineer*

1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of the State of Nevada, Office of the Attorney
3 General, and that on this 5th day of December, 2018, I served a true and correct
4 copy of the foregoing CASE APPEAL STATEMENT, by placing said document in the
5 U.S. Mail, postage prepaid, addressed to:

6 Paul G. Taggart, Esq.
7 Timothy D. O'Connor, Esq.
8 TAGGART & TAGGART LTD
108 North Minnesota Street
Carson City, Nevada 89703

9
10 
Dorene A. Wright

Case #: CV-0020112

Judge: KOSACH, STEVEN

Date Filed: 08/22/14 Department: 30

Case Type: OTHRSP OTHER SPECIAL PROCEEDINGS

Title/Caption: Rodney St. Clair
vs.
Jason King P.E., et al.

Comments: ORDER OF RECUSAL FROM DEPT 2

Defendant(s)
KING, JASON

Attorney(s)
ATTORNEY GENERAL
CAVIGLIA, JUSTINA A.

Defendant(s)
DIVISION OF WATER RESOURCES

Attorney(s)
ATTORNEY GENERAL

Defendant(s)
DEPARTMENT OF CONSERVATION

Attorney(s)
ATTORNEY GENERAL

Plaintiff(s)
ST. CLAIR, RODNEY

Attorney(s)
TAGGART, PAUL G.

Disp/Judgment: JRBT Date: 04/22/16

Hearings:

Date	Time	Hearing	Reference
		ORAL ARGUMENTS - CONT'D	K/MF/RW8/12
11/03/15	3:00	CONT'D ORAL ARGUMENTS	K/J/P10/20
1/05/16	10:00	CONT'D ORAL ARGUMENTS (CARSON CITY)	ORD 1/4/16
10/19/18	9:00	MOTIONS HEARING (CARSON CITY)	CT 8/3/18

Filings:

Date	Pty	Filing	Fees
8/22/14	P	PETITION FOR JUDICIAL REVIEW	230.00
8/22/14	P	NOTICE OF APPEAL RULING 6287 OF THE NV STATE ENGINEER	
9/11/14	D	NOTICE OF INTENT TO DEFEND	
9/25/14	D	SUMMARY OF RECORD ON APPEAL	
10/13/14	P	STIPULATION AGREEING TO BRIEFING SCHEDULE	
11/19/14	P	STIPULATION AND ORDER EXTENDING BRIEFING SCHEDULE	
12/08/14	P	PETITIONER'S OPENING BRIEF	
1/20/15	D	STIPULATION AND ORDER FOR EXTENTION OF TIME	
1/22/15	D	RESPONDENT'S ANSWERING BRIEF	
2/23/15	P	STIPULATION & ORDER EXTENDING BRIEFING SCHEDULE	
2/27/15	P	PETITIONER'S REPLY BRIEF	
2/27/15	P	PETITIONER'S APPENDIX	
4/23/15	P	REQUEST FOR SUBMISSION	
6/03/15	P	REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PETITIONER'S REPLY	
7/02/15	P	PETITIONER'S REQUEST FOR ORAL ARGUMENT	
7/02/15	P	APPLICATION FOR SETTING	
7/02/15	P	REQUEST TO SUBMIT	
8/06/15	D	NOTICE OF CHANGE OF ATTY FOR RESPONDENT (SEE EVENTS)	
8/06/15	D	NON-OPPOSITION TO PETITIONER'S REQ. FOR ORAL ARGUMENT	

8/10/15 P STIPULATION AND ORDER TO EXTEND TIME
10/20/15 D NOTICE OF CHANGE OF ATTORNEY (CAVIGLIA FOR FAIRBANK)
11/03/15 O MINUTES - CONTINUED ORAL ARGUMENTS
11/16/15 O ORDER OF RECUSAL
11/19/15 O MEMORANDUM OF TEMPORARY ASSIGNMENT (JUDGE KOSACH)
11/19/15 D OPPOSITION TO PETITIONER'S REQUEST FOR JUDICIAL NOTICE IN SU
12/01/15 P REPLY TO RESPONDENT'S OPPOSITION TO PETITIONER'S REQ FOR JUD
12/04/15 P AMENDED CERTIFICATE OF SERVICE TO THE REPLY TO RESPONDENT'S
1/04/16 O STIPULATION AND ORDER SETTING ORAL ARGUMENT
1/21/16 O MINUTES - ORAL ARGUMENTS - 1/5/16 (FAXED COPY)
3/21/16 R RESPONDENT'S OBJECTION TO PETITIONER'S PROPOSED ORDER
3/30/16 P JUNGGO RANCH RESPONSE ST ENGINEER'S OBJECTION TO PROPOSED ORD
4/11/16 O MINUTES - HEARING ON OBJECTIONS
4/22/16 P ORDER OVERRULING STATE ENGINEER'S RULING 6287
4/29/16 P NOTICE OF ENTRY OF ORDER
5/23/16 R NOTICE OF APPEAL
5/23/16 R CASE APPEAL STATEMENT
5/27/16 O RECEIPT FOR DOCUMENTS (SC 70458)
6/13/16 R REQUEST FOR TRANSCRIPT OF PROCEEDINGS
6/24/16 O AMENDED REQUEST FOR TRANSCRIPT OF PROCEEDINGS
10/24/16 O TRANSCRIPT OF PROCEEDINGS (HEARING HELD IN CARSON CITY)
3/29/18 O OPINION (S.C.) (DISTRICT CT DECISION AFFIRMED)
4/25/18 O OPINION
4/25/18 O CLERK'S CERTIFICATE
4/25/18 O REMITTITUR (SC #70458)
7/02/18 P PETITIONER'S NOTICE OF MOTION & MOTION FOR ATTY FEES
7/16/18 O OPPOSITION TO MOTION FOR ATTORNEY'S FEES
7/23/18 P REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES
7/24/18 P REQUEST FOR SUBMISSION (WITH ORDER)
11/14/18 O PARTIAL TRANS OF PROCEEDINGS-JUDGE'S ORDER 10/19/18 HEARING
11/19/18 P PROPOSED ORDER GRANTING MOTION FOR ATTORNEY'S FEES
11/19/18 P AFFIDAVIT OF T. D. O'CONNOR, ESQ. IN SUPPORT OF MOTION TO
11/26/18 P ORDER GRANTING MOTION FOR ATTORNEY FEES
12/03/18 O TRANSCRIPT OF PROCEEDINGS - MOTION FOR ATTORNEY'S FEES
12/03/18 O NOTICE OF ENTRY OF ORDER
12/06/18 D EXPARTE MOTION FOR ORDER SHORTENING TIME ON MOTION FOR STAY
12/06/18 D MOTION FOR STAY OF ATTORNEYS' FEES JUDGMENT PENDING APPEAL
12/06/18 D NOTICE OF APPEAL
12/06/18 D CASE APPEAL STATEMENT

FILED

2018 NOV 26 PM 2:50

TAMARA SPENCER
DISTRICT COURT CLERK
[Signature]

1 CASE NO.: CV 20, 112

2 DEPT. NO.: 2

3
4
5
6 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF HUMBOLDT

8 ***

9 RODNEY ST. CLAIR,

10 Petitioner,

11 vs.

