

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

Comstock Residents Association, Joe
McCarthy,
Appellants

v.

Lyon County Board of County Commissioners,
Comstock Mining Inc.,
Respondents

No. 83463

DOCKETING STATEMENT
CIVIL APPEALS

Electronically Filed
Sep 27 2021 12:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Judicial District Third Department II
County Lyon Judge Hon. Robert Estes
District Ct. Case No. 14-CV-00128

2. Attorney filing this docketing statement:

Attorney John L. Marshall Telephone 775.303.4882
Firm _____
Address 570 Marsh Ave
Reno, NV 89509

Client(s) Comstock Residents Association, Joe McCarthy

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Stephen B. Rye Telephone 775-463-6511
Firm Lyon County District Attorney
Address 31 South Main St.
Yerington, NV 89447

Client(s) Lyon County Board of County Commissioners

Attorney James R. Cavilia Telephone 775-687-0202
Firm Allison, McKenzie Ltd.
Address 402 North Division St.
Carson City, NV 89703

Client(s) Comstock Mining Inc.

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCF 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Attorneys' Fees</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Comstock Residents Assoc., et al., v. Lyon County Board of County Commissioners, et al.,
Supreme Court Docket No. 68433.

Comstock Residents Assoc., et al., v. Lyon County Board of County Commissioners, Supreme
Court Docket No. 70738.

Comstock Residents Assoc., et al., v. Lyon County Board of County Commissioners, et al.,
Supreme Court Docket No. 79445.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:
None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Petition for Judicial Review/Complaint with four counts challenging Respondent Lyon County's approval of Respondent Comstock Mining Inc.'s application to allowing mining use within and adjacent to Silver City town site. Judgment entered in Respondents' favor on all claims. In Petitioners/Plaintiffs' first appeal, panel affirmed on PJR/OML claim with a dissent on the OML claim. Panel reversed and remanded dismissal of the Due Process/NRS 281A claim. After discovery and hearing below on the Due Process/NRS 281A claim, District Court entered judgment for Defendants, who thereafter moved for an award of attorneys' fees and costs. Petitioners/Plaintiffs then appealed judgment. Different Panel affirmed judgment and Petitioners/Plaintiffs sought reconsideration en banc. The Supreme Court denied en banc petition with two justices dissenting. After issuance of remittitur, the District Court granted motion and awarded over \$250,000 in attorneys' fees under NRS 18.010(2) and 278.0237 without any specific findings supporting entitlement or amount awarded, discouraging citizens from seeking legitimate review of their governments' actions.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the District Court erred when it awarded Respondents over \$250,000 in attorneys' fees under NRS 18.010(2) when neither statutes provides Respondents' entitlement to fees, the District Court made no findings justifying the award, the documentation proffered was not substantial, and given the reasonableness of the claims as evidenced by the record and dissenting justices' review of the case.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: In contrast to the District Court's award, no court has held that NRS 278.0237 provides a prevailing respondent, whose land use application was granted, with an entitlement to fees against the petitioner. Similarly, NRS 18.010(2) does not apply to judicial review actions as the Legislature provided limited instances of fee entitlement in such cases, and should not apply where three Justices dissented from majority rulings in this matter. The District Court's award of more than \$250,000 in fees will chill citizen efforts to review government action directly affecting their daily lives.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The Supreme Court should retain the appeal as it meets the requirements of NRAP 17(a) (10) and (11) even though a post-judgment order in a civil case could be assigned to the Court of Appeals pursuant to 17(b)(7). As described above, the District Court's award of fees in the land use case involves critical public policy issues of first impression as to the applicable fee statute in judicial review cases. Moreover, judicial economy will be served by retaining the appeal as the Supreme Court heard all the related appeals and is familiar with the factual background of the claims, which will be necessary to resolve the issues before the Court. Moreover, the Justices themselves will be in the best position to reconcile their disagreement among themselves (i.e., the dissenting votes) as to the merits of the claims and hence the reasonableness of the action.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from July 30, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served August 3, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed September 1, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRPA 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Award of attorneys' fees is a special post-judgment order appealable under NRAP 3A(b)(8).
Thomas v. City of North Las Vegas, 122 Nev. 82, 127 P.3d 1057 (2006)

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Comstock Residents Association, Joe McCarthy, Gayle Sherman, Lyon County
Board of County Commissioners, Comstock Mining Inc.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Gayle Sherman (stipulated dismissal pending below).

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Open Meeting Law/NRS 241 -- Dismissal affirmed December 2, 2016
Due Process/NRS 281A Claim -- Judgment affirmed January 11, 2021
PJR/Abuse of Discretion Claims -- Judgment affirmed December 2, 2016

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:
N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The District Court's order is independently appealable under NRAP 3A(b)(8).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

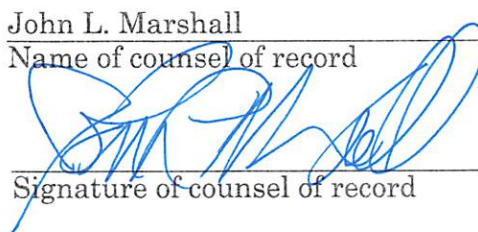
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Comstock Res. Assoc., Joe McCarthy
Name of appellant

September 27, 2021
Date

Washoe County, Nevada
State and county where signed

John L. Marshall
Name of counsel of record

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 27th day of September, 2021, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Stephen B. Rye
Lyon County District Attorney
31 South Main St.
Yerington, NV 89447

James R. Cavilia
Allison, MacKenzie, Ltd.
402 North Division St.
Carson City, NV 89703

Dated this 27th day of September, 2021


Signature

Comstock Residents Assoc., et al. v. Lyon County, et al.

Supreme Court No. 83463

INDEX TO EXHIBITS

<u>Document Title</u>	<u>Exhibit Number</u>
Complaint for Declaratory and Injunctive Relief/ Petition for Writ of Mandate or Judicial Review	1
Order Granting Motion for Attorneys' Fees	2
Notice of Entry of Order	3

EXHIBIT 1

EXHIBIT 1

1 JOHN L. MARSHALL
2 SBN 6733
3 570 Marsh Avenue
4 Reno, Nevada 89509
5 Telephone: (775) 303-4882
6 Attorney for Plaintiffs/Petitioners Comstock
7 Residents Association, Gayle Sherman, Joe
8 McCarthy

FILED
2014 JAN 31 PM 1:47

TANYA SCERINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Tanya Scerine DEPUTY

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IN THE THIRD JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR LYON COUNTY

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE MCCARTHY

Case No.: 14-CV-00128

Plaintiffs/Petitioners,

Dept. No.: II

v.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK
MINING INCORPORATED

Defendants/Respondents,

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF/
PETITION FOR WRIT OF MANDATE OR JUDICIAL REVIEW

I. INTRODUCTION

1. Plaintiffs/Petitioners Comstock Residents Association ("CRA") members, Gayle Sherman and Joe McCarthy are residents of the Comstock including Silver City, Lyon County, Nevada. In this lawsuit they challenge the January 2, 2014 action of the Defendant Lyon County Board of Commissioners ("BOC") to reverse decades of prior precedent – and contrary to the recommendation of its own Planning Commission and professional planning staff – and grant a version of Defendant Comstock Mining Incorporation's ("CMI") application to allow mining uses within Silver City. Because Lyon County provided no basis to depart from its prior

1 precedent, acted contrary to law and without proper notice and record support, and was unduly
2 influenced, Plaintiffs/Petitioners ask that Lyon County BOC's January 2, 2014 action be
3 reversed.

