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FILED
FIFTH JUDICIAL DISTRICT

DEC 10 2018

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Nye County Clerk
Elizabeth A. Brown Deputy
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IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

PAHRUMP FAIR WATER, LLC.,
a Nevada limited-liability company;
STEVEN PETERSON, an individual;
MICHAEL LACH, an individual;
PAUL PECK, an individual;
BRUCE JABOUR, an individual; and
GERALD SCHULTE, an individual,

Petitioners,

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 Petition for Judicial Review, filed by this Court on December 6, 2018. Notice of Entry of Order was served on December 6, 2018. A copy of said Notice of Entry of Order is attached hereto as Exhibit 1.

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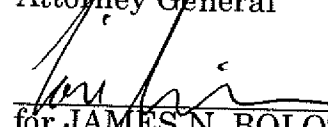
AFFIRMATION

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

DATED this 7th day of December, 2018.

ADAM PAUL LAXALT
Attorney General

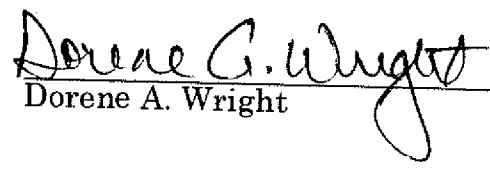
By:

 (Bar No. 14156)
for JAMES N. BOLOTIN (Bar No. 13829)
Deputy Attorney General
State of Nevada
Office of the Attorney General
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*

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 7th day of December, 2018, I served a true and correct copy of the foregoing NOTICE OF APPEAL, by placing said document in the U.S. Mail, postage prepaid, addressed to:

Paul G. Taggart, Esq.
David H. Rigdon, Esq.
TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703


Dorene A. Wright

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INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	Notice of Entry of Order	15

EXHIBIT 1

EXHIBIT 1

OFFICE OF THE ATTORNEY GENERAL
CARSON CITY, NEVADA

DEC 06 2018

BUREAU OF GOVERNMENT AFFAIRS
GNR/BL/APPELLATE

1 PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
2 DAVID H. RIGDON, ESQ.
Nevada State Bar No. 13567
3 TIMOTHY D. O'CONNOR, ESQ.
Nevada State Bar No. 14098
4 TAGGART & TAGGART, LTD.
108 North Minnesota Street
5 Carson City, Nevada 89703
6 (775) 882-9900 - Telephone
(775) 883-9900 - Facsimile
7 Attorneys for Petitioners

8
9 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF NYE

11 * * *

12 PAHRUMP FAIR WATER, LLC, a Nevada
limited-liability company; STEVEN PETERSON,
13 an individual; MICHAEL LACH, an individual;
PAUL PECK, an individual; BRUCE JABOUR,
14 an individual; and GERALD SCHULTE, an
individual,

Case No. 39524

Dept. No. 2

15 Petitioners,

16 vs.

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

20 Respondent.

21 **NOTICE OF ENTRY OF ORDER**

22 PLEASE TAKE NOTICE that on December 6, 2018, the above-entitled Court entered its Order
23 Granting Petition for Judicial Review in the above-captioned matter, a copy of which is attached hereto
24 as Exhibit 1.

25 ///

26 ///

27 ///

28 ///

AFFIRMATION
Pursuant to NRS 239B.030(4)

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

DATED this 11 day of December, 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
DAVID H. RIGDON, ESQ.
Nevada State Bar No. 13567
TIMOTHY D. O'CONNOR, ESQ.
Nevada State Bar No. 14098
Attorneys for Petitioners

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) and NRS 533.450, 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 HAND-DELIVERY:

James N. Bolotin, Esq.
Deputy Attorney General
Nevada Attorney General's Office
100 N. Carson St.
Carson City, NV 89701

DATED this 6th day of December, 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

<u>Exhibit</u>	<u>Document</u>	<u>Pages</u>
1.	Order Granting Petition for Judicial Review	10

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 DEC -6 P 2:34

NYE COUNTY CLERK

BY TD
DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

* * *

PAHRUMP FAIR WATER, LLC, a Nevada
limited-liability company; STEVEN PETERSON,
an individual; MICHAEL LACH, an individual;
PAUL PECK, an individual; BRUCE JABEOUR,
an individual; and GERALD SCHULTE, an
individual,

Petitioners,

vs.

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

Respondent.

Case No. 39524

Dept. No. 2

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

THIS MATTER comes before the Court on Petitioners' Petition for Judicial Review of Respondent's Amended Order 1293A. Petitioners filed their Opening Brief on September 11, 2018. Respondent filed his Answering Brief on or around October 8, 2018. Petitioners filed their Reply Brief on November 1, 2018. The Court heard oral argument on November 8, 2018, in Pahrump, Nevada. Petitioners are represented by Paul G. Taggart, Esq. and David H. Rigdon, Esq., of Taggart & Taggart, Ltd. Respondent is represented by Attorney General Adam P. Laxalt and Deputy Attorney General James N. Bolotin.

1 This Court, having reviewed the record on appeal and Petitioner's Supplemental Record on
2 Appeal, and having considered the parties' arguments, the applicable law, State Engineer Amended
3 Order 1293A, and all pleadings and papers on file herein, hereby **GRANTS** Petitioners' Petition for
4 Judicial Review based upon the following findings of fact and conclusions of law.

5 **I. Facts and Procedural History**

6 On December 19, 2017, the State Engineer issued Order 1293 (the "Order") wherein he restricted
7 the drilling of new domestic wells on existing parcels of land within the Pahrump basin. Despite the
8 fact that the average domestic well in Pahrump uses less than 0.5 acre-feet of water per year, Order 1293
9 required a property owner to obtain two acre-feet of existing water rights, and relinquish those rights to
10 the State Engineer, in order to drill a domestic well. Prior to issuing Order 1293, the State Engineer did
11 not provide any notice to affected property owners, nor did he provide any opportunity for those property
12 owners to provide comments or submit evidence in opposition to the Order. While it is still unclear
13 exactly how many parcels are directly affected by the Order, the Order could affect as many as 8,000
14 existing residential lots within the basin that are currently unbuilt.

15 Petitioner, PFW timely filed a Petition for Judicial Review of Order 1293. PFW filed its Opening
16 Brief in that appeal on July 6, 2018. On July 12, 2018, without providing any notice to the Court or
17 opposing counsel, the State Engineer issued Order 1293A (the "Amended Order"). On July 18, 2018,
18 the State Engineer filed a motion to dismiss PFW's appeal of Order 1293, claiming that the issuance of
19 Order 1293A rendered the appeal moot. The State Engineer stated in the motion to dismiss that "Order
20 1293A supersedes any legal force and effect of Order 1293" and therefore "Order 1293 is no longer
21 legally valid or enforceable." Like Order 1293, Order 1293A was issued without providing any notice
22 to affected property and without providing an opportunity for affected persons to provide comments or
23 challenge the evidence the State Engineer relied upon. In substance and effect, Order 1293A is nearly
24 identical to Order 1293. The only difference is that Order 1293A provides two additional exemptions
25 to the drilling restriction. Of these exemptions, one allows individuals who filed a notice of intent to
26 drill a domestic well before the issuance of Order 1293, and who had those notices subsequently rejected
27 by the State Engineer, to refile the notices and drill their wells.

1 On August 8, 2018, the parties entered into a settlement agreement whereby PFW agreed to
2 voluntarily dismiss the appeal of Order 1293 and file a new petition for judicial review of Order 1293A.
3 In exchange, the State Engineer agreed to an expedited briefing schedule and to expedite the scheduling
4 of a hearing on the new appeal. On August 10, 2018, the parties filed a stipulation requesting dismissal
5 of the previous appeal. On that same day, PFW submitted a new petition for judicial review of Order
6 1293A to the Court and served the same on the State Engineer.

7 During briefing, Petitioners argued that Respondent did not have legal authority to restrict
8 drilling of domestic wells, Respondent violated constitutional due process in the issuance of the
9 Amended Order, the Amended Order is unsupported by substantial evidence, and that the Amended
10 Order amounts to an unconstitutional taking of private property without just compensation. Respondent
11 argued that he does have the required legal authority to issue the Amended Order and that the Amended
12 Order was based on substantial evidence, the Amended Order does not violate due process protections,
13 Petitioners improperly alleged a taking claim, no taking resulting from the Amended Order occurred,
14 and that Petitioners lack legal standing to bring the instant action. In their reply brief, Petitioners
15 reasserted Respondent's lack of legal authority to issue the Amended Order, the violation of basic
16 constitutional due process in issuing the Amended Order, the lack of substantial evidence in the record
17 to support the Amended Order, the unconstitutionality of the Amended Order, and their constitutional
18 and statutory right to bring this action.