12 JASON KING, P.E., Nevada State Engineer,
13 DIVISION OF WATER RESOURCES,
14 DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,

15 Respondent.

**[PROPOSED] ORDER GRANTING
MOTION FOR ATTORNEYS' FEES**

16
17 THIS MATTER comes before the Court on Petitioner RODNEY ST. CLAIR's ("St. Clair") July
18 2, 2018, Motion for Attorneys' Fees (hereinafter "Motion"). Respondent, JASON KING, P.E. Nevada
19 State Engineer, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND
20 NATURAL RESOURCES ("State Engineer") filed his Opposition to Motion for Attorneys' Fees on
21 July 16, 2018. St. Clair filed his Reply in Support of Motion for Attorneys' Fees on July 23, 2018. Oral
22 argument was held on October 19, 2018, with both parties appearing. Having considered the arguments
23 contained in the papers and presented at oral argument, the Court hereby grants St. Clair's Motion. St.
24 Clair is awarded attorney's fees requested in the Motion, and additional attorney's fees incurred in
25 preparation and argument of the Motion, pursuant to NRS 18.010(2)(b) due to the State Engineer's
26 claims maintained throughout the instant litigation without reasonable ground.
27
28

DISCUSSION AND BACKGROUND

1
2 St. Clair owns real property in Humboldt County, Nevada, that was purchased in August 2013.
3 St. Clair filed a Proof of Appropriation to prove that he owned a vested groundwater right which existed
4 on his property when he purchased the property (hereinafter the "Vested Right"). On November 8,
5 2013, St. Clair filed a change application to change the point of diversion of the vested water right to a
6 new well. The State Engineer issued Ruling 6287 on July 25, 2014, finding that the Vested Right was
7 valid, and the right did exist on St. Clair's property, but, without holding a hearing and without evidence
8 of intent to support the claim, that the Vested Right had been abandoned by the previous owner.¹ St.
9 Clair subsequently appealed the State Engineer's Ruling 6287 to this Court.

10 During the litigation before this Court, the State Engineer took multiple positions that
11 unnecessarily raised the expenses being incurred by St. Clair, without reasonable ground. On July 3,
12 2015, St. Clair filed a Request for Judicial Notice with the district court, requesting that the district court
13 review legal briefs and prior State Engineer decisions. The State Engineer did not file a timely
14 opposition to St. Clair's request, thereby waiving any objection to the request. Nevertheless, five months
15 later, without leave of Court or stipulation of counsel, the State Engineer filed his untimely Opposition
16 to St. Clair's Request for Judicial Notice. This late filing was in clear opposition to DCR 13(3). St.
17 Clair timely filed his Reply to the State Engineer's Opposition. The Court, after consideration of all
18 arguments and timeliness of filings, found it proper to take judicial notice of the documents requested
19 by St. Clair.

20 After initial oral argument on the merits of the abandonment matter, this Court found that the
21 State Engineer had no evidence to support the claim of abandonment. This Court found that the State
22 Engineer clearly violated Nevada law by relying only on non-use evidence while wholly ignoring the
23 element of intent – a necessary and pivotal requirement for abandonment. As such, this Court ruled for
24 St. Clair, specifically noting that "abandonment in Nevada is defined as the relinquishment of the right
25 by the owner with the intention to forsake and desert it."² Continuing, the Court explained that "if
26 there's only evidence of non-use, that's not good enough."³ Ultimately, the State Engineer demonstrated

27
28 ¹ Ruling 6287.

² January 5, 2016, Hearing Transcript, p. 79:21-23.

³ *Id.*, p. 80:20-21.

1 no argument, nor did he put forth any case law, which would suggest that the clear Nevada law is not
2 applicable in the instant matter.

3 St. Clair was then directed to draft a proposed order for this Court, and confer with the State
4 Engineer's office prior to submitting the order, as "it is common practice for Clark County district courts
5 to direct the prevailing party to draft the court's order."⁴ When the parties could not come to an
6 agreement on the proposed order, both parties' orders were submitted to this Court for consideration.
7 The State Engineer then objected to the proposed order, filing a 78-page, six-exhibit document with the
8 district court, despite having his order submitted in conjunction with St. Clair's proposed order. St.
9 Clair filed a response to the objection, and another hearing was eventually held on the matter of the
10 proposed order. This Court, after hearing the State Engineer's objections and St. Clair's responses,
11 found that St. Clair's order accurately reflected this Court's findings and overruled the State Engineer's
12 objections.

13 The State Engineer appealed the matter to the Nevada Supreme Court, maintaining the same
14 argument rejected by this Court – that St. Clair's Vested Right was abandoned based solely on non-use.
15 The Nevada Supreme Court upheld this Court's ruling, finding in relevant part that "there is not clear
16 and convincing evidence" that the Vested Right was ever abandoned.⁵ The Nevada Supreme Court
17 concluded that "the State Engineer misapplied Nevada law by presuming abandonment *based on nonuse*
18 *evidence alone.*"⁶

19 The Nevada Supreme Court also upheld this Court's decisions on both the Request for Judicial
20 Notice and St. Clair's proposed order. The Nevada Supreme Court ruled, as this Court did, that "the
21 State Engineer failed to preserve [the objection] with its opposition filed five months after St. Clair's
22 request for judicial notice."⁷ The Nevada Supreme Court also found that this Court had a hearing on the
23 issue of St. Clair's proposed order, after which "the district court found [the State Engineer's] objections
24 unpersuasive."⁸ The Nevada Supreme Court noted that the district court did not "neglect[] its duty to
25 make factual findings."⁹

26 ⁴ *King v. St. Clair*, 134 Nev. Adv. Op. 18, 8, 414 P.3d 314, 318 (2018).

27 ⁵ *St. Clair*, 134 Nev. Adv. Op. 18 at 7, 414 P.3d at 317.

28 ⁶ *St. Clair*, 134 Nev. Adv. Op. 18 at 8, 414 P.3d at 318.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

1 Upon completion of the appellate process, and after ensuring that he was a prevailing party, St.
2 Clair filed the Motion for Attorney's Fees before this Court. In the Motion St. Clair requested fees on
3 the basis of NRS 18.010(2)(b), arguing that the State Engineer, throughout the litigation, maintained a
4 position without reasonable ground relating to 1) the claims of abandonment of the Vested Right, 2) the
5 Request for Judicial Notice, and 3) this Court's proposed order process. St. Clair argued that the State
6 Engineer's meritless claims, motions, and objections unreasonably added to the cost of the litigation,
7 and St. Clair should not be held to suffer the burden of that cost alone. After briefing and a hearing on
8 the matter, in which both parties were present and put forth argument, this Court found that attorney's
9 fees were warranted in this matter due to the State Engineer's groundless claims, meritless objections,
10 and untimely motions. This Court finds that the State Engineer's maintenance of a claim without
11 reasonable ground demonstrates an appropriate situation for an award of attorneys' fees pursuant to NRS
12 18.010(2)(b).

13 STANDARD OF REVIEW FOR ATTORNEY'S FEES

14 Under NRS 533.450 parties feeling aggrieved from a decision of the State Engineer are allowed
15 to seek judicial review of the decision before a district court.¹⁰ "[T]he practice in civil cases applies" to
16 judicial reviews of a State Engineer decision.¹¹ The district court has discretion under NRS
17 18.010(2)(b), found in Title 2 of the Nevada Statutes, entitled "Civil Practice," to award attorney's fees
18 upon a finding that a party maintained a claim "without reasonable ground."¹² Additionally, NRS
19 18.010(2)(b) mandates that a Court "shall liberally construe the provisions of this paragraph in favor of
20 awarding attorney's fees in all appropriate situations."¹³

21 A review of Nevada Supreme Court rulings demonstrates that "for purposes of an award of
22 attorney's fees pursuant to NRS 18.010(2)(b), a claim is groundless if the allegations in the complaint .
23 . . are not supported by any credible evidence at trial."¹⁴ Further, unlike NRS 18.010(2)(a), NRS
24 18.010(2)(b) is clear that attorneys' fees can be granted "[w]ithout regard to the recovery sought . . ."
25 and therefore a monetary recovery is not a prerequisite. The Nevada Supreme Court has also visited

26
27 ¹⁰ NRS 533.450.

28 ¹¹ NRS 533.450(8).

¹² NRS 18.010(2)(b).

¹³ NRS 18.010(2)(b).

¹⁴ *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1354, 971 P.2d 383, 387 (1998).