4 II. PARTIES

5 2. Plaintiff/Petitioner CRA is a not-for-profit organization incorporated in Nevada
6 and through its members appeared at appropriate public hearings and objected to the CMI's
7 application to allow mining uses within Silver City. Members of CRA live, work, recreate
8 and/or commute in the Comstock Historic District in general and more specifically in Silver
9 City.
10

11 3. Plaintiff/Petitioner Gayle Sherman lives in Silver City at 100 Grant Street. Ms.
12 Sherman first purchased her home in 1976 and lived there for many years until she had to sell
13 her home to pay for her son's college education. Ms. Sherman repurchased her old home in
14 2001 after, and in express reliance upon, Lyon County's 1986 denial of Nevex Gold's
15 application to make the same land uses changes as CMI obtained.
16

17 4. Plaintiff/Petitioner Joe McCarthy and his wife Ann purchased land from 2003 to
18 2006 and built their Silver City home in 2006 and have been living there since 2007. Prior to
19 purchasing their land and building their house, Mr. and Ms. McCarthy diligently researched the
20 applicable land uses allowed within Silver City and specifically determined that mining was not
21 a permitted use on lands within Silver City now owned by CMI.
22

23 5. Defendant Lyon County Board of Commissioners is the governing body of a
24 subdivision of the State of Nevada and pursuant to NRS Chapter 278 possesses the authority
25 and responsibility to regulate land use for the benefit of the public within Lyon County, Nevada.

26 6. Defendant CMI, a mining corporation, owns and or controls lands within the
27 Comstock generally and specifically within and adjacent to Silver City. In 2013, CMI applied
28

1 to Lyon County to amend the Lyon County Master Plan and applicable zoning for “the purpose
2 of pursuing continued mineral exploration, development and the economic mining potential of
3 the subject property.” In order to mine its property within Silver City, CMI needed to undue
4 years of prior planning and reverse multiple Lyon County BOC decision. CMI’s application
5 sought to change the long-standing aster Plan land use designations and zoning for their
6 property in and adjacent to Silver City from its current Suburban Residential (where mining is
7 not permitted) designation to Rural Residential (where mining is permitted). CMI’s application
8 to add mining uses by seeking a Master Plan amendment and Zoning change is referred to
9 herein as CMI’s “2013 Application.”
10

11 **III. BACKGROUND**

12 **A. The Comstock Historic District, Silver City and Lyon County’s Prior Land Use** 13 **Decisions**

14
15 7. The Virginia City National Historic Landmark represents a truly unique piece of
16 Nevada and national cultural history. The site of the single most productive mining strike in
17 history, the Comstock brought tens of thousands of people to Nevada, generated enormous
18 wealth and created the towns of Virginia City, Gold Hill and Silver City, the second largest
19 metropolitan center in the Far West at the time. The Virginia and Truckee Railroad (recently
20 restored as a recreational/tourist railroad) was constructed to service the mines, and important
21 advances in unionizing and labor standards occurred in the Comstock during the 1860’s. The
22 Comstock also generated significant technological achievements in the mining industry later
23 incorporated worldwide. Because of the Comstock, Nevada became a territory in 1861 and a
24 state on October 31, 1864.
25
26
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1 8. Recognizing its critical cultural resource value to the citizens of Nevada and the
2 Nation, the United States first designated the Virginia City Historic District as a National
3 Historic Landmark on July 4, 1961.

4 9. The National Park Service lists the site as in a threatened condition as a result of
5 recent surface mining:

6 Several contributing buildings, a portion of the historic highway at
7 Greiner's Bend, and the entire mountainside adjacent to Gold Hill are in
8 danger of sliding into an inactive mining pit developed in the 1970s. **The**
9 **cumulative effect of contemporary surface mines within the central**
10 **corridor of the district has been a gradual destruction and**
11 **disintegration of the historic landscape that constitutes the visual**
12 **heart of the historic district.**

13 10. In 1969, the Nevada Legislature enacted Chapter 384 of the Nevada Revised
14 Statutes to create the Comstock Historic District ("CHD"). The Comstock Historic District Act,
15 as NRS 384.010 to 384.210 is known, is the only Comstock-specific legislation designed to
16 protect this amazing site of Nevada history and national heritage.

17 11. In the Comstock Historic District Act, the Nevada Legislature decreed that it is
18 "the public policy of the State of Nevada to promote the educational, cultural, economic and
19 general welfare and safety of the public through the preservation and protection of the
20 structures, sites and areas of historic interest and scenic beauty" of the CHD. NRS 384.020
21 (emphasis added).

22 12. Silver City, Nevada, is one of the few residential communities identified in Lyon
23 County. It is one of two communities Lyon County dedicated as a living, historic community.
24
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1 13. As modern planning and zoning emerged for the Silver City area, it retained this
2 historical backdrop as its foundation, and overlaid a modern transect of desired development.
3 The Silver City Town Site has been envisioned consistently as having a commercial core with a
4 small industrial zone which includes some historic mills and mines, all surrounded by
5 residential development. Beyond the boundaries of the Town Site, land use has consistently
6 been designated for less dense development and open space. Using different designations with
7 different names, this basic concept has carried through generations of land use plans and
8 continues today.

10 14. In 1971, Lyon County enacted its first master plan and related zoning. It planned
11 and zoned Silver City like all the other towns in the county: urban appropriate uses and densities
12 within the town and rural uses and densities outside of town.

13 15. Since Lyon County's original planning for Silver City it has consistently and
14 uniformly determined that the basic urban/rural distinction meets the needs of the Silver City
15 community and the county as a whole.

17 16. In 1986, Nevex Mining Company applied to Lyon County to change the land use
18 and zoning designations for property within Silver City from urban uses to rural uses to allow
19 mining within the town (Nevex applied at the same time for a special use permit to mine). The
20 Lyon County Commission denied Nevex's proposed land use and zone changes specifically
21 finding that Nevex's application for more rural uses and densities violated its Master Plan and
22 was otherwise inappropriate.

24 17. In 1986, the Lyon County BOC, offered a long, comprehensive list of "findings of
25 fact" supporting the denial, including that, "[t]he proposed rezoning violates the following
26 expressed goals of the county's master plan: To manage natural resources in a beneficial way;
27
28

1 To improve neighborhood stability and increase property values by preventing incompatible and
2 disruptive land use.” Other specific findings include:

- 3 a. After a four hour presentation on June 17 [1986], the Planning Commission, by
4 vote of five to two, recommended denial of the Nevex rezoning request considered
5 today.
- 6 b. In reference to requirements for zoning established by NRS Section 278 and 250,
7 we find (A) that the Nevex rezoning request does not comply with the Lyon
8 County Master Plan. (B) The proposed rezoning does not promote the
9 conservation of open space or protect the natural and scenic resources from
10 unreasonable impairment. (C) The proposed rezoning would have both a long-
11 term adverse financial impact to Silver City and the Comstock National Historic
12 Landmark. (D) The proposed rezoning does not promote the health and general
13 welfare of the Silver City area. (E) The proposed rezoning is not compatible with
14 the Silver City area and does not encourage the most appropriate use of land in the
15 Silver City Townsite.
- 16 c. There is no land in the Silver City Town site zoned RR-5, and the present zoning is
17 predominantly residential in nature.
- 18 d. The proposed rezoning would significantly harm the integrity of the Comstock
19 Historic District and the National Landmark District.
- 20 e. The proposed rezoning violates the following expressed goals: (A) to manage
21 national resources in a beneficial way. (B) To improve neighborhood stability and
22 increase property values by preventing incompatible and disruptive land uses.

23
24
25
26 18. In 1990, Lyon County affirmed its 1986 decision when it adopted a new Master
27 Plan and maintained the same urban/rural land use designations for Silver City.
28

1 19. Lyon County approved two goals for Silver City in the 1990 Master Plan:

2 Goal #1 – To maintain, promote, and secure the historic character of the community and
3 to prevent the destruction or degradation of the historic character. Objective: Lyon
4 County should support the Comstock Historic District Commission in its legislative
5 mission.

6 Goal #2 – Lyon County should review all new development proposals with the intent to
7 protect the riparian ecology associated with Gold Canyon and American Ravine, with the
8 intent of protecting water quality, minimizing flooding, erosion and sedimentation, and
9 preserving natural drainage, habitat, and aesthetic functions.
10

11 20. In 2002, Lyon County again examined the appropriate land use designations for
12 Silver City and its environs and in the West Central Lyon County Land Use Plan again
13 designated Silver City as appropriate for urban uses and densities.
14

15 21. The West Central Lyon County Land Use Plan concludes that Silver City has the
16 potential for continued limited growth with only half of the potential home sites developed. The
17 plan for slow growth of the community was acknowledged, as was the historic nature of the
18 town's architecture and the context of the community within the Comstock Historic District and
19 the Virginia City National Historic Landmark. In the plan, Lyon County stated that Silver City
20 did not have the kind of development potential they saw in Dayton Valley, but instead hoped for
21 gradual residential and commercial growth of Silver City while maintaining the community's
22 historical integrity.
23

24 22. In the West Central Lyon County Land Use Plan, the Lyon County BOC adopted
25 specific goals for Silver City that articulated future direction and continuation of earlier policies
26 set out in previous master plans as follows:
27

1 a. To recognize, enhance, and protect the unique character of Silver City.
2 Among the actions set forth to implement this Goal was "to maintain that scale and primary
3 residential character by retaining the existing Master Plan designation and zoning categories."