19 Petitioners claim certain undisputed facts are present in this proceeding. Petitioners claim these
20 undisputed facts include that the Pahrump basin is not currently being over-pumped, groundwater
21 pumping in Pahrump has declined since 1969, as a result of this reduction in pumping, water levels in
22 some portions the basin have leveled off or significantly rebounded (in some cases by as much as 45
23 feet), and the Amended Order contains no scientific analysis of whether the drilling of additional
24 domestic wells impact existing wells in the basin.

25 **II. Standard of Review**

26 Under NRS 533.450, a party aggrieved by a State Engineer's order or decision is entitled to have
27 the order or decision reviewed in the nature of an appeal. The role of the reviewing court is to determine
28 if the State Engineer's decision was arbitrary, capricious, an abuse of discretion, or is otherwise affected

1 by prejudicial legal error.¹ A decision is arbitrary if it was made "without consideration of or regard for
2 facts, circumstances, fixed rules, or procedures."² A decision is capricious if it is "contrary to the
3 evidence or established rules on law."³ With regard to factual findings, the Court must determine
4 whether substantial evidence exists in the record to support the State Engineer's decision.⁴ Substantial
5 evidence is "that which 'a reasonable mind might accept as adequate to support a conclusion.'"⁵

6 In *Revert v. Ray*, the Nevada Supreme Court articulated the procedural safeguards the State
7 Engineer must employ prior to issuing an order or decision.⁶ First, the State Engineer must provide
8 affected parties with a "full opportunity to be heard" and "must clearly resolve all the crucial issues
9 presented."⁷ Next, the State Engineer's order or decision must include "findings in sufficient detail to
10 permit judicial review."⁸ Finally, if such procedures are not followed and "the resulting administrative
11 decision is arbitrary, oppressive, or accompanied by a manifest abuse of discretion," a court should not
12 hesitate to intervene and block the enforcement of the order or decision.⁹

13 Here, the State Engineer provided no notice that he was intending to issue the Amended Order,
14 nor did he hold any hearing or seek any comments from affected property owners. Accordingly, unlike
15 with other appellate-type proceedings, there is little to no record below for the Court to review. While
16 the State Engineer has provided an ostensible "record on appeal" for the Court's consideration, this
17 record consists of only the documents the State Engineer claims he relied on in making his decision.
18 None of the documents have been authenticated or validated, nor have the authors of the documents
19 been required to testify in a formal hearing or been subjected to cross-examination. In addition, no one
20 from the State Engineer's office has provided any testimony or evidence supporting his claim of reliance
21 on these documents. Accordingly, none of the processes and procedures which are designed to ensure
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24 ¹ *Pyramid Lake Paiute Tribe of Indians v. Washoe Cty.*, 112 Nev. 743, 751, 918 P.2d 697, 702 (1996) (citing *Sherakis Dist.*
25 *v. State, Dep't of Taxation*, 108 Nev. 901, 903, 839 P.2d 1315, 1317 (1992)).

26 ² BLACK'S LAW DICTIONARY 125 (10th ed. 2014) (definition of "arbitrary").

27 ³ BLACK'S LAW DICTIONARY 254 (10th ed. 2014) (definition of "capricious").

28 ⁴ *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979).

⁵ *Bacher v. State Eng'r*, 122 Nev. 1110, 1121, 146 P.3d 793, 800 (2006) (quoting *State, Emp. Sec. Dep't v. Hilton Hotels Corp.*, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

⁶ *Revert*, 95 Nev. 782, 603 P.2d 262.

⁷ *Revert*, 95 Nev. at 787, 603 P.2d at 264-65.

⁸ *Revert*, 95 Nev. at 787, 603 P.2d at 265.

⁹ *Id.*

1 a full and fair opportunity to challenge evidence before a decision, or to verify that evidence submitted
2 to the Court is relevant and accurate have been followed.

3 The State Engineer claims “[d]ecisions of the State Engineer are entitled not only to deference
4 with respect to factual determinations, but also with respect to legal conclusions.”¹⁰ The Nevada
5 Supreme Court has clearly and unambiguously held that “[w]hile the State Engineer’s interpretation of
6 a statute is persuasive, it is not controlling”¹¹ and that a reviewing court is required to “decide pure legal
7 questions *without deference* to an agency determination.”¹² The latter of these holdings was issued this
8 year and reflects the Nevada Supreme Court’s current thinking. The State Engineer asserts that this
9 Court should adopt a *Chevron*-like standard of review to the State Engineer’s legal conclusions.¹³ The
10 State Engineer initially cites NRS 533.450 as the basis for his assertion. However, NRS 533.450
11 establishes no such standard, either expressly or by implication, and the Nevada Supreme Court has
12 never adopted the *Chevron* standard for purely legal questions. In fact, in *Town of Eureka*, the Supreme
13 Court held just the opposite – that a “district court is free to decide purely legal questions . . . *without*
14 *deference* to the agency’s decision.”¹⁴

15 **III. The State Engineer Exceeded His Statutory Authority.**

16 The language of NRS 534.030(4) is plain and unambiguous. The statute grants the State
17 Engineer general supervisory power over all groundwater wells in Nevada *except* domestic wells. The
18 history of this particular provision, and of the groundwater law in general, demonstrate that the
19 Legislature purposely intended to exempt domestic wells from the State Engineer’s regulatory authority
20 except in certain limited circumstances inapplicable to the present case. Accordingly, the Amended
21 Order is an invalid exercise of authority that the State Engineer does not possess.

22 Two separate and distinct protections for domestic wells are provided in NRS 534.180(1) and
23 NRS 534.030(4) which are exemptions from the State Engineer’s general regulatory control. Under
24 NRS 534.180(1), domestic wells are exempt from the State Engineer’s permitting process while NRS
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26 ¹⁰ Answering Brief at 8:20-21 (citing *State v. State Eng’r*, 104 Nev. 709, 713, 766 P.2d 263, 266 (1988)).

27 ¹¹ *Town of Eureka v. Office of State Eng’r, State of Nev., Div. of Water Res.*, 108 Nev. 163, 165-66, 826 P.2d 948, 950 (1992).

28 ¹² *Felton v. Douglas Cty.*, 134 Nev. Adv. Op. 6 at 3, 410 P.3d 991, 994 (2018) (emphasis added).

¹³ See *Chevron, U.S.A. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844, 104 S. Ct. 2778, 2782 (1984) (establishing a
deferential standard of review for federal courts reviewing legal determinations of federal agencies).

¹⁴ *Town of Eureka*, 108 Nev. at 165, 826 P.2d at 949 (citing *Jones v. Rasner*, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986))
(emphasis added).

1 534.030(4) separately exempts them from the State Engineer's general supervisory control.
2 Accordingly, the State Engineer is wrong when he claims that "NRS 534.030(4) specifically exempts
3 domestic wells from the permitting process."¹⁵ Instead, as shown above, it is NRS 534.180(1) that
4 exempts domestic wells from the permitting process while NRS 534.030(4) provides an additional
5 exemption that removes domestic wells from the State Engineer's general supervisory control.

6 Because domestic wells are afforded an exemption from the State Engineer's regulatory purview,
7 the only way he can issue a regulation governing them is if he can point to a specific statute that overrides
8 the general exemption and authorizes him to do so. With respect to the Orders in question, no specific
9 statutory authority exists to justify the Orders. The Legislature must be presumed to mean what it says,
10 and say what it means.¹⁶ When the Legislature has seen fit to apply specific provisions of the water law
11 to domestic wells, it has done so with unambiguous language and clear intent. Where, as here, the
12 Legislature has not clearly expressed such intent in a statute, it cannot be presumed to intend that
13 outcome. Accordingly, the State Engineer is not authorized by the general language in NRS 534.120(1)
14 to place the restrictions contained in NRS 534.110(8) on domestic wells.

15 **IV. The State Engineer Should Have Provided Notice To Property Owners.**

16 The State Engineer issued Order 1293 on December 19, 2017, without any prior notice or
17 publication and without holding a hearing. Order 1293A was issued while the appeal over Order 1293
18 was pending. The State Engineer issued Order 1293A without any prior notice or publication. These
19 facts are a matter of public record and are undisputed. The Nevada Supreme Court has ruled that prior
20 to issuing a regulation affecting an interest in real property a regulatory body must provide personal
21 notice to each affected property owner.¹⁷ Said notice must include the content of the regulation so that
22 affected parties can adequately prepare to oppose it.¹⁸ Finally, the regulatory body must hold a hearing
23 and allow affected property owners the opportunity to provide testimony and evidence related to the
24 regulation.¹⁹ A failure to follow these steps is a constitutional due process violation that renders the
25 regulation invalid. Because the Orders impair a vested property right, and because the State Engineer
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27 ¹⁵ Answering Brief at 12:21-22.

¹⁶ *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-254, 112 S. Ct. 1146, 1149 (1992).

28 ¹⁷ *Bing Const. Co. of Nev. v. Cty. of Douglas*, 107 Nev. 262, 266, 810 P.2d 768, 770-71 (1991).