1 this question and concluded that subsection (b) did allow for attorneys' fees for nonmonetary
2 judgments.¹⁵ In reviewing this statute, the Nevada Supreme Court held that "NRS 18.010 provides no
3 time limits for motions for attorney's fees. Absent a specific statutory provision governing the time
4 frame in which a party must request attorney's fees, the timeliness of such requests, we conclude, is a
5 matter left to the discretion of the trial court."¹⁶ As such, district courts have discretion to determine
6 "[w]hether a motion for attorney's fees is timely."¹⁷

7 ANALYSIS

8 I. The State Engineer Maintained A Claim Against St. Clair's Request For Judicial Notice 9 Without Reasonable Ground.

10 On June 2, 2015, St. Clair requested that this Court take notice of several public documents. The
11 State Engineer did not timely object to the request. Five months later, however, on November 17, 2015,
12 the State Engineer filed an opposition without leave of Court or stipulation by St. Clair. Under DCR
13 13(3), any party opposing a motion is required to file and serve the opposition within 10 days after
14 service of the motion. St. Clair incurred attorneys' fees in responding to the State Engineer's untimely
15 filing. Because the filing was five months late, filed without leave of Court, and filed without a
16 stipulation by St. Clair, this Court finds the filing and the arguments made therein were brought without
17 reasonable ground. St. Clair is therefore awarded attorneys' fees associated with the State Engineer's
18 late opposition.

19 II. The State Engineer Maintained A Claim Against St. Clair's Proposed Order Without 20 Reasonable Ground.

21 St. Clair was ordered to prepare an order after prevailing before this Court. Requesting draft
22 orders from the prevailing party is a "common practice for Clark County district courts."¹⁸ After the
23 parties could not come to an agreement on the language to be included in the proposed order, this Court
24 accepted and reviewed both the State Engineer and St. Clair's proposed orders. The State Engineer also
25 contacted the Court separately and made its concerns about the proposed order known to the Court. This
26

27 ¹⁵ *Key Bank of Alaska v. Donnels*, 106 Nev. 49, 787 P.2d 382 (1990).

¹⁶ *Farmers Ins. Exch. v. Pickering*, 104 Nev. 660, 662, 765 P.2d 181, 182 (1988).

¹⁷ *Davidsohn v. Steffens*, 112 Nev. 136, 139, 911 P.2d 855, 857 (1996).

28 ¹⁸ *St. Clair*, 134 Nev. Adv. Op. 18 at 8, 414 P.3d at 318 (citing EDCR 1.90(a)(5) ("[A] judge or other judicial officer shall order the prevailing party to prepare a written judgment and findings of fact and conclusions of law.")).

1 Court held an additional hearing on the proposed order matter, in which this Court overruled each of the
2 State Engineer's objections. Ultimately, this Court found that St. Clair's proposed order was accurate,
3 accepted St. Clair's proposed order as drafted, and executed that order. Because the positions relating
4 to the proposed order that the State Engineer maintained were without reasonable ground in light of the
5 proceedings, St. Clair is awarded attorneys' fees associated with the State Engineer's objections to the
6 proposed order.

7 This Court finds that it would be against public policy to allow the State Engineer to maintain
8 unreasonable groundless claims and litigation positions, and have St. Clair pay attorneys' fees to defend
9 against the claims, only to allow the State Engineer to remain unaccountable for the attorneys' fees
10 incurred. This Court finds that the first consideration to be made in considering motions for attorneys'
11 fees is to look at what the movant spent, and then look at the non-movant and see what they spent. Here,
12 St. Clair spent \$41,881.25, plus additional fees in preparation and argument for the instant motion
13 totaling \$8,143.75, and the State Engineer was represented by the Attorney General's Office. This Court
14 finds in its discretion that the State Engineer's actions and litigation positions taken in the instant case
15 qualify as an "appropriate situation to punish for and deter"¹⁹ such groundless positions, because "such
16 claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious
17 claims and increase the costs of engaging in business and providing professional services to the
18 public."²⁰ In short, St. Clair would not have expended tens of thousands of dollars on this matter had
19 the State Engineer followed otherwise clear Nevada law and past State Engineer practice. St. Clair was
20 put in an unfair position, and the State Engineer should compensate him for the attorneys' fees spent on
21 countering the State Engineer's groundless arguments.

22 **III. The State Engineer Maintained Claim of Abandonment Against St. Clair Without**
23 **Reasonable Ground.**

24 The rules of civil practice apply to judicial review taken under NRS 533.450.²¹ NRS
25 18.010(2)(b) is a rule of civil practice, and dictates when attorney's fees may be awarded. Under that
26 statute, attorney's fees may be granted when a claim is maintained without reasonable ground.²² NRS

27 ¹⁹ NRS 18.010(2)(b).

28 ²⁰ *Id.*

²¹ NRS 533.450(8).

²² NRS 18.010(2)(b).

1 18.010(2)(b) further mandates that this Court is required to “liberally construe the provisions of this
2 paragraph in favor of awarding attorney’s fees in all appropriate situations.” A claim is groundless under
3 NRS 18.010(2)(b) “if the allegations in the complaint . . . are not supported by any credible evidence at
4 trial.”²³

5 Here, throughout the district court and Nevada Supreme Court litigation, the State Engineer was
6 unable to point to any evidence whatsoever to support his claim of abandonment. The State Engineer
7 relied only on non-use evidence which, under clear Nevada law, is not adequate. The State Engineer
8 brought forth no evidence of intent to abandon, which is a required element to maintain a claim of
9 abandonment. This fact was recognized by this Court after the district court proceedings in its order,²⁴
10 and recognized again at the Nevada Supreme Court in its ruling.²⁵ Notably, the State Engineer never
11 submitted evidence of intent to abandon the vested water right, and relied only on nonuse evidence. The
12 State Engineer had a history of correctly implementing and analyzing the law of abandonment in
13 Nevada, yet erroneously pursued his abandonment claim against St. Clair based solely on nonuse
14 evidence. As there was no evidence to support a claim of abandonment, St. Clair is entitled to recover
15 reasonable attorneys’ fees incurred in defending against a claim maintained without reasonable ground.

16 The State Engineer made a series of arguments as to why St. Clair should not be awarded
17 attorneys’ fees pursuant to NRS 18.010(2)(b). Each argument was unpersuasive. First, the State
18 Engineer argued that NRS 533.450(7), which limits costs against the State Engineer should additionally
19 limit attorney’s fees against the State Engineer. However, the State Engineer recognized in his argument
20 that NRS 533.450 “does not include a provision for awarding attorney fees, but includes a provision
21 regarding the recovery of costs, as in civil cases.”²⁶ In Nevada, attorney fees are not considered costs.²⁷
22 Because “the principle of statutory construction [] ‘the mention of one thing implies the exclusion of
23 another,’”²⁸ this Court cannot find that the State Engineer is exempt from paying attorneys’ fees in
24 appropriate situations.

25
26 ²³ *Bobby Berosini, Ltd.*, 114 Nev. at 1354, 971 P.2d at 387.

²⁴ See April 22, 2016, Order Overruling State Engineer’s Ruling 6287, CV 20, 112, at 12:13-14.

²⁵ *St. Clair*, 134 Nev. Adv. Op. 18 at 7, 414 P.3d at 317.

²⁶ Opposition to Motion for Attorneys’ Fees at 7:20-22 (emphasis added).

²⁷ *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 287, 890 P.2d 769, 776 (1995).

²⁸ *Rural Tel. Co. v. Pub. Utils. Comm’n*, 133 Nev. Adv. Op. 53 at 5, 398 P.3d 909, 911 (2017) (quoting *Sonia F. v. Eighth Jud. Dist. Court*, 125 Nev. 495, 499, 215 P.3d 705, 708 (2009)).