4 b. To preserve the scale of the community by architectural review that is
5 sensitive to how new structures fit into the existing fabric. Among the actions set forth to
6 implement this Goal was "to preserve the existing pedestrian character by maintaining alleys,
7 soft paving approaches, and relatively narrow streets."

8 c. To promote the revitalization of the commercial corridor by promoting
9 reinvestment.

10 d. To preserve and strengthen the existing infrastructure, i.e., water,
11 roadways, drainage, and public facilities. Among the actions set forth to implement this Goal
12 was "Lyon County shall provide an infrastructure inventory and deficiency evaluation and
13 report. Lyon County shall provide a long term if modest capital improvement commitment (i.e.,
14 20 years) that methodically addresses these deficiencies." Also included was an action "to
15 implement and actively oversee the 'dark sky' ordinance."

16 e. To focus on encouraging tourist-oriented historic activities that do not
17 degrade the quality of life central to Silver City's uniqueness. Among the actions set forth to
18 implement this Goal was "to actively support the efforts of residents to preserve and improve
19 their property."

20 f. To limit earth disturbance or above-ground mining activities that create
21 visual scarring or that disrupt the fabric of the community. The only action set forth to
22 implement this Goal was "Lyon County shall establish a land use policy that minimizes the
23 impact of mining and other significant earth-disturbing activities that degrade quality of life."

1 g. To maintain the primary focus of the community as residential. The only
2 action set forth to implement this Goal was “to urge the Board of County Commissioners to
3 carefully consider all zone changes or Master Plan amendments that would substantially alter
4 the character and identity of Silver City.”

5 23. Because of its historic value and scenic beauty, Storey County recently prohibited
6 new open pit mines within its portion of the heart of the Comstock –following Highway 342
7 from just north of Silver City through Gold Hill and into Virginia City.

8
9 **B. Development and Adoption of the 2010 Lyon County Comprehensive Master Plan**

10 24. In December 2010, Lyon County adopted a new, fully vetted County-wide
11 Comprehensive Master Plan (2010 Comprehensive Master Plan). For the fifth time, it
12 specifically considered the appropriate land uses for Silver City.

13 25. During the development of the 2010 Comprehensive Master Plan, numerous public
14 hearings and community workshops were held throughout Lyon County. The community
15 workshops concentrated on developing the county-wide land use map as well as the language to
16 be included in the text. Development of the 2010 Comprehensive Master Plan was a standing
17 item on Lyon County Planning Commission meetings from September of 2005 to its adoption in
18 late 2010.

19
20 26. The 2010 “Comprehensive Master Plan is the culmination of four years of
21 dialogue and analysis that has included a wide array of participants including the Board of
22 Commissioners, the Planning Commission, community advisory councils, County staff and the
23 community at large. A series of community meetings, open house events and workshops were
24 held throughout the county to obtain citizen input and recommendations, including eight
25 meetings on issues identification in March 2007, eight community meetings and two joint
26 Planning Commission/Board of Commissioners sessions on community vision in April and
27
28

1 September 2007, six meetings in November 2008 in goals and policies, fourteen meetings in
2 January, April and May 2009 on land use maps, six meetings in July 2009 on land use goals and
3 policies, and finally eleven sessions in October 2009 and March 2010 on the overall County-
4 wide Comprehensive Plan.” 2010 Comprehensive Master Plan at 1.10-1.11.

5 27. On December 23, 2010, the Lyon County Board of Commissioners held a public
6 hearing to consider adopting the 2010 Comprehensive Master Plan. The only public comment
7 at the December 23, 2010 BOC hearing were Silver City residents that expressly supported the
8 proposed the Master Plan as it applied to Silver City as recommended by the Planning
9 Commission. Lyon County Board of Commissioners thereafter unanimously adopted the same
10 planning designations for Silver City.
11

12 28. The 2010 Comprehensive Master Plan states that it “represents a future vision of
13 Lyon County along with recommendations for achieving that vision. The ideas of the Plan are a
14 distillation of the community's many desires, tempered by what seems necessary, feasible, and
15 reasonable.”
16

17 29. The 2010 Comprehensive Master Plan is organized in two tiers: a County-wide
18 Component and more specific Community Plans.

19 30. The County-wide Component of the 2010 Comprehensive Master Plan provides
20 for the overall foundation and framework for directing the County’s future growth and
21 development. The County-wide Component is the umbrella document that applies to all of the
22 unincorporated area of Lyon County. It represents the overall vision, goals and policy direction,
23 generalized land use patterns for the entire County, and the land use designations for lands
24 outside of defined communities. The County wide-Component provides guidance for the
25 preparation of the more specific Community Plans.
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1 31. The Community Plan tier of the 2010 Comprehensive Master Plan presents the
2 specific vision, goals and policy direction, and land use pattern for each identified community
3 as determined through the community planning process. Community Plans are designated for
4 existing established communities. These maps provide detailed views of the community's
5 desired growth and development for the future taking into consideration each community's
6 unique character, opportunities and constraints. The County will work with each community to
7 complete Community Plans, including Community Land Use Plans in each community.
8

9 32. Lyon County intended the 2010 Master Plan to at least "serve for about 10 years."
10 2010 Comprehensive Master Plan at 1.8.

11 33. The 2010 Comprehensive Master Plan "is comprehensive because the elements
12 cover a broad range of development and growth issues which can be influenced significantly by
13 the County Planning Commission, Board of Commissioners and other governing authorities and
14 agencies. The Plan is general because the recommendations are broad. The plan is long-range
15 because consideration is given to the problems and opportunities which may arise over the next
16 twenty or so years. The Plan is dynamic because there will be amendments to adapt to new
17 situations and meet new challenges over time." 2010 Comprehensive Master Plan at 1.8.
18

19 34. No new situation or new challenge has presented itself in Silver City since the
20 adoption of the 2010 Comprehensive Master Plan.
21

22 35. The 2010 Comprehensive Master Plan contains policies and goals that are County-
23 wide in nature as well as specific to its eight diverse communities, including Silver City. The
24 following excerpts from the Master Plan are relevant to CMI's 2013 Application.

25 a. Policy LU 1.1: "Follow development patterns as established on
26 Countywide Land Use Plan or a more specific Community Plan. The Community Plan
27
28

1 envisioned for Silver City has not yet been initiated by Lyon County.” Until a Community Plan
2 is adopted, the Countywide Land Use Plan will be the guide.

3 b. Policy LU 1.4: “Locate industrial development as designated on County-
4 wide Land Use Plan or determined by criteria. Industrial uses, including extractive industries,
5 will occur in areas that are designated on the County-wide Land Use Plan. New industrial uses
6 should only be located in areas that do not adversely impact existing residential settlements.”

7 c. Policy CC 1.3: “Design Tailored to Communities. New development in
8 Lyon County should address and respect the unique character of communities within the county.
9 Strategies: develop Community Plans to identify typical or desirable design elements that
10 maintain or promote the community’s desired image. Adopt County-wide standards that allow
11 the flexibility to address specific design needs for individual communities in Lyon County.” In
12 Silver City, this means maintaining the historic character of development in the Town Site,
13 continuing the architectural standards within the Comstock Historic District, retaining or
14 restoring existing historic structures, and limiting new development to those proposals that fit
15 with the historic image of Silver City.

16 d. Goal CC-3: Heritage (under Community Character and Design, Chapter 5).
17 “Historic places, structures, and landmarks in the county will be preserved and will provide an
18 opportunity for residents and visitors to learn about and celebrate our heritage.”