¹⁸ *Id.*

¹⁹ *Id.*

1 failed to provide notice or hold a hearing before issuing the Orders, the Orders are hereby deemed
2 invalid.

3 **V. Substantial Evidence Does Not Support Order 1293A.**

4 Even if the State Engineer had the authority to apply NRS 534.110(8) to domestic wells, before
5 he can do so he must demonstrate that additional wells will unduly interfere with wells that already exist.
6 In his Answering Brief, the State Engineer makes the conclusory statement that "[i]t is clear that if
7 existing pumping rates will lead to well failures, an increase in the number of wells and therefore an
8 increase in pumping will accelerate the problem - undoubtedly causing an undue interference with
9 existing wells."²⁰ However, there is a major problem with this statement - it is not backed by any
10 evidence or facts in the record and the State Engineer provides no citation to any evidence.

11 Here, the State Engineer did not perform a full conflicts analysis or make a determination about
12 how, specifically, the restrictions in Order 1293A will benefit existing wells. Instead, the State Engineer
13 relied exclusively on a groundwater model that was never designed to determine whether new wells
14 would cause undue interference with existing wells.²¹ Instead, the model was designed to determine the
15 likelihood of well failures resulting from the pumping of existing wells in the basin.

16 The State Engineer also did not make any determination or employ any objective standards
17 regarding what constitutes an "undue" interference with an existing well. Under NRS 534.110(4), all
18 appropriations of groundwater must allow for a "reasonable lowering of the static water level at the
19 appropriator's point of diversion." Nowhere in the Orders does the State Engineer set an objective
20 standard for determining whether predicted declines in the water table are reasonable. This is an
21 important pre-requisite for any conflicts analysis because if the declines caused by existing or new wells
22 are reasonable then, by definition, such declines cannot be said to unduly interfere with existing wells.

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27 ²⁰ Answering Brief at 10:27-11:2.

28 ²¹ Notably the State Engineer fails in his Answering Brief to address any of the criticisms of the groundwater study raised by
Petitioners' in their Opening Brief. Such failure should be deemed an admission that Petitioners' arguments are meritorious
and that the groundwater study is fundamentally flawed and, therefore, cannot be considered substantial evidence supporting
the issuance of the Orders.

1 **VI. Petitioner's Claim That Order 1293A Is An Unconstitutional Taking.**

2 Petitioners argue that Order 1293A is an unconstitutional taking of private party without just
3 compensation. They allege that the requirement to purchase and forever relinquish water rights to the
4 State Engineer is a per se taking of that property. They further allege that the ban on the drilling of a
5 new domestic well on an existing parcel is also a regulatory taking. Respondent alleges that NRS
6 Chapter 37 provides the exclusive means to bring an action for a taking and that the issue is not ripe for
7 adjudication at this time.

8 The Court has already determined that the Respondent (1) did not have legislative authority to
9 issue Order 1293A, (2) violated due process in the issuance of Order 1293A, and (3) issued Order 1293A
10 without substantial evidence to support it. Because of this Order 1293A is invalid. Accordingly, the
11 Court finds that there is no need at this time to make a determination with respect to whether Order
12 1293A is an unconstitutional taking of private property without just compensation.

13 **VII. Respondent's Claim That Pahrump Fair Water, LLC Lacks Standing.**

14 Respondent argues that Petitioner PFW has no standing to file or participate in this action.²² The
15 Court finds that this argument is without merit. PFW has both statutory and constitutional standing to
16 assert the interests of its members because it is an association that was formed for the express purpose
17 of doing so.²³

18 In *Citizens for Cold Springs v. City of Reno*,²⁴ the Court reviewed the grant of statutory standing
19 contained in NRS 268.668 regarding annexation decisions. In that case, the Court held that an
20 association of property owners that would be affected by an annexation decision had standing to
21 challenge that decision.²⁵ The Court interpreted the language of NRS 268.668 which grants standing to
22 "any person or city claiming to be adversely affected by such proceeding."²⁶ Since the statute says that
23 any person claiming to be adversely affected may bring an action, in the "tradition of [its] long-standing
24 jurisprudence," the Court found that standing rights under NRS 268.668 are broader than what
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27 ²² Answering Brief at 29:8-12.

²³ SROA 858:22-859:1.

²⁴ *Citizens for Cold Springs v. City of Reno*, 125 Nev. 625, 218 P.3d 847 (2009).

²⁵ *Id.*, 125 Nev. at 634, 218 P.3d at 853.

²⁶ *Id.*, 125 Nev. at 629, 218 P.3d at 850.

1 constitutional standing allows.²⁷ The Court specifically focused on the NRS 268.668 grant of standing
2 to any person claiming to be aggrieved.²⁸ Based on that language the Court held that even property
3 owners who do not have constitutional standing because they did not own property in the area of
4 annexation at issue do have standing under NRS 268.668.²⁹

5 Further, an association has standing to bring suit on behalf of its members when (1) its members
6 would otherwise have standing to sue in their own right, (2) the interests it seeks to protect are germane
7 to their organization's purpose, and (3) neither the claim asserted, nor the relief requested, requires the
8 participation of individual members in the lawsuit.³⁰ Here, PFW has members that would otherwise
9 have the right to bring this action on their own. Also, because PFW was formed for the express purpose
10 of fighting the Orders,³¹ this challenge is germane to its purpose, and it is not necessary to have
11 individual members participate in the lawsuit. Finally, the participation of the individual members of
12 PFW is not required in order to resolve the issues raised in PFW's Petition because only declarative and
13 injunctive relief is being sought.

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27 ²⁷ *Id.*, 125 Nev. at 630-31, 218 P.3d at 851.

28 ²⁸ *Id.*

²⁹ *Id.*, 125 Nev. at 631, 218 P.3d at 851.

³⁰ *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441 (1977).

³¹ SROA 858:22-859:1.

ORDER

UPON CONSIDERATION, and good cause appearing therefore, the Court hereby finds that Amended Order 1293A was arbitrarily and capriciously issued and orders that Amended Order 1293A be reversed.

IT IS HEREBY ORDERED that Petitioners' Petition for Judicial Review is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that Respondent's Amended Order 1293A is **REVERSED**.

IT IS HEREBY FURTHER ORDERED that Respondent shall issue an order noticing the reversal of Amended Order 1293A within five (5) days of the ^{receipt}~~signing~~ of this order.
SVC

IT IS SO ORDERED.

DATED this 3 day of December, 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: 

PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
DAVID H. RIGDON, ESQ.
Nevada State Bar No. 13567
Attorneys for Petitioners



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IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

PAHRUMP FAIR WATER, LLC.,
a Nevada limited-liability company;
STEVEN PETERSON, an individual;
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Petitioners,

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 P. Elliott.

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

1 Natural Resources, Division of Water Resources (hereafter "State
2 Engineer").

3 b. The attorneys for the State Engineer:

4 Adam Paul Laxalt, Attorney General
5 James N. Bolotin, Deputy Attorney General
6 Nevada Bar No. 13829
7 100 North Carson Street
8 Carson City, Nevada 89701-4717
9 T: (775) 684-1231

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

12 a. The respondents are Pahrump Fair Water, LLC, a Nevada limited-
13 liability company, and individuals Steven Peterson, Michael Lach,
14 Paul Peck, Bruce Jabeour, and Gerald Schulte (collectively
15 "respondents").

16 b. Upon information and belief, the following attorneys will represent
17 respondent in the appeal:

18 Paul G. Taggart, Esq.
19 Nevada Bar No. 6136
20 David H. Rigdon, Esq.
21 Nevada Bar No. 13567
22 Taggart & Taggart, Ltd.
23 108 North Minnesota Street
24 Carson City, Nevada 89703

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

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

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///

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.

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

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

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

A petition for judicial review of State Engineer's Amended Order No. 1293A was served and filed on or about August 10, 2018.

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

The State Engineer is appealing the district court's decision to grant respondents' Petition for Judicial Review, reversing and overturning the State Engineer's Amended Order No. 1293A, prohibiting the drilling of new domestic wells in the Pahrump Basin without relinquishment of 2 acre-feet annually of water rights to the State Engineer to serve the new domestic well. Following a full briefing on the issue from both parties, and oral argument held November 8, 2018, the District Court ruled from the bench, granting respondents' Petition for Judicial Review, finding that the State Engineer exceeded his statutory authority, the record was deficient, that respondents should have been provided notice and a hearing, and that the

1 entity Pahrump Fair Water, LLC, had standing. That decision is being
2 appealed by the State Engineer.

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

6 No, this case has not been the subject of an appeal to or original writ
7 proceeding in the Supreme Court.

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

9 This appeal does not involve child custody or visitation.

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

12 Based upon the nature of the appeal, and the arguments that will be raised
13 therein, it is unlikely that this case involves the possibility of settlement.

