



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: October 18, 2018

Staff Contact: Carson City District Attorney Jason Woodbury

Agenda Title: For Possible Action: To consider Carson City's potential involvement as an amicus curiae ("friend of the court") in Mineral County v. Walker River Irrigation District, a matter pending with the Nevada Supreme Court on questions certified from the United States Ninth Circuit Court of Appeals, and to authorize the District Attorney's Office and the Public Works Department to oversee the filing of a legal brief.

Staff Summary: Carson City has been invited to participate in a litigation matter as an amicus curiae (friend of the court). The case at issue originates from the United States Ninth Circuit Court of Appeals, which has certified two questions involving Nevada water law to the Nevada Supreme Court. The first question is: "Does the public trust doctrine apply to rights already adjudicated and settled under the doctrine or prior appropriation and, if so, to what extent? The second question is: "If the public trust doctrine applies and allows for the reallocation of rights settled under the doctrine of prior appropriation, does the abrogation of such adjudicated or vested rights constitute a 'taking' under the Nevada Constitution requiring payment of just compensation?" Nevada law has not previously been interpreted in a way that would subordinate adjudicated water rights to interests recognized by the public trust doctrine. A ruling to that effect would be a dramatic modification of Nevada water law. This modification has the potential to implicate the interests of Carson City in two regards. First, as the owner of adjudicated water rights, Carson City's ownership interests could be affected by the ruling in this case. Second, Carson City's juxtaposed interests in promoting development and conservation are potentially implicated as well.

If the Board of Supervisors elects to move forward with participation in this matter as an amicus curiae, the District Attorney anticipates enlisting the assistance of the law firm of Taggart & Taggart, Ltd. to complete its brief. Carson City has an active engagement with Taggart & Taggart to provide expert legal advice and assistance with respect to issues involving water rights and water law.

Agenda Action: Formal Action/Motion

Time Requested: 15 minutes

Proposed Motion

I move to direct the District Attorney and the Public Works Department to oversee the preparation and filing of a brief in the Nevada Supreme Court reflecting Carson City's position concerning the issues being litigated in Mineral County v. Walker River Irrigation District.

Board's Strategic Goal

Sustainable Infrastructure

Previous Action

N/A

Background/Issues & Analysis

Please see the supporting materials for background: (1) Letter from DePaoli to James (July 20, 2018); (2) Amended Order Certifying Questions to the Supreme Court of Nevada (Aug. 22, 2018); and (3) Order Accepting Second Certified Question and Modifying Briefing Schedule (Nevada Supreme Court) (Sept. 7, 2018).

Applicable Statute, Code, Policy, Rule or Regulation

Not applicable.

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number: 520-3502-435.03-09

Is it currently budgeted? Yes No

Explanation of Fiscal Impact: It is roughly estimated that the briefing at issue could be completed at a cost to Carson City of \$5,000 or less. The \$5,000 would consist of fees and associated costs paid to Taggart & Taggart.

Alternatives

1. Decline invitation to participate in Mineral County v. Walker River Irrigation District litigation;
2. Direct staff to gather additional information; or
3. Defer decision on participation in Mineral County v. Walker River Irrigation District litigation.

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)