1 Second, the State Engineer argued that *Fowler*,²⁹ *Wrenn*,³⁰ and *Zenor*³¹ each prohibit an award
2 of attorney's fees under NRS 18.010(2)(b) in a judicial review action. These cases are inapplicable for
3 numerous reasons. First and foremost, none of these cases involve NRS 533.450 appeals, and are limited
4 to appeals made under NRS 233B or NRS 616. The substantial difference between NRS 533.450 and
5 other statutes is that NRS 533.450 authorizes the "practice in civil cases" including NRS 18.010.³²
6 Additionally, the Nevada Supreme Court has limited awards of attorney's fees in NRS 233B cases
7 because NRS 233B includes specific limiting language stating that "the provisions of this chapter are
8 the *exclusive* means of judicial review . . ."³³ The applicable statute at hand, NRS 533.450, , includes
9 no such limiting provision. Finally, the State Engineer is specifically exempt from the provisions of
10 NRS 233B, making the State Engineer's lineage of case law inapplicable here.³⁴

11 Third, the State Engineer's arguments relating to the fact that St. Clair's claims were not
12 monetary in nature do not have any impact on recovery under NRS 18.010(2)(b). NRS 18.010(2)(b) is
13 clear that attorneys' fees can be granted "[w]ithout regard to the recovery sought . . ." and therefore a
14 monetary recovery is not a prerequisite.³⁵ The Nevada Supreme Court has explained that subsection (b)
15 did allow for attorneys' fees for nonmonetary judgments in proper situations.³⁶

16 Finally, the State Engineer argued that any attorneys' fees that were expended based on the
17 Nevada Supreme Court litigation are not warranted. NRS 18.010(2)(b) is silent with respect to
18 attorneys' fees on appeal. Further, Nevada law appears to be silent on the matter. Recently, the Nevada
19 Supreme Court relied on other jurisdictions' interpretations of fee shifting statutes to find that appellate
20 fees can be granted.³⁷

21 The State Engineer's conduct regarding the abandonment claim warrants attorney's fees in this
22 matter. The State Engineer maintained an unsupported claim of abandonment, and despite his office's
23 knowledge of the requirements of the claim, proceeded with the claim against St. Clair anyway. This

24
25 ²⁹ *State, Dep't of Human Res., Welfare Div. v. Fowler*, 109 Nev. 782, 858 P.2d 375 (1993).

26 ³⁰ *State Indus. Ins. Sys. v. Wrenn*, 104 Nev. 536, 539, 762 P.2d 884, 886 (1988).

27 ³¹ *Zenor v. State, Dep't of Transp.*, 134 Nev. Adv. Op. 14, 412 P.3d 28 (2018).

28 ³² NRS 533.450(8).

³³ *Fowler*, 109 Nev. at 785, 858 P.2d at 377 (emphasis added).

³⁴ NRS 233B.039(j).

³⁵ NRS 18.010(2)(b).

³⁶ *Key Bank of Alaska*, 106 Nev. 49, 787 P.2d 382.

³⁷ *In re Estate and Living Trust of Miller*, 125 Nev. 550, 216 P.3d 239 (2009).

1 Court finds that the State Engineer's maintenance of its claim against St. Clair was without reasonable
2 ground, and it would be manifestly unjust to require a litigant to expend attorney's fees defending against
3 such a claim without reimbursement. As such, the Court finds it proper to award St. Clair attorney's
4 fees:

5 States with fee-shifting rules or statutes similar to Nevada's have held they
6 apply to appellate fees. Additionally, nothing in the language of NRCP
7 68 and NRS 17.115 suggests that their fee-shifting provisions cease
8 operation when the case leaves trial court. We therefore hold that the fee-
shifting provisions in NRCP 68 and NRS 17.115 extend to fees incurred
on and after appeal.³⁸

9 Similarly, nothing in the language of NRS 18.010 suggests that its fee-shifting provisions cease
10 operation when the case leaves district court. The State Engineer cites to *Bd. of Gallery of History, Inc.*
11 *v. Datecs Corp.*³⁹ for the proposition that fees on appeal cannot be granted pursuant to NRS 18.010(2).
12 With seemingly competing rulings on this issue, the Court finds that the more recent controlling law,
13 and the law with the more beneficial public policy to this case, is to allow fees for the appellate process
14 under NRS 18.010(2). This approach maintains the legislature's mandate of "liberally constru[ing] the
15 provisions of [NRS 18.010(2)(b)] in favor of awarding attorney's fees in all appropriate situations."⁴⁰
16 This approach additionally follows more recent Nevada case precedent.

17 **IV. St. Clair's Motion Was Timely.**

18 No mention of time frames to file a motion is contained in NRS 18.010, leaving such a
19 determination of timeliness to the district court's discretion.⁴¹ Indeed, the Nevada Supreme Court has
20 instructed that "[a]bsent a specific statutory provision governing the time frame in which a party must
21 request attorney's fees, the timeliness of such requests, we conclude, is a matter left to the discretion of
22 the trial court."⁴² In *Pickering*, the Court determined that it was proper for a party seeking attorney's
23 fees to make such a request upon completion of the appellate process, "as soon as he was assured that
24 he was the prevailing party within the meaning of NRS 18.010(2)."⁴³

25
26 ³⁸ *Id.* (internal quotations omitted).

27 ³⁹ 116 Nev. 286, 288, 994 P.2d 1149, 1150 (2000).

⁴⁰ NRS 18.010(2)(b).

⁴¹ NRS 18.010; see also *Pickering*, 104 Nev. at 662, 765 P.2d at 182.

28 ⁴² *Pickering*, 104 Nev. at 662, 765 P.2d at 182.

⁴³ *Id.*

1 St. Clair filed his Motion after he completed the appellate process and ensured he was a
2 prevailing party. This Court, after hearing argument, determined within its discretion that it would hear
3 the Motion given the facts and circumstances of the case. St. Clair during the hearing argued that the
4 State Engineer was not prejudiced by the timing of the filing. The State Engineer made no claims or
5 showing of unfairness, surprise, or prejudice.

6 The State Engineer further argued that NRCP 54(d)(2) should bar a request for attorneys' fees
7 under NRS 18.010. This logic was flawed for multiple reasons. First, NRCP 54(d)(2)'s 20-day timeline
8 for filing a motion does not bind NRS 18.010. In *Pickering*, a similar argument was made to limit an
9 NRS 18.010 motion based on NRCP 59(e). The Nevada Supreme Court declined to extend a time limit
10 imposed by NRCP 59(e) to NRS 18.010, citing to *White v. New Hampshire Department of Employment*
11 *Security*, which held "we do not think that application of Rule 59(e) to [attorney's] fee requests is either
12 necessary or desirable to promote finality, judicial economy, or fairness."⁴⁴ Here, similar logic prevails.
13 The timelines given in NRCP 52(d)(2) are no more necessary or desirable to promote finality, judicial
14 economy, or fairness as those included in NRCP 59(e). Additionally, St. Clair was diligent in seeking
15 fees, making his Motion shortly after completion of the appellate process and ensuring that he was a
16 prevailing party. Therefore, the Court finds that the Motion was made in a timely manner.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 _____

⁴⁴ *Id.*

CONCLUSION

IT IS HEREBY ORDERED that St. Clair's Motion for Attorneys' Fees is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that the State Engineer shall reimburse St. Clair for his attorneys' fees in the amount of \$50,025.00.

IT IS HEREBY FURTHER ORDERED that the State Engineer shall forward the amount of \$50,025.00 directly to TAGGART & TAGGART, LTD., counsel for St. Clair, at 108 North Minnesota Street, Carson City, Nevada, 89703 within thirty (30) days from service of this order, unless otherwise ordered by this Court or a Court of competent jurisdiction.

IT IS SO ORDERED.

DATED this 20 day of November, 2018.