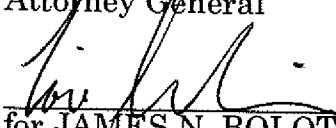
14 AFFIRMATION

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

17 DATED this 7th day of December, 2018.

18 ADAM PAUL LAXALT
19 Attorney General


20 By:

 (Bar No. 14156)
21 for JAMES N. BOLOTIN (Bar No. 13829)
22 Deputy Attorney General
23 State of Nevada
24 Office of the Attorney General
25 100 North Carson Street
26 Carson City, Nevada 89701-4717
27 Tel: (775) 684-1231
28 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 7th day of December, 2018, I served a true and correct copy of
4 the foregoing CASE APPEAL STATEMENT, by placing said document in the U.S. Mail,
5 postage prepaid, addressed to:

6 Paul G. Taggart, Esq.
7 David H. Rigdon, Esq.
8 TAGGART & TAGGART, LTD.
9 108 North Minnesota Street
10 Carson City, Nevada 89703

11 
12 Dorene A. Wright
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Case #: CV-0039524

Judge: ELLIOTT, STEVEN P

Date Filed: 08/17/18 Department: 02

Case Type: JU/APP JUDICIAL REVIEW/APPEAL - OTHER

Title/Caption: PAHRUMP FAIR WATER, LLC; STEVEN PETERSON
MICHAEL LACH, PAUL PECK; BRUCE JABBOUR;
GERALD SCHULTE
VS.
JASON KING, P.E., NEVADA STATE ENGINEER,
DIVISION OF WATER RESOURCES, DEPARTMENT
OF CONSERVATION AND NATURAL RESOURCES

Comments: FILE IN PAHRUMP RELATED TO CV38972

Defendant(s) KING, JASON	Attorney(s) BOLOTIN, JAMES N
Defendant(s) DIVISION OF WATER RESOURCES	Attorney(s) BOLOTIN, JAMES N
Defendant(s) DEPT OF CONSERVATION & NATURAL	Attorney(s) BOLOTIN, JAMES N
Plaintiff(s) PAHRUMP FAIR WATER, LLC	Attorney(s) TAGGART, PAUL G.
Plaintiff(s) PETERSON, STEVEN	Attorney(s) TAGGART, PAUL G.
Plaintiff(s) LACH, MICHAEL	Attorney(s) TAGGART, PAUL G.
Plaintiff(s) PECK, PAUL	Attorney(s) TAGGART, PAUL G.
Plaintiff(s) JABBOUR, BRUCE	Attorney(s) TAGGART, PAUL G.
Plaintiff(s) SCHULTE, GERALD	Attorney(s) TAGGART, PAUL G.

Filings:

Date	Pty	Filing	Fees
8/17/18	P	PETITION FOR JUDICIAL REVIEW	245.00
8/17/18	P	NOTICE OF APPEAL OF NEVADA STATE ENGINEER AMENDED ORDER #1293A	150.00
8/22/18	C	ORDER OF RECUSAL (JUDGE LANE)	
8/22/18	C	STIPULATION AND ORDER REGARDING BRIEFING SCHEDULE	
8/29/18	D	SUMMARY OF RECORD ON APPEAL VOLUME II	
8/29/18	D	SUMMARY OF RECORD ON APPEAL VOLUME III	
8/29/18	D	SUMMARY OF RECORD ON APPEAL VOLUME IV	
8/29/18	D	SUMMARY OF RECORD ON APPEAL VOLUME V	
8/29/18	D	SUMMARY OF RECORD ON APPEAL VOLUME VI	

8/29/18	D	SUMMARY OF RECORD ON APPEAL VOLUME VII	
8/29/18	D	SUMMARY OF RECORD ON APPEAL VOLUME VIII	
8/29/18	D	SUMMARY OF RECORD ON APPEAL VOLUME IX	
8/30/18	D	SUMMARY OF RECORD ON APPEAL VOLUMES 1-IX (SE ROA 1-3574)	
8/31/18	C	ORDER GRANTING STIPULATION AND ORDER REGARDING BRIEFING SCHEDULE	
9/04/18	P	PEREMPTORY CHALLENGE OF JUDGE (CHANGE OF SENIOR JUDGE, WILLIAM MADDOX)	450.00
9/04/18	C	NOTICE OF DEPARTMENT REASSIGNMENT (ASSIGNED TO SENIOR JUDGE WILLIAM MADDOX, AND TO BE DETERMINED TO SENIOR ASSIGNED JUDGE)	
9/11/18	D	NOTICE OF TRANSMITTAL OF RECORD ON APPEAL	
9/11/18	D	STATE ENGINEER'S PEREMPTORY CHALLENGE OF JUDGE (NO FEE PAID)	
9/11/18	P	PETITIONERS OPENING BRIEF	
9/11/18	P	SUPPLEMENTAL RECORD ON APPEAL(PART 1 & 2); (IN A BOX #2)	
9/21/18	P	REQUEST TO SET HEARING DATE	
10/12/18	D	RESPONDENT STATE ENGINEER'S ANSWERING BRIEF	
10/29/18	C	ORDER SETTING HEARING	
10/31/18	C	STIPULATION AND ORDER FOR EXTENSION OF TIME	
11/01/18	P	PETITIONERS' REPLY BRIEF	
11/26/18	P	(PROPOSED) ORDER GRANTING PETITION FOR JUDICIAL REVIEW ((PROPOSED) ORDER ATTACHED AS EXHIBIT, NOT YET SIGNED)	
12/06/18	C	ORDER GRANTING PETITION FOR JUDICIAL REVIEW	
12/07/18	P	NOTICE OF ENTRY OF ORDER	
12/10/18	D	NOTICE OF APPEAL	
12/10/18	D	CASE APPEAL STATEMENT	
12/10/18	D	EX PARTE MOTION FOR ORDER SHORTENING TIME ON MOTION FOR STAY OF ORDER GRANTING PETITION FOR JUDICIAL REVIEW AND REVERSING STATE ENGINEER'S AMENDED ORDER NO.1293A PENDING APPEAL	
12/10/18	D	PROPOSED ORDER SHORTENING TIME ON MOTION FOR STAY OF ORDER GRANTING PETITION FOR JUDICIAL REVIEW AND REVERSING STATE ENGINEER'S AMENDED ORDER NO. 1293A PENDING APPEAL	
12/10/18	D	MOTION FOR STAY OF ORDER GRANTING PETITION FOR JUDICIAL REVIEW AND REVERSING STATE ENGINEER'S AMENDED ORDER NO. 1293A PENDING APPEAL ON ORDER SHORTENING TIME	
12/10/18	D	MOTION FOR STAY OF ORDER GRANTING PETITION FOR JUDICIAL REVIEW AND REVERSING STATE ENGINEER'S AMENDED ORDER NO. 1293A PENDING APPEAL ON ORDER SHORTENING TIME	
12/10/18	D	PROPOSED ORDER GRANTING MOTION FOR STAY OF ORDER GRANTING PETITION FOR JUDICIAL REVIEW AND REVERSING STATE ENGINEER'S AMENDED ORDER NO. 1293A PENDING APPEAL	
12/12/18	P	REQUEST FOR SUBMISSION OF EXPARTE MOTION FOR ORDER SHORTENING TIME	

Case #: CV-0039524

Judge: ELLIOTT, STEVEN P

Date Filed: 08/17/18 Department: 02

Case Type: JU/APP JUDICIAL REVIEW/APPEAL - OTHER

Title/Caption: PAHRUMP FAIR WATER, LLC; STEVEN PETERSON
MICHAEL LACH, PAUL PECK; BRUCE JABBOUR;
GERALD SCHULTE
VS.
JASON KING, P.E., NEVADA STATE ENGINEER,
DIVISION OF WATER RESOURCES, DEPARTMENT
OF CONSERVATION AND NATURAL RESOURCES

Comments: FILE IN PAHRUMP RELATED TO CV38972

Defendant(s)	Attorney(s)
KING, JASON	BOLOTIN, JAMES N
Defendant(s)	Attorney(s)
DIVISION OF WATER RESOURCES	BOLOTIN, JAMES N
Defendant(s)	Attorney(s)
DEPT OF CONSERVATION & NATURAL	BOLOTIN, JAMES N
Plaintiff(s)	Attorney(s)
PAHRUMP FAIR WATER, LLC	TAGGART, PAUL G.
Plaintiff(s)	Attorney(s)
PETERSON, STEVEN	TAGGART, PAUL G.
Plaintiff(s)	Attorney(s)
LACH, MICHAEL	TAGGART, PAUL G.
Plaintiff(s)	Attorney(s)
PECK, PAUL	TAGGART, PAUL G.
Plaintiff(s)	Attorney(s)
JABBOUR, BRUCE	TAGGART, PAUL G.
Plaintiff(s)	Attorney(s)
SCHULTE, GERALD	TAGGART, PAUL G.