19 e. Policy CC-3.1: “Maintain and restore historic resources. Lyon County will
20 encourage and support efforts to preserve and restore registered historic structures, and
21 landmarks, and districts. Strategies: Revise zoning to encourage historic use and development
22 patterns including mixed-use structures and districts. Within historic districts, promote historic
23 design elements, features, and context, and prohibit building design that compromises the
24 integrity of the historic community character. Within historic districts, limit new land uses that
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1 would pose a risk to historic structures or the historic character of the district. Promote the
2 preservation of historic landscape features to maintain historic settings and the integrity of
3 historic resources within historic districts.”

4 f. Goal NR 9: Mining and Resource Extraction (under Natural Resources and
5 Environment, Chapter 6). Lyon County will promote the continued development of mineral and
6 aggregate resources while working to prevent and reduce conflict between mining and other
7 resource extraction activities and residential, commercial and industrial development.

8 g. Policy NR-9.3: Mitigate Operations. “To the extent possible, Lyon County
9 will require resource extraction projects to mitigate adverse operational impacts on such items
10 as public infrastructure, traffic, agricultural operations, residential and commercial land uses,
11 the visual character of the area, etc.” Silver City is an existing community with residential,
12 commercial and industrial areas that would be adversely affected by the mining activities
13 envisioned by CMI there were similar to the impacts anticipated for the proposed Nevex mine
14 in 1986.

15 h. Goal CP-1: Support Diversity. “Lyon County will celebrate and support
16 the diversity of character among communities in the county.”

17 i. Policy CP-1.1: Recognize Diversity of Communities. Lyon County
18 planning efforts and regulations will consider the unique aspects of communities in the county,
19 and will allow for variation and exceptions to address key aspects of their diversity.”

20 j. Goal CP-3: Community Plans. “Lyon County will support community-
21 based planning efforts that elaborate community-specific goals that are developed with strong
22 public consensus.”

23 36. The communities within the Comstock Historic District, including Silver City, are
24 the oldest in Lyon County, representing a unique aspect of historic development within the
25

1 County. Embracing the historic character of Silver City and supporting planning actions and
2 designations that are consistent with Silver City's heritage is consistent with the intent of this
3 Goal. It is anticipated that the Community Plan process will begin soon for Silver City, which
4 is identified as one of eight existing, established communities in Lyon County for which a
5 Community Plan is required under the Comprehensive Master Plan. Because the Community
6 Plan is intended to tier off the Comprehensive Master Plan, maintaining the Master Plan
7 decisions for Silver City is critical to the continuity and consistency of this process.
8

9 37. As with prior land use plans in Lyon County, the 2010 Comprehensive Master
10 Plan embraced the historic nature and slow pace of development in Silver City, acknowledging
11 that: "Over the past 30 years residential infill and limited commercial endeavors have occurred
12 on existing historic properties in Silver City. The pace of development has been slow for a
13 variety of reasons, including challenging topography, limited water and sewer infrastructure,
14 and an array of patented and unpatented mining claims."
15

16 38. The 2010 Comprehensive Master Plan also states "Silver City has a strong sense of
17 identity and prides itself on its cohesive small town atmosphere. The community treasures its
18 historic buildings and landscape features, as evidenced by the preservation and rehabilitation of
19 many original structures. New construction is regulated for exterior architectural features by the
20 Comstock Historic District Commission."
21

22 39. The 2010 Comprehensive Master Plan establishes the entire area within the Silver
23 City Community Boundary as an Historic Character District, defined as follows: "Historic
24 Districts include those areas in and around lands included in the Comstock Historic District and
25 Silver City or other future historic designations to preserve existing historic character or to
26 promote 'historic' architectural design elements. Tools might include mixed-use, design
27 guidelines and conservation easements."
28

1 40. The lands within the Community Boundary for Silver City will also be the subject
2 of a Community Plan for Silver City. The lands owned by CMI that are proposed for the
3 Master Plan Amendment and Zoning Map Change are all included within the Community
4 Boundary. Therefore, all of the Comstock Mining lands included in its application are within
5 the Historic Character District.

6
7 41. In addition to the Character Districts, the Land Use Plan Map for Silver City
8 establishes Land Use Categories. In keeping with the historical pattern of planning and zoning
9 for Silver City, the lands proposed for Master Plan Amendment and Zoning Map Change are
10 generally divided between a Suburban Residential designation within the Town Site boundary,
11 and a Resource designation outside that boundary.

12 42. CMI proposes to change this Suburban Residential designation within the Silver
13 City Town Site to Rural Residential which typically includes zoning such as RR-3 and RR-5
14 where mining could be allowed under a Special Use Permit. Rural Residential planning and
15 zoning (except RR-1) have never been included within the Silver City.

16
17 43. CMI's owns or controls over 6,000 acres of land outside of Silver City in the
18 Comstock, a significant portion of which are classified as appropriate for mining.

19 44. Prior to adoption of the 2010 Comprehensive Master Plan Defendant CMI,
20 objected to the proposed land use designations for their property within Silver City – which they
21 desired to mine. Lyon County rejected CMI's request.

22
23 **C. Public Reliance on Stable Silver City Master Planning**

24 45. Over the years, Nevada citizens purchased/and or invested in property and
25 businesses within and around Silver City as a result of, and in reliance on, these public,
26 deliberate and consistent land use decisions.

1 46. For example, after Lyon County 1971 Master Plan, Chris and Bonnie Brown
2 purchased land and built their home in 1977. As described above, Gayle Sherman moved a
3 house to her Silver City lot and in 1984 undertook an extensive remodel. In 1985, Darlene and
4 John Cobbey purchased a lot on Main Street, Silver City, with historic structures and made
5 extensive restorations and renovations of them.

6
7 47. After Lyon County BOC denied Nevex Gold's application to change the Silver
8 City land use to allow mining, citizen investment continued. In 1987 Karen Kreyeski purchased
9 her home on Vivian Street and under took a major remodel including the addition of a master
10 suite, detached garage and utility room. In 1990, Dan and Janet Rose purchased land on Vivian
11 Street and built a house thereon shortly after.

12 48. In 1992, after Lyon County adopted the revised Master Plan in 1990, Deborah
13 Nicholson purchased her home on Buckeye Street in Silver City as did Wil and Carol Godwin
14 in 1999 on Dayton Toll Road. In 2001, Gayle Sherman repurchased her home on Grant Street
15 and Jeff Nicholson and Jean Legassick purchased their house on 2nd Street.

16
17 49. In 2002, Lyon County confirmed the land use for Silver City in the West Central
18 Lyon County Master Plan and Jack and Lorraine Richmond purchased their on The Golden
19 Road. In 2004 Suzanne Cassidy purchased her historic home on Main Street as did Allison
20 Woodman and Allen Jackson. In 2006, Chad and Judi Olsen purchased land and built their
21 home. In 2007, Cyndy Etchegoin purchased her home and Joe and Ann McCarthy built their
22 home on land acquired from 2003 to 2007.

23
24 50. As residents bought and invested in Silver City, the community grew as well. In
25 the late 1960's in Silver City began a slow change from the old to the new as an influx of young
26 people bought land in what was truly a ghost town. The few remaining mining widows were
27 respectfully integrated into the newcomer's enthusiasm and interests. The Fire Department
28

1 was revitalized as was the town advisory council. Houses were restored and newly built,
2 children were born and families established. In this rebirth of Silver City, the blending of the
3 old-timers and the newcomers resulted in a refreshing freedom of expression and robust
4 community involvement. The Silver City Schoolhouse became the Silver City Community
5 Center, the heart of a unique town life that values individual independence and treasures the
6 collective act of building a community from the bones of the past.
7

8 51. In the 1980's and the 1990's more homes were built as more newcomers (this time
9 artists, teachers and archeologists) found the charms of small town life attractive. When the
10 Silver City Community Center burned to the ground in 2003, the community rallied around the
11 restoration and rebuilding of the center, donating thousands of hours to reclaim artifacts, restore
12 the building and navigate political obstacles that impeded the historically accurate rebuild of the
13 center. With stubborn perseverance, the Silver City Community Center was lovingly and
14 carefully rebuilt and the community became stronger for it. It is now a place reserved for
15 spirited local governance, fellowship and fun and is the physical embodiment of Silver City's
16 journey from ghost town to thriving community.
17