DISTRICT COURT JUDGE

Respectfully submitted by:

TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 – Telephone
(775) 883-9900 – Facsimile

By: /s/ Timothy D. O'Connor
PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
TIMOTHY D. O'CONNOR, ESQ.
Nevada State Bar No. 14098
Attorneys for Petitioner

1 CASE NO.: CV 20, 112

2 DEPT. NO.: 2 30

FILED

2018 DEC -3 PM 12: 22

TAMI RAE SPERO
DIST. COURT CLERK

E. J. J. J.

3
4
5
6 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF HUMBOLDT

8 ***

9 RODNEY ST. CLAIR,

10 Petitioner,

11 vs.

12 JASON KING, P.E., Nevada State Engineer,
13 DIVISION OF WATER RESOURCES,
14 DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,

15 Respondent.

NOTICE OF ENTRY OF ORDER

16
17 PLEASE TAKE NOTICE that on November 26, 2018, the above-entitled Court entered its Order
18 Granting Motion for Attorneys' Fees in the above-captioned matter, a copy of which is attached hereto
19 as Exhibit 1.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

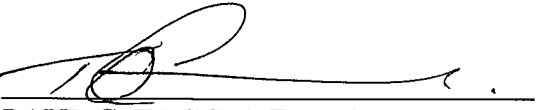
28 ///

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 29 day of November, 2018.

TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 – Telephone
(775) 883-9900 – Facsimile

By: 
PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
TIMOTHY D. O'CONNOR, ESQ.
Nevada State Bar No. 14098
Attorneys for Petitioner

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 – Telephone
(775) 883-9900 – Facsimile

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date, I served, or caused to be served, a true and correct copy of the foregoing as follows:

[X] By **U.S. POSTAL SERVICE**, by depositing for mailing in the United States Mail, with postage prepaid, an envelope containing the foregoing document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

James N. Bolotin, Esq.
Nevada Attorney General's Office
100 North Carson Street
Carson City, Nevada 89701
Attorney for Respondent

The Hon. Steven R. Kosach
P.O. Box 1950
Reno, NV 89505

DATED this 29th day of November, 2018.



Employee of TAGGART & TAGGART, LTD.

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 ~ Telephone
(775) 883-9900 ~ Facsimile

EXHIBIT INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit Number

Description

Page Count

1. Order Granting Motion for Attorneys' Fees

11

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775)882-9900 ~ Telephone
(775)883-9900 ~ Facsimile

EXHIBIT 1

EXHIBIT 1

FILED

2018 NOV 25 PM 2:50

FILED
DIST. COURT CLERK

1 CASE NO.: CV 20, 112

2 DEPT. NO.: 2

3
4
5
6 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF HUMBOLDT

8 ***

9 RODNEY ST. CLAIR,

10 Petitioner,

11 vs.

12 JASON KING, P.E., Nevada State Engineer,
13 DIVISION OF WATER RESOURCES,
14 DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,

15 Respondent.

**[PROPOSED] ORDER GRANTING
MOTION FOR ATTORNEYS' FEES**

16
17 THIS MATTER comes before the Court on Petitioner RODNEY ST. CLAIR's ("St. Clair") July
18 2, 2018, Motion for Attorneys' Fees (hereinafter "Motion"). Respondent, JASON KING, P.E. Nevada
19 State Engineer, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND
20 NATURAL RESOURCES ("State Engineer") filed his Opposition to Motion for Attorneys' Fees on
21 July 16, 2018. St. Clair filed his Reply in Support of Motion for Attorneys' Fees on July 23, 2018. Oral
22 argument was held on October 19, 2018, with both parties appearing. Having considered the arguments
23 contained in the papers and presented at oral argument, the Court hereby grants St. Clair's Motion. St.
24 Clair is awarded attorney's fees requested in the Motion, and additional attorney's fees incurred in
25 preparation and argument of the Motion, pursuant to NRS 18.010(2)(b) due to the State Engineer's
26 claims maintained throughout the instant litigation without reasonable ground.

DISCUSSION AND BACKGROUND

1
2 St. Clair owns real property in Humboldt County, Nevada, that was purchased in August 2013.
3 St. Clair filed a Proof of Appropriation to prove that he owned a vested groundwater right which existed
4 on his property when he purchased the property (hereinafter the "Vested Right"). On November 8,
5 2013, St. Clair filed a change application to change the point of diversion of the vested water right to a
6 new well. The State Engineer issued Ruling 6287 on July 25, 2014, finding that the Vested Right was
7 valid, and the right did exist on St. Clair's property, but, without holding a hearing and without evidence
8 of intent to support the claim, that the Vested Right had been abandoned by the previous owner.¹ St.
9 Clair subsequently appealed the State Engineer's Ruling 6287 to this Court.

10 During the litigation before this Court, the State Engineer took multiple positions that
11 unnecessarily raised the expenses being incurred by St. Clair, without reasonable ground. On July 3,
12 2015, St. Clair filed a Request for Judicial Notice with the district court, requesting that the district court
13 review legal briefs and prior State Engineer decisions. The State Engineer did not file a timely
14 opposition to St. Clair's request, thereby waiving any objection to the request. Nevertheless, five months
15 later, without leave of Court or stipulation of counsel, the State Engineer filed his untimely Opposition
16 to St. Clair's Request for Judicial Notice. This late filing was in clear opposition to DCR 13(3). St.
17 Clair timely filed his Reply to the State Engineer's Opposition. The Court, after consideration of all
18 arguments and timeliness of filings, found it proper to take judicial notice of the documents requested
19 by St. Clair.

20 After initial oral argument on the merits of the abandonment matter, this Court found that the
21 State Engineer had no evidence to support the claim of abandonment. This Court found that the State
22 Engineer clearly violated Nevada law by relying only on non-use evidence while wholly ignoring the
23 element of intent – a necessary and pivotal requirement for abandonment. As such, this Court ruled for
24 St. Clair, specifically noting that "abandonment in Nevada is defined as the relinquishment of the right
25 by the owner with the intention to forsake and desert it."² Continuing, the Court explained that "if
26 there's only evidence of non-use, that's not good enough."³ Ultimately, the State Engineer demonstrated

27
28 ¹ Ruling 6287.

² January 5, 2016, Hearing Transcript, p. 79:21-23.

³ *Id.*, p. 80:20-21.

1 no argument, nor did he put forth any case law, which would suggest that the clear Nevada law is not
2 applicable in the instant matter.

3 St. Clair was then directed to draft a proposed order for this Court, and confer with the State
4 Engineer's office prior to submitting the order, as "it is common practice for Clark County district courts
5 to direct the prevailing party to draft the court's order."⁴ When the parties could not come to an
6 agreement on the proposed order, both parties' orders were submitted to this Court for consideration.
7 The State Engineer then objected to the proposed order, filing a 78-page, six-exhibit document with the
8 district court, despite having his order submitted in conjunction with St. Clair's proposed order. St.
9 Clair filed a response to the objection, and another hearing was eventually held on the matter of the
10 proposed order. This Court, after hearing the State Engineer's objections and St. Clair's responses,
11 found that St. Clair's order accurately reflected this Court's findings and overruled the State Engineer's
12 objections.

13 The State Engineer appealed the matter to the Nevada Supreme Court, maintaining the same
14 argument rejected by this Court – that St. Clair's Vested Right was abandoned based solely on non-use.
15 The Nevada Supreme Court upheld this Court's ruling, finding in relevant part that "there is not clear
16 and convincing evidence" that the Vested Right was ever abandoned.⁵ The Nevada Supreme Court
17 concluded that "the State Engineer misapplied Nevada law by presuming abandonment *based on nonuse*
18 *evidence alone.*"⁶

19 The Nevada Supreme Court also upheld this Court's decisions on both the Request for Judicial
20 Notice and St. Clair's proposed order. The Nevada Supreme Court ruled, as this Court did, that "the
21 State Engineer failed to preserve [the objection] with its opposition filed five months after St. Clair's
22 request for judicial notice."⁷ The Nevada Supreme Court also found that this Court had a hearing on the
23 issue of St. Clair's proposed order, after which "the district court found [the State Engineer's] objections
24 unpersuasive."⁸ The Nevada Supreme Court noted that the district court did not "neglect[] its duty to
25 make factual findings."⁹

26 ⁴ *King v. St. Clair*, 134 Nev. Adv. Op. 18, 8, 414 P.3d 314, 318 (2018).

