

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIM WILSON, P.E., Nevada State Engineer, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,

Appellant,

vs.

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,

Respondents.

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Clerk of Supreme Court

Case No. 77722

**STATE ENGINEER'S RESPONSE TO MOTION OF THE
NEVADA GROUNDWATER ASSOCIATION AND WATER
SYSTEMS COUNCIL FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF IN SUPPORT OF RESPONDENTS**

Tim Wilson, P.E., in his capacity as Acting Nevada State Engineer, Department of Conservation and Natural Resources, Division of Water Resources (hereafter "State Engineer"), by and through counsel, Nevada Attorney General Aaron D. Ford and Senior Deputy Attorney General James N. Bolotin, hereby submits this Response to the Motion of the

Nevada Groundwater Association and Water Systems Council for Leave to File *Amicus Curiae* Brief in Support of Respondents. This Response is based upon the following points and authorities, all pleadings and papers on file in this case.

MEMORANDUM OF POINTS AND AUTHORITIES

As a general matter, the State Engineer seeks to be as transparent as possible in his decisions, including those under review by this Court or district courts. Thus, the State Engineer is not opposed to the filing of *amicus curiae* briefs in general, and welcomes any useful information that may assist this Court in making its ultimate determination in this case and others.

That being said, this Court has denied motions for leave to file *amicus curiae* briefs where “[i]t appear[ed] from the motions that the issues raised will substantially mirror those raised on appeal” such that the amicus briefs would not assist the Court. *Dow Chemical Co. v. Mahlum*, 115 Nev. 13, 15 n.1, 973 P.2d 842, 843 n.1 (1999). As stated by former Chief Judge Posner, of the United States Court of Appeals for the Seventh Circuit, “[t]he vast majority of *amicus curiae* briefs are filed by allies of litigants and duplicate the arguments made in the litigants’

briefs, in effect merely extending the length of the litigant's brief. Such *amicus* briefs should not be allowed. They are an abuse. The term '*amicus curiae*' means friend of the court, not friend of a party." See *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997). "A court may grant leave to appear as an *amicus* if the information offered is 'timely and useful.'" See *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999).

It is not clear from the Motion filed by the Nevada Groundwater Association and Water Systems Council ("Proposed Amici"), or the subsequently filed proposed Amended *Amicus* Brief, that the Proposed Amici are presenting any arguments that differ in substance from those presented by Respondents Pahrump Fair Water, LLC, *et al.* ("PFW"). From their Motion, Proposed Amici are clearly acting as a friend of PFW. However, it is less clear whether they are also acting as a friend of the Court by providing useful information that will assist this Court in reaching a determination rather than duplicating the arguments from PFW.

Lastly, at no time during the course of this litigation has PFW disclosed the membership of Pahrump Fair Water, LLC. Now, Proposed

Amici, an additional two organizations with undisclosed membership, seek leave to file an *amicus* brief in this matter. There stands the very real possibility that there may be an overlap in membership between PFW and the Nevada Groundwater Association and/or Water Systems Council. Should this overlap exist, the proposed Amended *Amicus* Brief would be an obvious example of an *amicus* brief “merely extending the length of the litigant’s brief.”

To the extent this Court, in its discretion, finds that Proposed Amici essentially mirror those arguments already made by PFW such that the

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proposed Amended *Amicus* Brief is merely an extension of PFW's Answering Brief, this Court should deny the Motion filed by Proposed Amici and should not permit them to participate in this case.

RESPECTFULLY SUBMITTED this 29th day of March, 2019.

AARON D. FORD
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By: /s/ James N. Bolotin
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 29th day of March, 2019, I served a copy of the foregoing STATE ENGINEER'S RESPONSE TO MOTION OF THE NEVADA GROUNDWATER ASSOCIATION AND WATER SYSTEMS COUNCIL FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENTS, by electronic service to:

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