18 **D. Advent of CMI's Unprecedented Money Influence in the Comstock**

19 52. Since its recent entry into the Comstock, CMI has sought to purchase influence in
20 a variety of ways, initiated in Storey County and then perfected in Lyon County. In Storey
21 County where it needed various special land use permits, CMI contributed to County
22 Commissioner election campaigns and hired the father of the sole planner employed by Storey
23 County.
24

25 53. Once it had received the approvals it needed in Storey County, CMI turned its
26 attention to Lyon County as it needed to change the Silver City land use designations in order to
27 mine on that portion of its ownership in Lyon County.
28

1 54. In December 2010, when it adopted the 2010 Master Plan and ignored CMI's first
2 reclassification request, the Lyon County BOC consisted of Chairman Joe Mortenson, Vice-
3 chair Chuck Roberts, and Commissioners Phyliss Hunewill, Ray Fierro and Larry McPherson.
4 Vice-chair Chuck Roberts represented District I, which includes Silver City. Commissioner
5 Roberts made clear that he favored maintaining the longstanding land use designations in Silver
6 City. As a result of the 2010 election, Vida Keller replaced Commissioner Larry McPherson.
7

8 55. In order to gain the vote of the District I Commissioner, CMI needed to replace
9 Vice Chair Roberts. Vice chair Roberts came up for reelection in 2012.

10 56. In the 2012 election, CMI threw its huge corporate and unprecedented support
11 behind Bob Hastings, the challenger to Commissioner Roberts.

12 57. CMI and its related companies contributed \$17,500 in cash to Bob Hastings to
13 insure his election. CMI's cash contributions were approximately 60 percent Mr. Hastings'
14 cash contributions that year.
15

16 58. CMI's cash contributions to Mr. Hastings election campaign in 2012 were
17 unprecedented in scale. According to Nevada Secretary of State records, CMI's cash
18 contribution to Bob Hastings dwarfed all prior contributions to any candidate from a single
19 interest by 350 percent.

20 59. CMI cash contribution to Bob Hastings was more than any other Lyon County
21 BOC candidate has ever raised in **total** contributions (cash and in kind) in any other BOC
22 election. The average Lyon County BOC candidate since 2008 has raised \$7,379 in these other
23 races according to reports posted by the Nevada Secretary of States. CMI's \$17,500
24 contribution more than doubled this average campaign fund raising.
25
26
27
28

1 60. CMI's contribution to Bob Hastings equaled the total amount of cash contributions
2 raised by Vice-chair Roberts during the 2012 District I race. Without CMI's cash contributions,
3 Mr. Roberts would have outraised Mr. Hastings in all contributions by \$25,716 to \$12,059.

4 61. Plaintiffs/Petitioners are informed and believe that CMI also contributed to Mr.
5 Hastings' campaign significantly in other ways. During the 2012 campaign, CMI held
6 "Community Open Houses" within Mr. Hastings' election district, and provided free food,
7 drinks and music. At these "Open Houses," CMI, Plaintiffs/Petitioners are informed and
8 believe, introduced Mr. Hastings, allowed him to speak and promote his election.

9
10 62. In the November 2012 election, Bob Hastings defeated Mr. Roberts in the election
11 for District I Commissioner.

12 63. After CMI's overwhelming support for Commissioner Hastings and in opposition
13 to a perceived opponent provided the following blunt message to the other BOC members: if
14 CMI perceives a commissioner as unfriendly to its position, CMI will fund an opponent who is
15 friendly.

16
17 64. CMI also makes strategic hiring decisions of those related to important decision
18 makers, as it did in Storey County.

19 65. In Lyon County, CMI hired either Keller Rebuilders (owned by Commissioner
20 Keller and her husband) or Commissioner Keller's husband directly to work CMI owned or
21 controlled buildings and structures in the Comstock. CMI thereafter created a foundation,
22 apparently only supported by CMI contributions, and hired either Keller Rebuilders or
23 Commissioner Keller's husband to continue work on CMI owned or controlled buildings and
24 structures in the Comstock. Commissioner Keller's husband is currently working for CMI's
25 foundation on a one year contract. This contract began in the Spring of 2013 and is therefore
26
27
28

1 due to expire in the Spring of 2014. When Commissioner Keller considered CMI's 2013
2 Application, her husband's employment contract was due to expire shortly thereafter.

3 66. According to her Nevada Financial Disclosure Forms, in 2013 and 2014 Ms.
4 Keller received income from only four sources: Lyon County (\$26,136 annually), Priceless
5 Realty Inc., Keller Rebuilders/Consulting, and Lakeview Plaza LLC. Plaintiffs/Petitioners are
6 informed and believe that Commissioner Keller and her husband owe Lyon County over \$8,000
7 in real property taxes.
8

9 67. Plaintiffs/Petitioners are concerned that if Commissioner Keller and her husband
10 sole source of income outside of their contracts with CMI is Commissioner Keller's Lyon
11 County salary, Ms. Keller's possess a powerful incentive to maintain good relations with CMI
12 and improve CMI's business opportunities.
13

14 68. CMI also employed Commissioner Hasting's wife in relation to certain events it
15 put on.

16 69. CMI also hired Commissioner Hasting's daughter's boyfriend as an equipment
17 operator.

18 70. In addition to directly hiring family members, CMI contributes to causes favored
19 by Commissioners. For example, Commissioner Hastings has stated, "Comstock Mining has
20 worked with me to help support several charities, including the Mason Valley Boys & Girls
21 Clubs - Dayton Units."
22

23 **E. With Influence In Place, CMI Applies to Change Silver City Land Uses Designations**

24 71. In August 2013, CMI applied to Lyon County to change the land use designations
25 and zoning within Silver City from more urban to more rural which would allow industrial uses,
26 such as mining, which heretofore had been prohibited.
27
28

1 72. CMI, a mining company, filed its 2013 Application in order to mine the property,
2 stating the application was for "the purpose of pursuing continued mineral exploration,
3 development and the economic mining potential of the subject property."

4 73. CMI's 2013 Application was, for all intents and purposes, the same application for
5 land use designation changes filed by Nevex Gold and rejected by Lyon County in 1986.

6 74. CMI's 2013 Application contained no expert reports and based its request for
7 zoning change primarily on an assertion that all prior Lyon County land use decisions had been
8 in error.

9 75. CMI's 2013 Application failed to specify any change in conditions in Silver City
10 or Lyon County.

11 76. CMI's 2013 Application failed to address the express policies in the 2010 Master
12 Plan that were contrary to CMI's request to locate an industrial use, such as mining, with Silver
13 City.

14 77. The citizens of Silver City overwhelmingly oppose CMI's 2013 Application.
15 Approximately 75 percent of the 146 registered voters in Silver City oppose CMI's 2013
16 Application and signed a petition to that effect.

17 78. Lyon County has created a system of town advisory councils to provide input of
18 the directly affected communities on issues of concern.

19 79. In September 2013, the Silver City Advisory Council considered CMI's 2013
20 Application and unanimously voted to recommend that it be denied.

21 **F. Lyon County Planning Staff and Planning Commission Reject CMI's Application**

22 80. Upon receipt of CMI's 2013 Application, Lyon County Planning Department staff
23 began to analyze it and compare it to the policies and guidance contained in the 2010 Master
24 Plan.

1 81. In addition, Plaintiffs/Petitioners completed a thorough legal, planning,
2 environmental, economic and historical evaluation of CMI's 2013 Application.
3 Plaintiffs/Petitioners submitted their final collated expert report to Lyon County. The final
4 report established not only consistency of Lyon County's many prior decisions on the same
5 question, but also inconsistency, and adverse economic, environmental, and social impacts of
6 CMI's proposed industrial uses within Silver City.
7

8 82. Upon an exhaustive review of the CMI's 2013 Application and
9 Plaintiffs/Petitioners' final report, Lyon County's professional planning staff recommended that
10 CMI's application be denied, based on the following considerations:

11 a. Industrial land uses requested by the application were in conflict with
12 multiple 2010 Master Plan policies.

13 b. No change in conditions has occurred to justify so altering the longstanding
14 land use designations within Silver City.
15

16 c. The proposed reduction in density would make needed town infrastructure
17 improvements less likely.