27 ⁵ *St. Clair*, 134 Nev. Adv. Op. 18 at 7, 414 P.3d at 317.

28 ⁶ *St. Clair*, 134 Nev. Adv. Op. 18 at 8, 414 P.3d at 318.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

1 Upon completion of the appellate process, and after ensuring that he was a prevailing party, St.
2 Clair filed the Motion for Attorney's Fees before this Court. In the Motion St. Clair requested fees on
3 the basis of NRS 18.010(2)(b), arguing that the State Engineer, throughout the litigation, maintained a
4 position without reasonable ground relating to 1) the claims of abandonment of the Vested Right, 2) the
5 Request for Judicial Notice, and 3) this Court's proposed order process. St. Clair argued that the State
6 Engineer's meritless claims, motions, and objections unreasonably added to the cost of the litigation,
7 and St. Clair should not be held to suffer the burden of that cost alone. After briefing and a hearing on
8 the matter, in which both parties were present and put forth argument, this Court found that attorney's
9 fees were warranted in this matter due to the State Engineer's groundless claims, meritless objections,
10 and untimely motions. This Court finds that the State Engineer's maintenance of a claim without
11 reasonable ground demonstrates an appropriate situation for an award of attorneys' fees pursuant to NRS
12 18.010(2)(b).

13 STANDARD OF REVIEW FOR ATTORNEY'S FEES

14 Under NRS 533.450 parties feeling aggrieved from a decision of the State Engineer are allowed
15 to seek judicial review of the decision before a district court.¹⁰ "[T]he practice in civil cases applies" to
16 judicial reviews of a State Engineer decision.¹¹ The district court has discretion under NRS
17 18.010(2)(b), found in Title 2 of the Nevada Statutes, entitled "Civil Practice," to award attorney's fees
18 upon a finding that a party maintained a claim "without reasonable ground."¹² Additionally, NRS
19 18.010(2)(b) mandates that a Court "shall liberally construe the provisions of this paragraph in favor of
20 awarding attorney's fees in all appropriate situations."¹³

21 A review of Nevada Supreme Court rulings demonstrates that "for purposes of an award of
22 attorney's fees pursuant to NRS 18.010(2)(b), a claim is groundless if the allegations in the complaint .
23 . . are not supported by any credible evidence at trial."¹⁴ Further, unlike NRS 18.010(2)(a), NRS
24 18.010(2)(b) is clear that attorneys' fees can be granted "[w]ithout regard to the recovery sought . . ."
25 and therefore a monetary recovery is not a prerequisite. The Nevada Supreme Court has also visited
26

27 ¹⁰ NRS 533.450.

¹¹ NRS 533.450(8).

28 ¹² NRS 18.010(2)(b).

¹³ NRS 18.010(2)(b).

¹⁴ *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1354, 971 P.2d 383, 387 (1998).

1 this question and concluded that subsection (b) did allow for attorneys' fees for nonmonetary
2 judgments.¹⁵ In reviewing this statute, the Nevada Supreme Court held that "NRS 18.010 provides no
3 time limits for motions for attorney's fees. Absent a specific statutory provision governing the time
4 frame in which a party must request attorney's fees, the timeliness of such requests, we conclude, is a
5 matter left to the discretion of the trial court."¹⁶ As such, district courts have discretion to determine
6 "[w]hether a motion for attorney's fees is timely."¹⁷

7 ANALYSIS

8 I. The State Engineer Maintained A Claim Against St. Clair's Request For Judicial Notice 9 Without Reasonable Ground.

10 On June 2, 2015, St. Clair requested that this Court take notice of several public documents. The
11 State Engineer did not timely object to the request. Five months later, however, on November 17, 2015,
12 the State Engineer filed an opposition without leave of Court or stipulation by St. Clair. Under DCR
13 13(3), any party opposing a motion is required to file and serve the opposition within 10 days after
14 service of the motion. St. Clair incurred attorneys' fees in responding to the State Engineer's untimely
15 filing. Because the filing was five months late, filed without leave of Court, and filed without a
16 stipulation by St. Clair, this Court finds the filing and the arguments made therein were brought without
17 reasonable ground. St. Clair is therefore awarded attorneys' fees associated with the State Engineer's
18 late opposition.

19 II. The State Engineer Maintained A Claim Against St. Clair's Proposed Order Without 20 Reasonable Ground.

21 St. Clair was ordered to prepare an order after prevailing before this Court. Requesting draft
22 orders from the prevailing party is a "common practice for Clark County district courts."¹⁸ After the
23 parties could not come to an agreement on the language to be included in the proposed order, this Court
24 accepted and reviewed both the State Engineer and St. Clair's proposed orders. The State Engineer also
25 contacted the Court separately and made its concerns about the proposed order known to the Court. This
26

27 ¹⁵ *Key Bank of Alaska v. Donnels*, 106 Nev. 49, 787 P.2d 382 (1990).

¹⁶ *Farmers Ins. Exch. v. Pickering*, 104 Nev. 660, 662, 765 P.2d 181, 182 (1988).

¹⁷ *Davidsohn v. Steffens*, 112 Nev. 136, 139, 911 P.2d 855, 857 (1996).

28 ¹⁸ *St. Clair*, 134 Nev. Adv. Op. 18 at 8, 414 P.3d at 318 (citing EDCR 1.90(a)(5) ("[A] judge or other judicial officer shall order the prevailing party to prepare a written judgment and findings of fact and conclusions of law.")).

1 Court held an additional hearing on the proposed order matter, in which this Court overruled each of the
2 State Engineer's objections. Ultimately, this Court found that St. Clair's proposed order was accurate,
3 accepted St. Clair's proposed order as drafted, and executed that order. Because the positions relating
4 to the proposed order that the State Engineer maintained were without reasonable ground in light of the
5 proceedings, St. Clair is awarded attorneys' fees associated with the State Engineer's objections to the
6 proposed order.

7 This Court finds that it would be against public policy to allow the State Engineer to maintain
8 unreasonable groundless claims and litigation positions, and have St. Clair pay attorneys' fees to defend
9 against the claims, only to allow the State Engineer to remain unaccountable for the attorneys' fees
10 incurred. This Court finds that the first consideration to be made in considering motions for attorneys'
11 fees is to look at what the movant spent, and then look at the non-movant and see what they spent. Here,
12 St. Clair spent \$41,881.25, plus additional fees in preparation and argument for the instant motion
13 totaling \$8,143.75, and the State Engineer was represented by the Attorney General's Office. This Court
14 finds in its discretion that the State Engineer's actions and litigation positions taken in the instant case
15 qualify as an "appropriate situation to punish for and deter"¹⁹ such groundless positions, because "such
16 claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious
17 claims and increase the costs of engaging in business and providing professional services to the
18 public."²⁰ In short, St. Clair would not have expended tens of thousands of dollars on this matter had
19 the State Engineer followed otherwise clear Nevada law and past State Engineer practice. St. Clair was
20 put in an unfair position, and the State Engineer should compensate him for the attorneys' fees spent on
21 countering the State Engineer's groundless arguments.

22 **III. The State Engineer Maintained Claim of Abandonment Against St. Clair Without**
23 **Reasonable Ground.**

24 The rules of civil practice apply to judicial review taken under NRS 533.450.²¹ NRS
25 18.010(2)(b) is a rule of civil practice, and dictates when attorney's fees may be awarded. Under that
26 statute, attorney's fees may be granted when a claim is maintained without reasonable ground.²² NRS

27 ¹⁹ NRS 18.010(2)(b).