Hearings:

Date	Time	Hearing	Reference
11/08/18	10:00	HEARING (SENIOR JUDGE ELLIOTT - D2P)	GERIE
JUDGE: STEVEN P ELLIOT			
CLERK: DEBRA BENNETT			
BAILIFF:DEPUTY SWEET			
COURT REPORTER: DEBBIE HINES			
APPEARANCES: DAVID H. RIGDON ESQ AND PAUL TAGGART ESQ FOR THE PLAINTIFF;			
JAMES N. BOLOTIN DEPUTY ATTORNEY GENERAL PRESENT ON BEHALF OF THE			
DEFENDANTS; MICHELINE FAIRBANK DEPUTY ADMINISTRATOR OF DIVISION OF WATER			
RESOURCES WITH DEFENDANTS. JASON KING,STATE ENGINEER/DEFENDANT PRESENT.			
COURT BRIEFS CASE. MR RIGDON PRESENTS ORAL ARGUMENTS /POWER POINT			

PRESENTATION CONCERNING PETITION REGARDING THE STATE ENGINEERS REPORT, CONCERNING DOMESTIC WELLS. MR TAGGERT BRIEFS COURT AND CONTINUES ORAL ARGUMENT ON BEHALF OF PLAINTIFFS. THE INTERPRETATION OF STATUTE IS THE CRUX OF THIS CASE. MR. TAGGERT CONCLUDES PRESENTATION. COURT ORDERS A SHORT RECESS. COURT BACK IN SESSION. MR RIGDON CONTINUES THE ORAL ARGUMENT AND PRESENTATION FOR THE PLAINTIFFS. MR RIGDON STATES #1293 SHOULD BE DECLARED AN INVALID ORDER AND CONCLUDES HIS PRESENTATION. COURT ADJOURNS FOR LUNCH. COURT BACK IN SESSION. MR BOLOTIN PRESENTS HIS CASE FOR THE DEFENSE. POWERPOINT PRESENTATION. ASKING COURT TO AFFIRM ORDER 1293A. STATE ENGINEER HAS AUTHORITY, ORDER 1293A DOES NOT AFFECT EXISTING DOMESTIC WELLS, DOES NOT VIOLATE DUE PROCESS AND WILL PROTECT EXISTING WELLS. PFW LACKS STANDING. MR. BOLOTIN REQUESTS PLAINTIFFS PETITION BE DENIED AND STATE ENGINEERS REPORT BE AFFIRMED. MR. BOLOTIN CONCLUDES HIS ORAL ARGUMENT AND PRESENTATION. COURT ADDRESSES MR BOLOTIN IN REGARDS TO THE THE DESIGNATED AREAS OF THE BASIN. MR TAGGERT CONDUCTS HIS REBUTTAL. STATE ENGINEER DOES NOT HAVE AUTHORITY OVER DOMESTIC WELLS. PFW IS AGGRIEVED AND HAS STANDING. MR TAGGERT STATES HE HAS NOTHING FURTHER. MR BOLOTIN CONDUCTS HIS REBUTTAL. STATE ENGINEERS REPORT IS SUPPORTED BY EVIDENCE IN THE REPORT. MR BOLOTIN CONCLUDES HIS REBUTTAL. COURT PROCEEDS WITH SOLILOQUY. COURT STATES PFW HAS STANDING. STATE ENGINEERS REPORT HAS SOME FLAWS. COURT GRANTS PETITIONERS RELIEF REQUESTED. MR RIGDON WILL PREPARE THE ORDER. COURT IS ADJOURNED.

FILED
FIFTH JUDICIAL DISTRICT COURT

DEC 07 2018

NYE COUNTY DEPUTY CLERK
DEPUTY

1 PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
2 DAVID H. RIGDON, ESQ.
Nevada State Bar No. 13567
3 TIMOTHY D. O'CONNOR, ESQ.
Nevada State Bar No. 14098
4 TAGGART & TAGGART, LTD.
108 North Minnesota Street
5 Carson City, Nevada 89703
6 (775) 882-9900 - Telephone
(775) 883-9900 - Facsimile
7 Attorneys for Petitioners

8
9 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF NYE

11 * * *

12 PAHRUMP FAIR WATER, LLC, a Nevada
limited-liability company; STEVEN PETERSON,
an individual; MICHAEL LACH, an individual;
13 PAUL PECK, an individual; BRUCE JABOUR,
an individual; and GERALD SCHULTE, an
14 individual,

15 Petitioners,

16 vs.

17 JASON KING, P.E., Nevada State
Engineer, DIVISION OF WATER RESOURCES,
18 DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,
19

20 Respondent.

Case No. 39524

Dept. No. 2

21 **NOTICE OF ENTRY OF ORDER**

22 PLEASE TAKE NOTICE that on December 6, 2018, the above-entitled Court entered its Order
23 Granting Petition for Judicial Review in the above-captioned matter, a copy of which is attached hereto
24 as Exhibit 1.

25 ///

26 ///

27 ///

28 ///

AFFIRMATION
Pursuant to NRS 239B.030(4)

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

DATED this 6 day of December, 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
DAVID H. RIGDON, ESQ.
Nevada State Bar No. 13567
TIMOTHY D. O'CONNOR, ESQ.
Nevada State Bar No. 14098
Attorneys for Petitioners

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NRS 533.450, 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:

☒ **BY HAND-DELIVERY:**

James N. Bolotin, Esq.
Deputy Attorney General
Nevada Attorney General's Office
100 N. Carson St.
Carson City, NV 89701

DATED this 6th day of December, 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

<u>Exhibit</u>	<u>Document</u>	<u>Pages</u>
1.	Order Granting Petition for Judicial Review	10

EXHIBIT 1

EXHIBIT 1

FILED

2018 DEC -6 P 2:34

NYE COUNTY CLERK

BY TD
DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

* * *

PAHRUMP FAIR WATER, LLC, a Nevada
limited-liability company; STEVEN PETERSON,
an individual; MICHAEL LACH, an individual;
PAUL PECK, an individual; BRUCE JABOUR,
an individual; and GERALD SCHULTE, an
individual,

Petitioners,

vs.

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

Respondent.

Case No. 39524

Dept. No. 2

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

THIS MATTER comes before the Court on Petitioners' Petition for Judicial Review of Respondent's Amended Order 1293A. Petitioners filed their Opening Brief on September 11, 2018. Respondent filed his Answering Brief on or around October 8, 2018. Petitioners filed their Reply Brief on November 1, 2018. The Court heard oral argument on November 8, 2018, in Pahrump, Nevada. Petitioners are represented by Paul G. Taggart, Esq. and David H. Rigdon, Esq., of Taggart & Taggart, Ltd. Respondent is represented by Attorney General Adam P. Laxalt and Deputy Attorney General James N. Bolotin.

1 This Court, having reviewed the record on appeal and Petitioner's Supplemental Record on
2 Appeal, and having considered the parties' arguments, the applicable law, State Engineer Amended
3 Order 1293A, and all pleadings and papers on file herein, hereby **GRANTS** Petitioners' Petition for
4 Judicial Review based upon the following findings of fact and conclusions of law.

5 **I. Facts and Procedural History**

6 On December 19, 2017, the State Engineer issued Order 1293 (the "Order") wherein he restricted
7 the drilling of new domestic wells on existing parcels of land within the Pahrump basin. Despite the
8 fact that the average domestic well in Pahrump uses less than 0.5 acre-feet of water per year, Order 1293
9 required a property owner to obtain two acre-feet of existing water rights, and relinquish those rights to
10 the State Engineer, in order to drill a domestic well. Prior to issuing Order 1293, the State Engineer did
11 not provide any notice to affected property owners, nor did he provide any opportunity for those property
12 owners to provide comments or submit evidence in opposition to the Order. While it is still unclear
13 exactly how many parcels are directly affected by the Order, the Order could affect as many as 8,000
14 existing residential lots within the basin that are currently unbuilt.

15 Petitioner, PFW timely filed a Petition for Judicial Review of Order 1293. PFW filed its Opening
16 Brief in that appeal on July 6, 2018. On July 12, 2018, without providing any notice to the Court or
17 opposing counsel, the State Engineer issued Order 1293A (the "Amended Order"). On July 18, 2018,
18 the State Engineer filed a motion to dismiss PFW's appeal of Order 1293, claiming that the issuance of
19 Order 1293A rendered the appeal moot. The State Engineer stated in the motion to dismiss that "Order
20 1293A supersedes any legal force and effect of Order 1293" and therefore "Order 1293 is no longer
21 legally valid or enforceable." Like Order 1293, Order 1293A was issued without providing any notice
22 to affected property and without providing an opportunity for affected persons to provide comments or
23 challenge the evidence the State Engineer relied upon. In substance and effect, Order 1293A is nearly
24 identical to Order 1293. The only difference is that Order 1293A provides two additional exemptions
25 to the drilling restriction. Of these exemptions, one allows individuals who filed a notice of intent to
26 drill a domestic well before the issuance of Order 1293, and who had those notices subsequently rejected
27 by the State Engineer, to refile the notices and drill their wells.