18 d. As envisioned by the 2010 Master Plan, a land use change of such a
19 magnitude should be considered, if at all, during the development of the Silver City Community
20 Plan.
21

22 83. Lyon County originally agendized CMI's 2013 Application for October 8, 2013.

23 84. After CMI received Lyon County planning staff's Staff Report recommending
24 denial of CMI's 2013 Application, Plaintiffs/Petitioners are informed and believe that CMI
25 contacted upper level Lyon County management and held a meeting attended by both members
26 of the Planning Commissioners and BOC and the Lyon County Manager. Lyon County has
27 never disclosed what was discussed at this meeting.
28

1 85. A large number of Silver City residents attended the October 8, 2013 Planning
2 Commission meeting.

3 86. After the Planning Commission had already approved its agenda for the day, while
4 keeping the public at the meeting for more than an hour, CMI and Lyon County staff announced
5 that they had agreed to seek a continuance to the next Planning Commission meeting in
6 November. Although CMI and Lyon County both had advance knowledge of their proposed
7 request, neither party alerted Silver City residents or their representatives of the likely
8 continuance of the hearing for which residents travelled to Yerington to participate in.

9
10 87. November 12, 2013, the Lyon County Planning Commission held a public hearing
11 on CMI's 2013 Application.

12 88. During its presentation on its application, CMI provided no expert testimony to
13 counter or address the evidentiary record created by Plaintiffs/Petitioners and the Lyon County
14 Planning Department. Instead, CMI presented a totally new presentation, not provided to any
15 one in advance, regarding exact boundaries of the original Silver City town site. The Planning
16 Commission chastised CMI for the introduction of last minute information not shared with the
17 obviously interested parties.

18
19 89. Both Commissioner Hastings and Keller attended the November 2013 Planning
20 Commission during the hearing on CMI's 2013 Application.

21
22 90. After hearing hours of public testimony, the Planning Commission adopted the
23 recommendation of its professional staff and recommended – by a 4 to 1 vote – that the BOC
24 deny CMI's application.

25 91. In making its recommendation, the Planning Commission found the following:

26 “A. The proposed amendment is not in substantial compliance with, nor
27 promotes the Master Plan goals, objectives and actions in that it is not in keeping with the
28

1 majority of applicable guiding principles, goals, policies, strategies and community description
2 contained in the 2010 Lyon County Comprehensive Master Plan, County-wide Component.

3 B. The proposed amendment would result in land uses which are incompatible
4 with the actual and planned adjacent land uses, and does not reflect a logical change in land use
5 in that the amendment would change the planned character and intensity of residential
6 development and enables the potential development of a land use incompatible with the actual
7 and planned adjacent and predominant residential land uses.

8 C. The proposed amendment fails to identify or respond to changed conditions
9 or further studies that have occurred since the Master Plan was adopted by the Board, and the
10 requested amendment does not represent a more desirable utilization of land.

11 D. The proposed amendment will adversely affect the implementation of the
12 Master Plan goals, objectives and actions, and will adversely impact the public health, safety or
13 welfare.

14 E. The proposed amendment does not promote the desired pattern for the
15 orderly physical growth of the County as set forth for the Silver City community in the
16 2010 Lyon County Comprehensive Master Plan, County-wide Component.

17 F. The existing Comprehensive Master Plan and/or any related element
18 thereof is not in need of the proposed amendment.

19 G. The proposed amendment is not compatible with the surrounding area, and
20 the goals and policies of the Comprehensive Master Plan, particularly those related to Silver
21 City.

22 H. The proposed amendment will have effects on service provision, including
23 adequacy or availability of facilities and services, and is not compatible with existing and
24 planned service provision.

1 I. Deviation from the strict adherence to the Comprehensive Master Plan
2 would result in a situation neither intended nor in keeping with other key elements and policies
3 of the Plan.

4 J. The proposed Plan amendment will not promote the public welfare and will
5 be inconsistent with the goals and policies of the Comprehensive Master Plan and the elements
6 thereof, and

7
8 K. The burden of proof has not been met by the applicant in their application
9 to warrant a change in the Master Plan at this time.”

10 92. The Planning Commission’s findings mirrored the BOC’s 1986 findings on the
11 similar Nevex Gold Master Plan amendment application.

12 93. For at least the last two years, the Lyon County BOC has upheld every positive
13 recommendation of the Lyon County Planning Commission.

14
15 **G. Without Explanation, Lyon County BOC Reverses its Own Prior Findings, its**
16 **Professional Staff and Planning Commission Recommendations and Approves CMI’s**
17 **Application**

18 94. Lyon County agendized CMI’s 2013 Application to be heard by the BOC at its
19 January 2, 2014 meeting.

20 95. At the beginning of the January 2, 2014 meeting, Commissioner Keller announced
21 she had a new action for consideration by the BOC. Commissioner Keller indicated she had
22 contacted BOC members and CMI to discuss her proposal. Although Commissioner Keller
23 characterized the new proposal as a “compromise” offered on behalf of the Silver City
24 residents, she never contacted any representative of the Silver City Town Board or concerned
25 residents to discuss the new alternative.
26
27
28

1 96. On January 1, 2014, Commissioner Keller and her husband, a CMI employee, met
2 privately with BOC Chair Joe Mortensen and the Lyon County Manager. Plaintiffs/Petitioners
3 are informed and believe that Commissioner Keller, her husband, Commissioner Mortensen and
4 the County Manager then met with CMI's CEO and its consultant. Despite meeting the day
5 before with CMI's CEO and its consultant, Commissioner Keller informed the public during the
6 January 2 meeting that she had only been working with CMI's consultant.
7

8 97. Commissioner Keller has had extensive contacts with CMI. Commissioner Keller
9 refused to meet with representatives of Silver City despite repeated invitations.

10 98. Even though they had advance knowledge of the new proposal, no BOC member
11 or Lyon County staff contacted Silver City residents or their known representatives to either
12 discuss the proposal or provide any notice of the intent to introduce it during the January 2,
13 2014 hearing.
14

15 99. Commissioner's Keller's new proposed action substantially modified the
16 boundaries of the proposed area for land use designation changes. Commissioner Keller's new
17 action represents a substantial, and heretofore undisclosed amendment to CMI's 2013
18 Application.
19

20 100. CMI's 2013 Application proposed to change land use designations for their
21 ownership within Silver City. The proposed change in land use and zoning designation would
22 permit CMI to pursue further permits for a range of new using including industrial type uses
23 such a mining, feed lots, etc. Some of these uses were classified as "allowed," which means
24 that CMI could pursue themwith an ordinary permit application. Other of the new uses, such
25 as the industrial one including mining, could only be pursued after obtaining a "special" use
26 permit.
27
28

1 101. When Lyon County's professional planning staff assessed the appropriateness of
2 CMI's application, it analyzed the full range of potential uses, including special uses such as
3 mining, that could occur under the proposed land use changes.

4 102. In direct contravention to their professional planning staff analysis and the BOC's
5 many prior considerations of the same basic planning decision such as the 1986 Nevex Gold
6 application, BOC members in favor of the application determined that they could only consider
7 the allowed uses during their discussion of CMI's 2013 Application. These members
8 determined that they could not consider the potential impacts of special uses, such as mining
9 and other industrial uses, at this stage in the land use planning determination.

11 103. During the January 2, 2014 hearing, CMI presented no expert testimony to
12 counter the factual record regarding the adverse impacts of its 2013 Application. The record is
13 devoid of any evidence of actual benefits to the public resulting from the 2013 Application.
14 The record is also devoid of any changed circumstances in Silver City or its environs to justify
15 a change in Lyon County's long-standing and consistent land use policies for Silver City.

17 104. After public comment, the BOC held an abbreviated discussion consistent with
18 their constrained view of the allowable impacts to consider and voted, 4 to 1 to overturn the
19 Silver City Advisory Council, its professional planning staff recommendation, and the
20 recommendation of its Planning Commission, and grant Commissioner Keller's new amended
21 CMI 2013 Application.