28 ²⁰ *Id.*

²¹ NRS 533.450(8).

²² NRS 18.010(2)(b).

1 18.010(2)(b) further mandates that this Court is required to “liberally construe the provisions of this
2 paragraph in favor of awarding attorney’s fees in all appropriate situations.” A claim is groundless under
3 NRS 18.010(2)(b) “if the allegations in the complaint . . . are not supported by any credible evidence at
4 trial.”²³

5 Here, throughout the district court and Nevada Supreme Court litigation, the State Engineer was
6 unable to point to any evidence whatsoever to support his claim of abandonment. The State Engineer
7 relied only on non-use evidence which, under clear Nevada law, is not adequate. The State Engineer
8 brought forth no evidence of intent to abandon, which is a required element to maintain a claim of
9 abandonment. This fact was recognized by this Court after the district court proceedings in its order,²⁴
10 and recognized again at the Nevada Supreme Court in its ruling.²⁵ Notably, the State Engineer never
11 submitted evidence of intent to abandon the vested water right, and relied only on nonuse evidence. The
12 State Engineer had a history of correctly implementing and analyzing the law of abandonment in
13 Nevada, yet erroneously pursued his abandonment claim against St. Clair based solely on nonuse
14 evidence. As there was no evidence to support a claim of abandonment, St. Clair is entitled to recover
15 reasonable attorneys’ fees incurred in defending against a claim maintained without reasonable ground.

16 The State Engineer made a series of arguments as to why St. Clair should not be awarded
17 attorneys’ fees pursuant to NRS 18.010(2)(b). Each argument was unpersuasive. First, the State
18 Engineer argued that NRS 533.450(7), which limits costs against the State Engineer should additionally
19 limit attorney’s fees against the State Engineer. However, the State Engineer recognized in his argument
20 that NRS 533.450 “does not include a provision for awarding attorney fees, but includes a provision
21 regarding the recovery of costs, as in civil cases.”²⁶ In Nevada, attorney fees are not considered costs.²⁷
22 Because “the principle of statutory construction [i]f the mention of one thing implies the exclusion of
23 another,”²⁸ this Court cannot find that the State Engineer is exempt from paying attorneys’ fees in
24 appropriate situations.

25
26 ²³ *Bobby Berosini, Ltd.*, 114 Nev. at 1354, 971 P.2d at 387.

27 ²⁴ See April 22, 2016, Order Overruling State Engineer’s Ruling 6287, CV 20, 112, at 12:13-14.

28 ²⁵ *St. Clair*, 134 Nev. Adv. Op. 18 at 7, 414 P.3d at 317.

²⁶ Opposition to Motion for Attorneys’ Fees at 7:20-22 (emphasis added).

²⁷ *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 287, 890 P.2d 769, 776 (1995).

²⁸ *Rural Tel. Co. v. Pub. Utils. Comm’n*, 133 Nev. Adv. Op. 53 at 5, 398 P.3d 909, 911 (2017) (quoting *Sonia F. v. Eighth Jud. Dist. Court*, 125 Nev. 495, 499, 215 P.3d 705, 708 (2009)).

1 Second, the State Engineer argued that *Fowler*,²⁹ *Wrenn*,³⁰ and *Zenor*³¹ each prohibit an award
2 of attorney's fees under NRS 18.010(2)(b) in a judicial review action. These cases are inapplicable for
3 numerous reasons. First and foremost, none of these cases involve NRS 533.450 appeals, and are limited
4 to appeals made under NRS 233B or NRS 616. The substantial difference between NRS 533.450 and
5 other statutes is that NRS 533.450 authorizes the "practice in civil cases" including NRS 18.010.³²
6 Additionally, the Nevada Supreme Court has limited awards of attorney's fees in NRS 233B cases
7 because NRS 233B includes specific limiting language stating that "the provisions of this chapter are
8 the *exclusive* means of judicial review . . ."³³ The applicable statute at hand, NRS 533.450, , includes
9 no such limiting provision. Finally, the State Engineer is specifically exempt from the provisions of
10 NRS 233B, making the State Engineer's lineage of case law inapplicable here.³⁴

11 Third, the State Engineer's arguments relating to the fact that St. Clair's claims were not
12 monetary in nature do not have any impact on recovery under NRS 18.010(2)(b). NRS 18.010(2)(b) is
13 clear that attorneys' fees can be granted "[w]ithout regard to the recovery sought . . ." and therefore a
14 monetary recovery is not a prerequisite.³⁵ The Nevada Supreme Court has explained that subsection (b)
15 did allow for attorneys' fees for nonmonetary judgments in proper situations.³⁶

16 Finally, the State Engineer argued that any attorneys' fees that were expended based on the
17 Nevada Supreme Court litigation are not warranted. NRS 18.010(2)(b) is silent with respect to
18 attorneys' fees on appeal. Further, Nevada law appears to be silent on the matter. Recently, the Nevada
19 Supreme Court relied on other jurisdictions' interpretations of fee shifting statutes to find that appellate
20 fees can be granted.³⁷

21 The State Engineer's conduct regarding the abandonment claim warrants attorney's fees in this
22 matter. The State Engineer maintained an unsupported claim of abandonment, and despite his office's
23 knowledge of the requirements of the claim, proceeded with the claim against St. Clair anyway. This
24

25 ²⁹ *State, Dep't of Human Res., Welfare Div. v. Fowler*, 109 Nev. 782, 858 P.2d 375 (1993).

26 ³⁰ *State Indus. Ins. Sys. v. Wrenn*, 104 Nev. 536, 539, 762 P.2d 884, 886 (1988).

27 ³¹ *Zenor v. State, Dep't of Transp.*, 134 Nev. Adv. Op. 14, 412 P.3d 28 (2018).

28 ³² NRS 533.450(8).

³³ *Fowler*, 109 Nev. at 785, 858 P.2d at 377 (emphasis added).

³⁴ NRS 233B.039(j).

³⁵ NRS 18.010(2)(b).

³⁶ *Key Bank of Alaska*, 106 Nev. 49, 787 P.2d 382.

³⁷ *In re Estate and Living Trust of Miller*, 125 Nev. 550, 216 P.3d 239 (2009).

1 Court finds that the State Engineer's maintenance of its claim against St. Clair was without reasonable
2 ground, and it would be manifestly unjust to require a litigant to expend attorney's fees defending against
3 such a claim without reimbursement. As such, the Court finds it proper to award St. Clair attorney's
4 fees:

5 States with fee-shifting rules or statutes similar to Nevada's have held they
6 apply to appellate fees. Additionally, nothing in the language of NRCP
7 68 and NRS 17.115 suggests that their fee-shifting provisions cease
8 operation when the case leaves trial court. We therefore hold that the fee-
shifting provisions in NRCP 68 and NRS 17.115 extend to fees incurred
on and after appeal.³⁸

9 Similarly, nothing in the language of NRS 18.010 suggests that its fee-shifting provisions cease
10 operation when the case leaves district court. The State Engineer cites to *Bd. of Gallery of History, Inc.*
11 *v. Datecs Corp.*³⁹ for the proposition that fees on appeal cannot be granted pursuant to NRS 18.010(2).
12 With seemingly competing rulings on this issue, the Court finds that the more recent controlling law,
13 and the law with the more beneficial public policy to this case, is to allow fees for the appellate process
14 under NRS 18.010(2). This approach maintains the legislature's mandate of "liberally constru[ing] the
15 provisions of [NRS 18.010(2)(b)] in favor of awarding attorney's fees in all appropriate situations."⁴⁰
16 This approach additionally follows more recent Nevada case precedent.