1 On August 8, 2018, the parties entered into a settlement agreement whereby PFW agreed to
2 voluntarily dismiss the appeal of Order 1293 and file a new petition for judicial review of Order 1293A.
3 In exchange, the State Engineer agreed to an expedited briefing schedule and to expedite the scheduling
4 of a hearing on the new appeal. On August 10, 2018, the parties filed a stipulation requesting dismissal
5 of the previous appeal. On that same day, PFW submitted a new petition for judicial review of Order
6 1293A to the Court and served the same on the State Engineer.

7 During briefing, Petitioners argued that Respondent did not have legal authority to restrict
8 drilling of domestic wells, Respondent violated constitutional due process in the issuance of the
9 Amended Order, the Amended Order is unsupported by substantial evidence, and that the Amended
10 Order amounts to an unconstitutional taking of private property without just compensation. Respondent
11 argued that he does have the required legal authority to issue the Amended Order and that the Amended
12 Order was based on substantial evidence, the Amended Order does not violate due process protections,
13 Petitioners improperly alleged a taking claim, no taking resulting from the Amended Order occurred,
14 and that Petitioners lack legal standing to bring the instant action. In their reply brief, Petitioners
15 reasserted Respondent's lack of legal authority to issue the Amended Order, the violation of basic
16 constitutional due process in issuing the Amended Order, the lack of substantial evidence in the record
17 to support the Amended Order, the unconstitutionality of the Amended Order, and their constitutional
18 and statutory right to bring this action.

19 Petitioners claim certain undisputed facts are present in this proceeding. Petitioners claim these
20 undisputed facts include that the Pahrump basin is not currently being over-pumped, groundwater
21 pumping in Pahrump has declined since 1969, as a result of this reduction in pumping, water levels in
22 some portions the basin have leveled off or significantly rebounded (in some cases by as much as 45
23 feet), and the Amended Order contains no scientific analysis of whether the drilling of additional
24 domestic wells impact existing wells in the basin.

25 **II. Standard of Review**

26 Under NRS 533.450, a party aggrieved by a State Engineer's order or decision is entitled to have
27 the order or decision reviewed in the nature of an appeal. The role of the reviewing court is to determine
28 if the State Engineer's decision was arbitrary, capricious, an abuse of discretion, or is otherwise affected

1 by prejudicial legal error.¹ A decision is arbitrary if it was made "without consideration of or regard for
2 facts, circumstances, fixed rules, or procedures."² A decision is capricious if it is "contrary to the
3 evidence or established rules on law."³ With regard to factual findings, the Court must determine
4 whether substantial evidence exists in the record to support the State Engineer's decision.⁴ Substantial
5 evidence is "that which 'a reasonable mind might accept as adequate to support a conclusion.'"⁵

6 In *Revert v. Ray*, the Nevada Supreme Court articulated the procedural safeguards the State
7 Engineer must employ prior to issuing an order or decision.⁶ First, the State Engineer must provide
8 affected parties with a "full opportunity to be heard" and "must clearly resolve all the crucial issues
9 presented."⁷ Next, the State Engineer's order or decision must include "findings in sufficient detail to
10 permit judicial review."⁸ Finally, if such procedures are not followed and "the resulting administrative
11 decision is arbitrary, oppressive, or accompanied by a manifest abuse of discretion," a court should not
12 hesitate to intervene and block the enforcement of the order or decision.⁹

13 Here, the State Engineer provided no notice that he was intending to issue the Amended Order,
14 nor did he hold any hearing or seek any comments from affected property owners. Accordingly, unlike
15 with other appellate-type proceedings, there is little to no record below for the Court to review. While
16 the State Engineer has provided an ostensible "record on appeal" for the Court's consideration, this
17 record consists of only the documents the State Engineer claims he relied on in making his decision.
18 None of the documents have been authenticated or validated, nor have the authors of the documents
19 been required to testify in a formal hearing or been subjected to cross-examination. In addition, no one
20 from the State Engineer's office has provided any testimony or evidence supporting his claim of reliance
21 on these documents. Accordingly, none of the processes and procedures which are designed to ensure
22
23

24 ¹ *Pyramid Lake Paiute Tribe of Indians v. Washoe Cty.*, 112 Nev. 743, 751, 918 P.2d 697, 702 (1996) (citing *Sherakis Dist.*
25 *v. State, Dep't of Taxation*, 108 Nev. 901, 903, 839 P.2d 1315, 1317 (1992)).

26 ² BLACK'S LAW DICTIONARY 125 (10th ed. 2014) (definition of "arbitrary").

27 ³ BLACK'S LAW DICTIONARY 254 (10th ed. 2014) (definition of "capricious").

28 ⁴ *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979).

⁵ *Bacher v. State Eng'r*, 122 Nev. 1110, 1121, 146 P.3d 793, 800 (2006) (quoting *State, Emp. Sec. Dep't v. Hilton Hotels Corp.*, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

⁶ *Revert*, 95 Nev. 782, 603 P.2d 262.

⁷ *Revert*, 95 Nev. at 787, 603 P.2d at 264-65.

⁸ *Revert*, 95 Nev. at 787, 603 P.2d at 265.

⁹ *Id.*

1 a full and fair opportunity to challenge evidence before a decision, or to verify that evidence submitted
2 to the Court is relevant and accurate have been followed.

3 The State Engineer claims "[d]ecisions of the State Engineer are entitled not only to deference
4 with respect to factual determinations, but also with respect to legal conclusions."¹⁰ The Nevada
5 Supreme Court has clearly and unambiguously held that "[w]hile the State Engineer's interpretation of
6 a statute is persuasive, it is not controlling"¹¹ and that a reviewing court is required to "decide pure legal
7 questions *without deference* to an agency determination."¹² The latter of these holdings was issued this
8 year and reflects the Nevada Supreme Court's current thinking. The State Engineer asserts that this
9 Court should adopt a *Chevron*-like standard of review to the State Engineer's legal conclusions.¹³ The
10 State Engineer initially cites NRS 533.450 as the basis for his assertion. However, NRS 533.450
11 establishes no such standard, either expressly or by implication, and the Nevada Supreme Court has
12 never adopted the *Chevron* standard for purely legal questions. In fact, in *Town of Eureka*, the Supreme
13 Court held just the opposite – that a "district court is free to decide purely legal questions . . . *without*
14 *deference* to the agency's decision."¹⁴

15 **III. The State Engineer Exceeded His Statutory Authority.**

16 The language of NRS 534.030(4) is plain and unambiguous. The statute grants the State
17 Engineer general supervisory power over all groundwater wells in Nevada *except* domestic wells. The
18 history of this particular provision, and of the groundwater law in general, demonstrate that the
19 Legislature purposely intended to exempt domestic wells from the State Engineer's regulatory authority
20 except in certain limited circumstances inapplicable to the present case. Accordingly, the Amended
21 Order is an invalid exercise of authority that the State Engineer does not possess.

22 Two separate and distinct protections for domestic wells are provided in NRS 534.180(1) and
23 NRS 534.030(4) which are exemptions from the State Engineer's general regulatory control. Under
24 NRS 534.180(1), domestic wells are exempt from the State Engineer's permitting process while NRS
25

26 ¹⁰ Answering Brief at 8:20-21 (citing *State v. State Eng'r*, 104 Nev. 709, 713, 766 P.2d 263, 266 (1988)).

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1 534.030(4) separately exempts them from the State Engineer's general supervisory control.
2 Accordingly, the State Engineer is wrong when he claims that "NRS 534.030(4) specifically exempts
3 domestic wells from the permitting process."¹⁵ Instead, as shown above, it is NRS 534.180(1) that
4 exempts domestic wells from the permitting process while NRS 534.030(4) provides an additional
5 exemption that removes domestic wells from the State Engineer's general supervisory control.

6 Because domestic wells are afforded an exemption from the State Engineer's regulatory purview,
7 the only way he can issue a regulation governing them is if he can point to a specific statute that overrides
8 the general exemption and authorizes him to do so. With respect to the Orders in question, no specific
9 statutory authority exists to justify the Orders. The Legislature must be presumed to mean what it says,
10 and say what it means.¹⁶ When the Legislature has seen fit to apply specific provisions of the water law
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14 to place the restrictions contained in NRS 534.110(8) on domestic wells.