23 105. The findings made by the BOC on January 2, 2014 to approve the revised CMI
24 application are legally and factually inconsistent with the Lyon County BOC's prior decisions
25 approving the 1971 Master Plan, the 1986 denial of the same application by Nevex Gold,
26 approving the 1990 Lyon County Master Plan, approving the 2002 Lyon County West Central
27 Master Plan and the 2010 Lyon County Comprehensive Master Plan.

1 106. The Lyon County BOC did not refer the amended 2013 Application for a Master
2 Plan amendment to its Planning Commission for a report prior to taking action on the
3 application.

4 107. Instead, Lyon County BOC referred the amended Master Plan amendment to the
5 Planning Commission for a report **after** the BOC approved the amendment.
6

7 **H. Adverse Effects of BOC's Action on Silver City Residents**

8 108. CRA members, who include many Silver City residents, and Gayle Sherman and
9 Joe McCarthy will be adversely affected by the BOC's approval of the CMI's revised 2013 in
10 the following ways:

11 a. Plaintiffs/Petitioners did not receive prior notice and an opportunity to
12 prepare for the actual application acted on by the BOC on January 2, 2014.

13 b. Plaintiffs/Petitioners were excluded from communications between BOC
14 members that would otherwise have been public.
15

16 c. CMI's existing mineral exploration in Silver City and surface mining in
17 the adjacent Lucerne Pit. CMI's past and present exploration and mining activities cause
18 degraded visual conditions, loud industrial noises within a quiet residential area, dust and dirt
19 on roads and in the air, and increased traffic on nearby roads including trucks and other
20 industrial equipment. The change in land use designations and zoning from prohibiting
21 industrial uses such as mining in Silver City will likely cause these present adverse effects to
22 increase.
23

24 d. The change in land use designations and zoning from prohibiting
25 industrial uses such as mining to allowing it under a special use permit will reduce the value of
26 Plaintiffs/Petitioners' property.
27
28

1 e. Surface mining, made possible by the change in land use will exacerbate
2 and accelerate the destruction of the CHD. Road building, cuts and fills, trenching, drill pads,
3 and subsequent associated surface mining activities, as noted by the National Park Surface
4 individually and cumulatively degrade the unique character of the CHD. In addition, the noise
5 associated with the proposed activities will substantially alter the character of the CHD. As
6 CRA members have testified, the construction, drilling and other activities associated with
7 CMI's past and current mineral exploration and mining have significantly altered the aural
8 landscape in the CHD and efforts to attenuate have proven unsuccessful.

10 f. Mining operations can generate dust from mining and mineral processing
11 operations and associated truck traffic, releasing particulates, nitrous oxide, sulfur dioxide, and
12 carbon monoxide from the equipment used to mine and process ore minerals. These emissions
13 can generate smog and other forms of air pollution that may impact local air quality. Mine
14 sites can also have increased concentrations of specific metals and salts in water used in – or
15 runoff from – mine sites. Acid mine drainage is a phenomenon that can occur when rock
16 containing sulfides is exposed to air and water. The water can become acidic and often carries
17 elevated levels of toxic metals. Acid mine drainage occurs most frequently in association with
18 metals mines [such as gold and silver mines] and can affect water quality. Pit lakes, another
19 water quality concern during and after mine closure, are created when mining is completed in a
20 pit and dewatering pumps are turned off, allowing groundwater to flow back into the pit.
21 Similar concerns about the acidity and concentration of heavy metals in these water bodies
22 arise in association with metals mines. Changes in water quality and quantity can affect not
23 only human health but also wildlife habitat and ecosystem health. Environmental impact
24 assessment processes often intensively focus on bio-diversity issues in Nevada, and as a
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1 consequence, operating plans require significant dedication to design of mitigation and
2 management efforts.

3 g. The change in land use to rural versus urban densities will it more difficult
4 for infrastructure improvement for Silver City that would improve the citizens' quality of life.

5 **I. Timely Commencement of this Action**

6 109. On January 8, 2014, the Office Manager to the Lyon County Commissioners and
7 County Manager distributed to CMI and a Silver City Town Advisory Board member an email
8 with the subject line "Planning Final Action 01/02/2014." The email attached letters dated
9 January 7, 2014 that describes the BOC's final action granting Commissioner Keller's revised
10 CMI 2013 Application. While no evidence exists that this notice of final action has been filed
11 with the Clerk of the Lyon County or another entity identified by Lyon County as clerk to the
12 BOC, Lyon County contends that "the date of the email, January 8, 2014, [is] the filing date
13 with the clerk's office" sufficient to trigger the NRS 278.0235 25-day limitation period.
14

15 110. Plaintiffs/Petitioners file this action within 25 days of Lyon County's January 8,
16 2014 notice of final action.
17

18 **FIRST CAUSE OF ACTION**

19 **(Violations of Nevada Open Meeting Law)**

20 111. Plaintiffs/Petitioners re-allege and incorporate by reference Paragraphs 1 through
21 110 inclusive, of this Complaint/Petition, as if fully set forth below.
22

23 112. Nevada's Open Meeting Law, NRS Chapter X, requires that Lyon County BOC
24 give proper notice of what it will consider taking action at each meeting.

25 113. Nevada Open Meeting Law also outlaws BOC members from deliberating outside
26 of noticed public meetings.

27 114. Lyon County BOC violated both Nevada Open Meeting requirements by failing to
28 agendize the action actually taken and deliberating on the action outside of a public hearing.

115. Since Lyon County BOC approval of Commissioner Keller's proposal violated Nevada's Open Meeting Law, it is void.

116. A real, live and present controversy exists between Plaintiffs/Petitioners and Defendants/Respondents.

SECOND CAUSE OF ACTION

(Denial of Due Process)

117. Plaintiffs/Petitioners re-allege and incorporate by reference, Paragraphs 1 through 116 of this Complaint, as if fully set forth below.

118. The Due Process Clause of the United States and Nevada Constitutions, as well as Nevada Ethics in Government Act, guarantee citizens that decisions made by government officials shall be free from undue influence. These laws provide that where a reasonable person would perceive a conflict of interest on the part of government official when he or she considers a matter, the government official must recuse himself or herself from consideration of that matter.

119. Commissioner Keller received income from CMI before and during her consideration of that company's application to expand its mining opportunities and thereby expand resources available to continue to hire Commissioner Keller's husband.

120. Commissioner Keller's receipt of money from CMI in this instance disqualifies her from participating in the consideration of CMI's 2013 Application.

121. CMI's unprecedented and outsized cash contributions to Commissioner Hastings's election campaign, as well as CMI's employment of Commissioner Hastings' wife and daughter's boyfriend and CMI's contributions to Commissioner Hastings' preferred charities, also poses a perceived or actual conflict of interest and disqualifies him from participating in the consideration of CMI's 2013 Application.

122. Plaintiffs/Petitioners' due process rights were therefore violated by the participation of Commissioners Keller and Hastings during consideration of CMI's 2013 Application.

1 **THIRD CAUSE OF ACTION**

2 **(Abuse of Discretion)**

3 123. Plaintiffs/Petitioners re-allege and incorporate by reference Paragraphs 1 through
4 122 inclusive, of this Complaint/Petition, as if fully set forth below.

5 124. Pursuant to the Nevada Revised Statutes, Lyon County possesses the authority to
6 control land uses within its boundaries. The Nevada Legislature empowered counties to
7 regulate land uses for the public health, convenience, safety and welfare and promotion of the
8 general good of its communities through NRS Chapter 278.

9 125. On each and every of the five separate occasions in which it addressed the exact
10 same land use designation question (the most recent being in 2010), the Lyon County BOC
11 found that the appropriate land use designation for the CMI's parcels in Silver City was urban
12 and not industrial. In 1986, Lyon County BOC expressly found that the land use designations
13 request by CMI in its 2013 Application were contrary to the good of the community and
14 contrary to the 2010 Comprehensive Master Plan.

15 126. Since 2010, no changes in circumstances have occurred to justify a change in land
16 use designations.

17 127. The revised CMI 2013 Application substantially conflicted with the adopted 2010
18 Comprehensive Master Plan.

19 128. The record before the Lyon County BOC fails to contain the evidence necessary
20 to support the findings made by the BOC on January 2, 2014, that directly contradicted the
21 findings made by the BOC on the five prior times it addresses the same question.