17 **IV. St. Clair's Motion Was Timely.**

18 No mention of time frames to file a motion is contained in NRS 18.010, leaving such a
19 determination of timeliness to the district court's discretion.⁴¹ Indeed, the Nevada Supreme Court has
20 instructed that "[a]bsent a specific statutory provision governing the time frame in which a party must
21 request attorney's fees, the timeliness of such requests, we conclude, is a matter left to the discretion of
22 the trial court."⁴² In *Pickering*, the Court determined that it was proper for a party seeking attorney's
23 fees to make such a request upon completion of the appellate process, "as soon as he was assured that
24 he was the prevailing party within the meaning of NRS 18.010(2)."⁴³

25
26 ³⁸ *Id.* (internal quotations omitted).

27 ³⁹ 116 Nev. 286, 288, 994 P.2d 1149, 1150 (2000).

28 ⁴⁰ NRS 18.010(2)(b).

⁴¹ NRS 18.010; *see also Pickering*, 104 Nev. at 662, 765 P.2d at 182.

⁴² *Pickering*, 104 Nev. at 662, 765 P.2d at 182.

⁴³ *Id.*

1 St. Clair filed his Motion after he completed the appellate process and ensured he was a
2 prevailing party. This Court, after hearing argument, determined within its discretion that it would hear
3 the Motion given the facts and circumstances of the case. St. Clair during the hearing argued that the
4 State Engineer was not prejudiced by the timing of the filing. The State Engineer made no claims or
5 showing of unfairness, surprise, or prejudice.

6 The State Engineer further argued that NRCP 54(d)(2) should bar a request for attorneys' fees
7 under NRS 18.010. This logic was flawed for multiple reasons. First, NRCP 54(d)(2)'s 20-day timeline
8 for filing a motion does not bind NRS 18.010. In *Pickering*, a similar argument was made to limit an
9 NRS 18.010 motion based on NRCP 59(e). The Nevada Supreme Court declined to extend a time limit
10 imposed by NRCP 59(e) to NRS 18.010, citing to *White v. New Hampshire Department of Employment*
11 *Security*, which held "we do not think that application of Rule 59(e) to [attorney's] fee requests is either
12 necessary or desirable to promote finality, judicial economy, or fairness."⁴⁴ Here, similar logic prevails.
13 The timelines given in NRCP 52(d)(2) are no more necessary or desirable to promote finality, judicial
14 economy, or fairness as those included in NRCP 59(e). Additionally, St. Clair was diligent in seeking
15 fees, making his Motion shortly after completion of the appellate process and ensuring that he was a
16 prevailing party. Therefore, the Court finds that the Motion was made in a timely manner.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 _____
⁴⁴ *Id.*

CONCLUSION

IT IS HEREBY ORDERED that St. Clair's Motion for Attorneys' Fees is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that the State Engineer shall reimburse St. Clair for his attorneys' fees in the amount of \$50,025.00.

IT IS HEREBY FURTHER ORDERED that the State Engineer shall forward the amount of \$50,025.00 directly to TAGGART & TAGGART, LTD., counsel for St. Clair, at 108 North Minnesota Street, Carson City, Nevada, 89703 within thirty (30) days from service of this order, unless otherwise ordered by this Court or a Court of competent jurisdiction.

IT IS SO ORDERED.

DATED this 20 day of November, 2018.


DISTRICT COURT JUDGE

Respectfully submitted by:

TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 – Telephone
(775) 883-9900 – Facsimile

By: /s/ Timothy D. O'Connor
PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
TIMOTHY D. O'CONNOR, ESQ.
Nevada State Bar No. 14098
Attorneys for Petitioner

SIXTH JUDICIAL DISTRICT COURT MINUTES

CASE NO. CV 20,112

TITLE: RODNEY ST. CLAIR VS JASON KING,
P.E., NEVADA STATE ENGINEER;
DIVISION OF WATER RESOURCES,
DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES

**MATTER HEARD IN THE SPECIALTY COURTROOM OF THE
FIRST JUDICIAL DISTRICT COURT, CARSON CITY**

04/11/16 – SPECIALTY COURT– HONORABLE STEVEN KOSACH
J. Harkleroad, Clerk – Not Reported

HEARING ON OBJECTIONS

Present: Paul Taggart counsel for Petitioner; Justina Caviglia, Deputy A.G.

Statements were made by Court.

Caviglia stated her objections to the Proposed Order for the record. Taggart in response.

Further statements were made by Court and counsel.

Objection No. 1 - Taxes and assessment issue and the newspaper issue.

COURT ORDERED: Objection is overruled.

Further statements were made by Court.

Objection No. 2

COURT ORDERED: It overrules the objection.

Further statements were made by Court.

In regards to the forfeiture vs abonnement issue.

COURT ORDERED: It is overruling that issue.

Further statements were made by Court.

COURT ORDERED: Order Overruling State Engineer's Ruling 6287 granted in accordance with the Order signed in open Court on April 11, 2016. Clerk is directed to forward the original Order along with the JAVS recording of this hearing to Humboldt County Clerk for filing.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

SIXTH JUDICIAL DISTRICT COURT MINUTES

CASE NO. CV20-112

TITLE: RODNEY ST. CLAIR VS JASON KING,
P.E., NEVADA STATE ENGINEER,
DIVISION OF WATER RESOURCES,
DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES

MATTER HEARD IN DEPT. 1 OF THE FIRST JUDICIAL DISTRICT COURT, CARSON CITY

01/05/16 – DEPT. II – HONORABLE SR. JUSTICE STEVEN R. KOSACH
J. Higgins, Clerk – Not Reported

ORAL ARGUMENTS

Present: Petitioner with counsel, Paul Taggart; Justina A. Caviglia, Deputy A.G.; Susan Joseph-Taylor, Deputy Administrator of Division of Water Resources.

Statements were made by Court.

Counsel presented arguments.

Court stated its findings of facts and conclusions of law.

COURT ORDERED: It overturns the State Engineer's decision.

Taggart to draft the decision.

Statements were made by Court.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

CV 20,112

Rodney St. Clair vs. Jason King, P E, et al

Judge: Michael R. Montero

Clerk: Jody Clark

Bailiff: Ron Moser

November 3, 2015

CONTINUED ORAL ARGUMENTS

PRESENT: Rodney St. Clair, present with counsel, Paul G. Taggart. Respondent, Jason King, P E. Nevada State Engineer, Division of Water Resources Department of Conservation and Natural Resources, present with counsel, Deputy Attorney General, Justina Caviglia.

The Court disclosed to the parties that he is a minority shareholder in his family ranching operation. Further, the ranch also holds water rights but does not believe there is any contested matters. Also, the Attorney General's Office has represented him as a State employee. Also, Jason King was the Engineer who approved his plans for his cabin on his families' ranch.

The Court informed the parties and counsel that should anyone have any concerns with what he has just informed them, he would recuse himself.

The Court gave the parties and counsel some time to discuss the matter.

After a brief recess, Taggart informed the Court that his client would be motioning the Court to recuse himself.

Caviglia concurred with Taggart's decision.

The Court addressed St. Clair.

The Court will recuse himself and immediately have the Clerk appoint a senior judge.

The Court thanked the parties for their patience.

CERTIFICATION OF COPY

STATE OF NEVADA,

COUNTY OF HUMBOLDT,

I, TAMI RAE SPERO, the duly elected, qualifying and acting Clerk of Humboldt County, in the State of Nevada, and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true , full and correct copy of the original: Notice of Appeal; Case Appeal Statement; District Court Docket Entries; Order Granting Motion for Attorneys' Fees; Notice of Entry of Order; District Court Minutes;

Rodney St. Clair,

Petitioner,

vs.

**Jason King, P.E., Nevada State Engineer,
Division of Water Resources, Department
of Conservation and Natural Resources,**

Respondents.

CASE NO. CV 20112

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto set my hand and affixed the seal of the Court at my office, Winnemucca, Nevada, this 7th day of December, 2018, A.D.


TAMI RAE SPERO, CLERK