15 **IV. The State Engineer Should Have Provided Notice To Property Owners.**

16 The State Engineer issued Order 1293 on December 19, 2017, without any prior notice or
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18 was pending. The State Engineer issued Order 1293A without any prior notice or publication. These
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3 **V. Substantial Evidence Does Not Support Order 1293A.**

4 Even if the State Engineer had the authority to apply NRS 534.110(8) to domestic wells, before
5 he can do so he must demonstrate that additional wells will unduly interfere with wells that already exist.
6 In his Answering Brief, the State Engineer makes the conclusory statement that "[i]t is clear that if
7 existing pumping rates will lead to well failures, an increase in the number of wells and therefore an
8 increase in pumping will accelerate the problem - undoubtedly causing an undue interference with
9 existing wells."²⁰ However, there is a major problem with this statement - it is not backed by any
10 evidence or facts in the record and the State Engineer provides no citation to any evidence.

11 Here, the State Engineer did not perform a full conflicts analysis or make a determination about
12 how, specifically, the restrictions in Order 1293A will benefit existing wells. Instead, the State Engineer
13 relied exclusively on a groundwater model that was never designed to determine whether new wells
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1 **VI. Petitioner's Claim That Order 1293A Is An Unconstitutional Taking.**

2 Petitioners argue that Order 1293A is an unconstitutional taking of private party without just
3 compensation. They allege that the requirement to purchase and forever relinquish water rights to the
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5 new domestic well on an existing parcel is also a regulatory taking. Respondent alleges that NRS
6 Chapter 37 provides the exclusive means to bring an action for a taking and that the issue is not ripe for
7 adjudication at this time.

8 The Court has already determined that the Respondent (1) did not have legislative authority to
9 issue Order 1293A, (2) violated due process in the issuance of Order 1293A, and (3) issued Order 1293A
10 without substantial evidence to support it. Because of this Oder 1293A is invalid. Accordingly, the
11 Court finds that there is no need at this time to make a determination with respect to whether Order
12 1293A is an unconstitutional taking of private property without just compensation.

13 **VII. Respondent's Claim That Pahrump Fair Water, LLC Lacks Standing.**

14 Respondent argues that Petitioner PFW has no standing to file or participate in this action.²² The
15 Court finds that this argument is without merit. PFW has both statutory and constitutional standing to
16 assert the interests of its members because it is an association that was formed for the express purpose
17 of doing so.²³

18 In *Citizens for Cold Springs v. City of Reno*,²⁴ the Court reviewed the grant of statutory standing
19 contained in NRS 268.668 regarding annexation decisions. In that case, the Court held that an
20 association of property owners that would be affected by an annexation decision had standing to
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1 constitutional standing allows.²⁷ The Court specifically focused on the NRS 268.668 grant of standing
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5 Further, an association has standing to bring suit on behalf of its members when (1) its members
6 would otherwise have standing to sue in their own right, (2) the interests it seeks to protect are germane
7 to their organization's purpose, and (3) neither the claim asserted, nor the relief requested, requires the
8 participation of individual members in the lawsuit.³⁰ Here, PFW has members that would otherwise
9 have the right to bring this action on their own. Also, because PFW was formed for the express purpose
10 of fighting the Orders,³¹ this challenge is germane to its purpose, and it is not necessary to have
11 individual members participate in the lawsuit. Finally, the participation of the individual members of
12 PFW is not required in order to resolve the issues raised in PFW's Petition because only declarative and
13 injunctive relief is being sought.

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27 ²⁷ *Id.*, 125 Nev. at 630-31, 218 P.3d at 851.

28 ²⁸ *Id.*

²⁹ *Id.*, 125 Nev. at 631, 218 P.3d at 851.

³⁰ *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441 (1977).

³¹ SROA 858:22-859:1.

ORDER

UPON CONSIDERATION, and good cause appearing therefore, the Court hereby finds that Amended Order 1293A was arbitrarily and capriciously issued and orders that Amended Order 1293A be reversed.

IT IS HEREBY ORDERED that Petitioners' Petition for Judicial Review is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that Respondent's Amended Order 1293A is **REVERSED**.

IT IS HEREBY FURTHER ORDERED that Respondent shall issue an order noticing the reversal of Amended Order 1293A within five (5) days of the ^{receipt} ~~signing~~ of this order. _{5/6}

IT IS SO ORDERED.

DATED this 3 day of December, 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: 

PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
DAVID H. RIGDON, ESQ.
Nevada State Bar No. 13567
Attorneys for Petitioners

FILED

2018 DEC -6 P 2: 34

NYE COUNTY CLERK

BY J
DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

* * *

PAHRUMP FAIR WATER, LLC, a Nevada
limited-liability company; STEVEN PETERSON,
an individual; MICHAEL LACH, an individual;
PAUL PECK, an individual; BRUCE JABOUR,
an individual; and GERALD SCHULTE, an
individual,

Petitioners,

vs.

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

Respondent.

Case No. 39524

Dept. No. 2

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

THIS MATTER comes before the Court on Petitioners' Petition for Judicial Review of Respondent's Amended Order 1293A. Petitioners filed their Opening Brief on September 11, 2018. Respondent filed his Answering Brief on or around October 8, 2018. Petitioners filed their Reply Brief on November 1, 2018. The Court heard oral argument on November 8, 2018, in Pahrump, Nevada. Petitioners are represented by Paul G. Taggart, Esq. and David H. Rigdon, Esq., of Taggart & Taggart, Ltd. Respondent is represented by Attorney General Adam P. Laxalt and Deputy Attorney General James N. Bolotin.

1 This Court, having reviewed the record on appeal and Petitioner's Supplemental Record on
2 Appeal, and having considered the parties' arguments, the applicable law, State Engineer Amended
3 Order 1293A, and all pleadings and papers on file herein, hereby **GRANTS** Petitioners' Petition for
4 Judicial Review based upon the following findings of fact and conclusions of law.

5 **I. Facts and Procedural History**

6 On December 19, 2017, the State Engineer issued Order 1293 (the "Order") wherein he restricted
7 the drilling of new domestic wells on existing parcels of land within the Pahrump basin. Despite the
8 fact that the average domestic well in Pahrump uses less than 0.5 acre-feet of water per year, Order 1293
9 required a property owner to obtain two acre-feet of existing water rights, and relinquish those rights to
10 the State Engineer, in order to drill a domestic well. Prior to issuing Order 1293, the State Engineer did
11 not provide any notice to affected property owners, nor did he provide any opportunity for those property
12 owners to provide comments or submit evidence in opposition to the Order. While it is still unclear
13 exactly how many parcels are directly affected by the Order, the Order could affect as many as 8,000
14 existing residential lots within the basin that are currently unbuilt.

15 Petitioner, PFW timely filed a Petition for Judicial Review of Order 1293. PFW filed its Opening
16 Brief in that appeal on July 6, 2018. On July 12, 2018, without providing any notice to the Court or
17 opposing counsel, the State Engineer issued Order 1293A (the "Amended Order"). On July 18, 2018,
18 the State Engineer filed a motion to dismiss PFW's appeal of Order 1293, claiming that the issuance of
19 Order 1293A rendered the appeal moot. The State Engineer stated in the motion to dismiss that "Order
20 1293A supersedes any legal force and effect of Order 1293" and therefore "Order 1293 is no longer
21 legally valid or enforceable." Like Order 1293, Order 1293A was issued without providing any notice
22 to affected property and without providing an opportunity for affected persons to provide comments or
23 challenge the evidence the State Engineer relied upon. In substance and effect, Order 1293A is nearly
24 identical to Order 1293. The only difference is that Order 1293A provides two additional exemptions
25 to the drilling restriction. Of these exemptions, one allows individuals who filed a notice of intent to
26 drill a domestic well before the issuance of Order 1293, and who had those notices subsequently rejected
27 by the State Engineer, to refile the notices and drill their wells.
28

1 On August 8, 2018, the parties entered into a settlement agreement whereby PFW agreed to
2 voluntarily dismiss the appeal of Order 1293 and file a new petition for judicial review of Order 1293A.
3 In exchange, the State Engineer agreed to an expedited briefing schedule and to expedite the scheduling
4 of a hearing on the new appeal. On August 10, 2018, the parties filed a stipulation requesting dismissal
5 of the previous appeal. On that same day, PFW submitted a new petition for judicial review of Order
6 1293A to the Court and served the same on the State Engineer.

7 During briefing, Petitioners argued that Respondent did not have legal authority to restrict
8 drilling of domestic wells, Respondent violated constitutional due process in the issuance of the
9 Amended Order, the Amended Order is unsupported by substantial evidence, and that the Amended
10 Order amounts to an unconstitutional taking of private property without just compensation. Respondent
11 argued that he does have the required legal authority to issue the Amended Order and that the Amended
12 Order was based on substantial evidence, the Amended Order does not violate due process protections,
13 Petitioners improperly alleged a taking claim, no taking resulting from the Amended Order occurred,
14 and that Petitioners lack legal standing to bring the instant action. In their reply brief, Petitioners
15 reasserted Respondent's lack of legal authority to issue the Amended Order, the violation of basic
16 constitutional due process in issuing the Amended Order, the lack of substantial evidence in the record
17 to support the Amended Order, the unconstitutionality of the Amended Order, and their constitutional
18 and statutory right to bring this action.