22 129. The Lyon County BOC abused its discretion when it refused to consider the full
23 range of uses contemplated CMI's 2013 Application.

24 130. Spot zoning is "zoning with disregard for the welfare of the whole community, for
25 the benefit of a few or in violation of a comprehensive plan." *Save a Valuable Environment v.*
26 *City of Bothel*, 576 P.2d 401, 405 (Wash. 1978). Such zoning is arbitrary and capricious, as it
27 disregards the emphasis upon consistency of rezoning with existing land uses. Lyon County
28

1 BOC's action approving CMI's amended 2013 Application constitutes illegal spot zoning as it
2 disregards the welfare of the whole community to the benefit of a mining company.

3 131. Lyon County BOC's action approving CMI's amended 2013 Application was
4 therefore contrary to law.

5 **FOURTH CAUSE OF ACTION**

6 **(Violation of NRS 278.220)**

7 132. Plaintiffs/Petitioners re-allege and incorporate by reference Paragraphs 1 through
8 131 inclusive, of this Complaint/Petition, as if fully set forth below.

9 133. NRS 278.220(4) mandates that "[n]o change in or addition to the master plan or
10 any part thereof, as adopted by the planning commission, made be made by the governing board
11 in adopting the same until the proposed change or addition has been referred to the planning
12 commission for a report thereon"

13 134. When the Lyon County BOC revised and then adopted CMI's Application it made
14 a change and/or an addition to the master plan that had not been heard by the Planning
15 Commission.

16 135. Instead, the Lyon County BOC first acted upon the changed/added proposed
17 Master Plan amendment and then referred the amendment to the Planning Commission for a
18 *post hoc* report.

19 136. Lyon County BOC therefore violated NRS 278.220(4).

20 **REQUEST FOR RELIEF**

21 WHEREFORE, as a result of the approval of the revised CMI 2013 Application,
22 Plaintiffs/Petitioners request judgment in their favor as follows:

23 1. That the Court declare that Lyon County BOC violated the Nevada Open Meeting
24 Law;

25 2. That the Court declare that Lyon County BOC denied Plaintiffs/Petitioners their
26 due process rights;

27 3. That the Court declare that Lyon County BOC abused its discretion and/or acted
28 contrary to law;

1 4. That the Court declare that Lyon County BOC violated NRS 278.220 by failing to
2 refer the revised proposed Master Plan amendment to its Planning Commission prior to
3 adopting it;

4 5. That the Court mandate that the adoption by Lyon County BOC of the revised
5 2013 Application is null and void.

6 6. That this Court issue an injunction enforcing the declarations issued above;

7 7. For Plaintiffs/Petitioners costs associated with this action;

8 8. To the extent permitted by law, for an award of reasonable attorneys' fees; and,

9 9. For such other and further relief as the Court may deem just and proper.

10 Dated: January 31, 2014.

11 Respectfully submitted,

12
13 By 

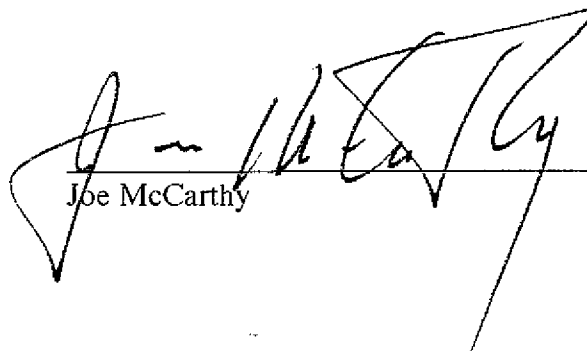
14 John L. Marshall, SBN 6733
15 570 Marsh Avenue
16 Reno, NV 89509
17 775.303.4882

18 Attorney for Plaintiffs/Petitioners CRA, Gayle
19 Sherman, Joe McCarthy
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AFFIDAVIT/VERIFICATION

I, Joe McCarthy, a member of the Board of Directors of Plaintiff CRA and a named Plaintiff/Petitioner, have read the foregoing Complaint/Petition and know the contents thereof; that the contents thereof were prepared with the assistance and advice of counsel for CRA. The contents of the Complaint, subject to inadvertent or undiscovered errors, are based upon and therefore limited by the records and information still in existence, presently recollected and thus far discovered in the course of preparation of this Complaint, are true to the best of my knowledge, information and belief. I reserve the right to make any changes in the contents of this Complaint if it appears at any time that omissions or errors have been made or that more accurate information becomes available.

Dated: January 31, 2014.



Joe McCarthy

EXHIBIT 2

EXHIBIT 2

FILED

2021 JUL 30 PM 2:01

CLERK OF DISTRICT COURT
CLERK OF DISTRICT COURT

Andrea Andersen

Case No. 14-CV-00128

Dept. No. II

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

Defendants/Respondents,

ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

This matter comes before the Court on Defendants' Motion for Attorneys' Fees filed on August 1, 2019. The Court having read the papers and the law applicable to the issues raised; and considering the merits of this matter; the Court finds as follows:

The Affidavits on file demonstrate that the fees requested are reasonable under the standards set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

The Court, therefore, finds that all fees requested must be awarded under NS 18.010 and NRS 278.0237.

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Office of the District Attorney
Lyon County, State of Nevada
601 Overland Loop, Suite 200, Dayton, Nevada 89403 • 31 South Main Street, Yerington, Nevada 89447 • 505 East Main Street, Pahrump, Nevada

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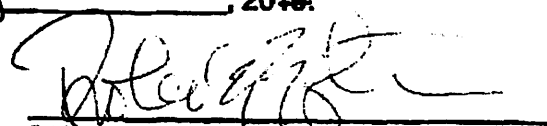
GOOD CAUSE APPEARING THEREFOR:

IT IS HEREBY ORDERED that Defendant, Lyon County Board of Commissioners, is awarded attorney fees to be paid by Plaintiffs in the amount of \$50,000.00;

IT IS FURTHER ORDERED that Defendant, Comstock Mining Incorporated, is awarded attorney fees and costs to be paid by Plaintiffs in the total amount of \$203,151.47.

IT IS SO ORDERED.

Dated this 30th day of July, 20²¹19.


DISTRICT JUDGE

4815-2344-4133, v. 1

EXHIBIT 3

EXHIBIT 3

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

Case No. 14-CV-00128

Dept. No. II

Pursuant to NRS 239B.030, the undersigned
affirms that the following document does not
contain the social security number of any person.

FILED

2021 AUG -4 AM 10:26

Kathy Thomas

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
JOE McCARTHY,

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK
MINING INCORPORATED,

Defendants/Respondents.

NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that on the 30th day of July 2021, the Court duly entered an
Order Granting Defendants' Motion For Attorneys' Fees in the above-entitled matter. A copy of
said Order is attached hereto.

DATED this 3rd day of August, 2021.

ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703

By:

[Signature]
JAMES R. CAVILIA, ESQ.
Nevada State Bar No. 3921
JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293
PO Box 646
Carson City, NV 89702
Attorneys for Defendant
Comstock Mining Incorporated

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date; I caused the foregoing document to be served to all parties to this action by:

- X Placing a true copy thereof in a sealed postage prepaid envelope in the United States
 Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- Facsimile
- Federal Express, UPS, or other overnight delivery
- E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures
 [NRCP 5(b)(2)(D)]

fully addressed as follows:

JOHN L. MARSHALL, ESQ.
570 Marsh Avenue
Reno, NV 89509

STEVEN B. RYE, ESQ.
District Attorney
31 South Main Street
Yerington, NV 89447

DATED this 3rd day of August, 2021.

Susan Price
SUSAN PRICE

FILED

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CLERK OF DISTRICT COURT
CLERK OF DISTRICT COURT

Andrea Andersen

Case No. 14-CV-00128

Dept. No. II

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

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Plaintiffs/Petitioners,

vs.

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The Court, therefore, finds that all fees requested must be awarded under NS 18.010 and NRS 278.0237.

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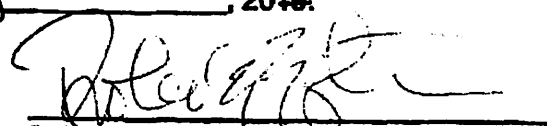
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DISTRICT JUDGE

4815-2344-4133, v. 1