19 Petitioners claim certain undisputed facts are present in this proceeding. Petitioners claim these
20 undisputed facts include that the Pahump basin is not currently being over-pumped, groundwater
21 pumping in Pahump has declined since 1969, as a result of this reduction in pumping, water levels in
22 some portions the basin have leveled off or significantly rebounded (in some cases by as much as 45
23 feet), and the Amended Order contains no scientific analysis of whether the drilling of additional
24 domestic wells impact existing wells in the basin.

25 **II. Standard of Review**

26 Under NRS 533.450, a party aggrieved by a State Engineer's order or decision is entitled to have
27 the order or decision reviewed in the nature of an appeal. The role of the reviewing court is to determine
28 if the State Engineer's decision was arbitrary, capricious, an abuse of discretion, or is otherwise affected

1 by prejudicial legal error.¹ A decision is arbitrary if it was made “without consideration of or regard for
2 facts, circumstances, fixed rules, or procedures.”² A decision is capricious if it is “contrary to the
3 evidence or established rules on law.”³ With regard to factual findings, the Court must determine
4 whether substantial evidence exists in the record to support the State Engineer’s decision.⁴ Substantial
5 evidence is “that which ‘a reasonable mind might accept as adequate to support a conclusion.’”⁵

6 In *Revert v. Ray*, the Nevada Supreme Court articulated the procedural safeguards the State
7 Engineer must employ prior to issuing an order or decision.⁶ First, the State Engineer must provide
8 affected parties with a “full opportunity to be heard” and “must clearly resolve all the crucial issues
9 presented.”⁷ Next, the State Engineer’s order or decision must include “findings in sufficient detail to
10 permit judicial review.”⁸ Finally, if such procedures are not followed and “the resulting administrative
11 decision is arbitrary, oppressive, or accompanied by a manifest abuse of discretion,” a court should not
12 hesitate to intervene and block the enforcement of the order or decision.⁹

13 Here, the State Engineer provided no notice that he was intending to issue the Amended Order,
14 nor did he hold any hearing or seek any comments from affected property owners. Accordingly, unlike
15 with other appellate-type proceedings, there is little to no record below for the Court to review. While
16 the State Engineer has provided an ostensible “record on appeal” for the Court’s consideration, this
17 record consists of only the documents the State Engineer claims he relied on in making his decision.
18 None of the documents have been authenticated or validated, nor have the authors of the documents
19 been required to testify in a formal hearing or been subjected to cross-examination. In addition, no one
20 from the State Engineer’s office has provided any testimony or evidence supporting his claim of reliance
21 on these documents. Accordingly, none of the processes and procedures which are designed to ensure
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24 ¹ *Pyramid Lake Paiute Tribe of Indians v. Washoe Cty.*, 112 Nev. 743, 751, 918 P.2d 697, 702 (1996) (citing *Shetakis Dist.*
25 *v. State, Dep’t of Taxation*, 108 Nev. 901, 903, 839 P.2d 1315, 1317 (1992)).

26 ² BLACK’S LAW DICTIONARY 125 (10th ed. 2014) (definition of “arbitrary”).

27 ³ BLACK’S LAW DICTIONARY 254 (10th ed. 2014) (definition of “capricious”).

28 ⁴ *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979).

⁵ *Bacher v. State Eng’r*, 122 Nev. 1110, 1121, 146 P.3d 793, 800 (2006) (quoting *State, Emp. Sec. Dep’t v. Hilton Hotels Corp.*, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

⁶ *Revert*, 95 Nev. 782, 603 P.2d 262.

⁷ *Revert*, 95 Nev. at 787, 603 P.2d at 264-65.

⁸ *Revert*, 95 Nev. at 787, 603 P.2d at 265.

⁹ *Id.*

1 a full and fair opportunity to challenge evidence before a decision, or to verify that evidence submitted
2 to the Court is relevant and accurate have been followed.

3 The State Engineer claims “[d]ecisions of the State Engineer are entitled not only to deference
4 with respect to factual determinations, but also with respect to legal conclusions.”¹⁰ The Nevada
5 Supreme Court has clearly and unambiguously held that “[w]hile the State Engineer’s interpretation of
6 a statute is persuasive, it is not controlling”¹¹ and that a reviewing court is required to “decide pure legal
7 questions *without deference* to an agency determination.”¹² The latter of these holdings was issued this
8 year and reflects the Nevada Supreme Court’s current thinking. The State Engineer asserts that this
9 Court should adopt a *Chevron*-like standard of review to the State Engineer’s legal conclusions.¹³ The
10 State Engineer initially cites NRS 533.450 as the basis for his assertion. However, NRS 533.450
11 establishes no such standard, either expressly or by implication, and the Nevada Supreme Court has
12 never adopted the *Chevron* standard for purely legal questions. In fact, in *Town of Eureka*, the Supreme
13 Court held just the opposite – that a “district court is free to decide purely legal questions . . . *without*
14 *deference* to the agency’s decision.”¹⁴

15 **III. The State Engineer Exceeded His Statutory Authority.**

16 The language of NRS 534.030(4) is plain and unambiguous. The statute grants the State
17 Engineer general supervisory power over all groundwater wells in Nevada *except* domestic wells. The
18 history of this particular provision, and of the groundwater law in general, demonstrate that the
19 Legislature purposely intended to exempt domestic wells from the State Engineer’s regulatory authority
20 except in certain limited circumstances inapplicable to the present case. Accordingly, the Amended
21 Order is an invalid exercise of authority that the State Engineer does not possess.

22 Two separate and distinct protections for domestic wells are provided in NRS 534.180(1) and
23 NRS 534.030(4) which are exemptions from the State Engineer’s general regulatory control. Under
24 NRS 534.180(1), domestic wells are exempt from the State Engineer’s permitting process while NRS
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7 to their organization's purpose, and (3) neither the claim asserted, nor the relief requested, requires the
8 participation of individual members in the lawsuit.³⁰ Here, PFW has members that would otherwise
9 have the right to bring this action on their own. Also, because PFW was formed for the express purpose
10 of fighting the Orders,³¹ this challenge is germane to its purpose, and it is not necessary to have
11 individual members participate in the lawsuit. Finally, the participation of the individual members of
12 PFW is not required in order to resolve the issues raised in PFW's Petition because only declarative and
13 injunctive relief is being sought.

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27 ²⁷ *Id.*, 125 Nev. at 630-31, 218 P.3d at 851.

28 ²⁸ *Id.*

²⁹ *Id.*, 125 Nev. at 631, 218 P.3d at 851.

³⁰ *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441 (1977).

³¹ SROA 858:22-859:1.

ORDER

UPON CONSIDERATION, and good cause appearing therefore, the Court hereby finds that Amended Order 1293A was arbitrarily and capriciously issued and orders that Amended Order 1293A be reversed.

IT IS HEREBY ORDERED that Petitioners' Petition for Judicial Review is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that Respondent's Amended Order 1293A is **REVERSED**.

IT IS HEREBY FURTHER ORDERED that Respondent shall issue an order noticing the reversal of Amended Order 1293A within five (5) days of the ^{receipt}~~signing~~ of this order.
SPE

IT IS SO ORDERED.

DATED this 3 day of December, 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: 

PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
DAVID H. RIGDON, ESQ.
Nevada State Bar No. 13567
Attorneys for Petitioners

**OFFICE OF THE NYE COUNTY CLERK
SANDRA L. MERLINO**

Tonopah Office
Nye County Courthouse
P.O. Box 1031
101 Radar Road
Tonopah, Nevada 89049
Phone (775) 482-8127
Fax (775) 482-8133



Pahrump Office
Government Complex
1520 East Basin Avenue
Pahrump, Nevada 89060
Phone (775) 751-7040
Fax (775) 751-7047

December 18, 2018

SENT VIA E-FILE

Supreme Court Clerk
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

Re: CV39524
PAHRUMP FAIR WATER, LLC. Appellant, vs. JASON KING
P.E. Nevada State Engineer, Respondent. Et Al.

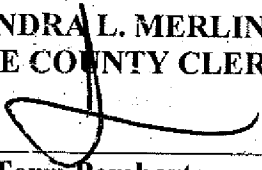
Dear Clerk of Court:

I am submitting an appeal packet for an appeal filed December 10, 2018 in the above referenced matter. As this was filed by the State of Nevada Attorney General's office no fees were collected.

Please feel free to contact me with any questions or concerns.

Sincerely,

**SANDRA L. MERLINO
NYE COUNTY CLERK**

By 
Terri Pemberton
Deputy Clerk, Pahrump

cc: Paul G Taggert (Attorney for Appellant)
James N. Bolotin Deputy Attorney General (Attorney for Respondent)
The Honorable Senior Judge Steven P Elliot