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BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA and the COUNTY OF NEVADA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NEVADA

RISE GRASS VALLEY, INC., a Nevada corporation,

Petitioner and Real Party in Interest,

v.

BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, and the COUNTY OF NEVADA; and DOES 1-50, Inclusive,

Respondents.

CASE NO.: CU0001386

RESPONDENTS BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA AND COUNTY OF NEVADA'S OBJECTIONS TO NEW EVIDENCE IN PETITIONER'S REPLY PAPERS

Date: January 9, 2026
Time: 10:00 a.m.
Dept.: 6
Judge: Hon. Robert Tice-Raskin

Petition Filed: May 10, 2024

Respondents Board of Supervisors of the County of Nevada, and County of Nevada (collectively, "County") hereby object to the new evidence that Petitioner Rise Grass Valley Inc. presents in its Reply papers, and to Petitioner's arguments in its Reply Brief that rely on that new evidence. Petitioner's presentation of such new evidence and argument violates "[t]he general rule of motion practice, which applies here, … that new evidence is not permitted with reply papers." (*Jay v Mahaffey* (2013) 218 Cal.App.4th 1522, 1537.) Also, this Court's consideration of the Board of Supervisors' vested rights determination must be based on the Administrative Record in this case, and Petitioner's new evidence is not included in that record.

Accordingly, this Court should strike and not consider the following:

1. Declaration of Martin P. Stratte In Support Of Petitioner Rise Grass Valley Inc.'s Request For Judicial Notice ("Stratte Declaration"), in its entirety;
2. Exhibits A, B, C, D, E, F, G and H, attached to the Stratte Declaration; and
3. Petitioner Rise Grass Valley Inc.'s Reply Brief In Support Of Petition For Writ Of Administrative Mandamus ("Reply Brief"), page 12, lines 14-28, and page 13, lines 1-12, and footnote 1, which relies on Exhibits A, B, C, D, E, F, G and H.

I. THIS COURT SHOULD NOT CONSIDER THE NEW EVIDENCE (EXHIBITS A, B, C, D, E, F, G AND H) PRESENTED BY PETITIONER IN ITS REPLY PAPERS.

"The general rule of motion practice … is that new evidence is not permitted with reply papers." (*Jay v. Mahaffey, supra,* 218 Cal.App.4th at p. 1537.) This rule is based on fundamental fairness and constitutional due process concerns. As the court in Jay explained:

> This rule is based on the same solid logic applied in the appellate courts, specifically, that '[p]oints raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument.' [Citations.] [¶] To the extent defendants argue they had the right to file any reply declarations at all, they are not wrong. Such declarations, however, should not have addressed the substantive issues in the first instance but only filled gaps in the evidence created by the limited partners' opposition. Defendants' decision to wait until the reply briefs to bring forth any evidence at all, when the limited partners would have no opportunity to respond, was simply unfair. Thus, while the trial court had discretion to admit the reply declarations, it was not an abuse of discretion to decline to do so. [*Jay, supra*, 218 Cal.App.4th at pp. 1537-1538 (italics omitted).]

As an example, in *Maleti v. Wickers* (2022) 82 Cal.App.5th 181, the Court of Appeal applied that rule in *Jay* as follows:

> Strictly speaking, Attorneys' reply presented new argument rather than new evidence. But the principle explained in *Jay* [*v. Mahaffey, supra,* 218 Cal.App.4th at p. 1537] – which is based upon the unfairness to the opponent of not being able to address the new matter raised in a reply (*San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 316) – applies here, particularly where the circumstances giving rise to the argument (i.e., an asserted pleading defect) were known to Attorneys when their anti-SLAPP motion was filed. (See Weil & Brown, Cal. Practice Guide: *Civil Procedure Before Trial* (The Rutter Group 2022) ¶ 9:106.1 ["[i]t is a serious mistake to leave key arguments for the reply brief … [because] [t]he court is likely to refuse to consider new evidence or arguments first raised in reply papers"].) [*Id.* at p. 228.]

In short, new documents and argument presented in reply papers should not be considered.

Here, the documents attached as Exhibits A, B, C, D, E, F, G and H to the Stratte Declaration were never provided to the Board. Petitioner referenced its own conclusions from factual information that was allegedly contained in documents allegedly found in Internet links to the Counties of San Bernardino and Merced, i.e., Exhibits A, B, C, D, E and F (AR 132, 147-148, 399, 3581-3582, 3597), but Petitioner never actually provided such documents to the Board. And Exhibits G and H from the County of Riverside did not even exist until 2025, and so they also were never provided to the Board. Thus, Exhibits A, B, C, D, E, F, G and H are not in the administrative record and were never before the Board when it made the vested rights determination in this case. Also, neither Exhibits A, B, C, D, E, F, G and H, nor the contents of those documents, were ever raised or discussed in Petitioner's Opening Brief.

Furthermore, this is not an "exceptional" situation. (See *Jay v Mahaffey, supra*, 218 Cal.App.4th at pp. 1537-1538 ["'the inclusion of additional evidentiary matter with the reply should *only be allowed in the exceptional case* …'"]) And even if this case was an "exceptional" situation, "the other party [i.e., the County] should be given the opportunity to respond." (*Id*. at p. 1538.) (*See e.g*., *Dickinson Frozen Foods, Inc. v. FPS Food Process Sols. Corp*., No. 1:17-cv-00519-MMB, 2021 U.S. Dist. LEXIS 227999, 2021 WL 5567300, at *1-*2 (D. Idaho, Nov. 29, 2021)["The Ninth Circuit has recognized that a district court has discretion either to decline to consider new facts or arguments raised for the first time on reply because the other party has no

opportunity to respond or else to consider the material if the court allows the other party such an opportunity."]) Therefore, in the alternative to striking and not considering Exhibits A, B, C, D, E, F, G and H, and in the alternative to striking and not considering the arguments in the Reply Brief that relies upon those Exhibits, this Court should do the following:

1. Continue the hearing on January 9, 2026; and

2. Provide the County with a reasonable opportunity to submit the following to this Court in response to the Petitioner's new evidence (Exhibits A, B, C, D, E, F, G and H):

   (a) A Surreply Brief as to the material raised in the new evidence;

   (b) Supplemental evidence with the Surreply Brief that responds to the new evidence presented by Petitioner.

II. THE NEW DOCUMENTS PRESENTED BY PETITIONER IN ITS REPLY PAPERS ARE NOT PART OF THE ADMINISTRATIVE RECORD, AND THERE IS NO APPLICABLE EXCEPTION THAT ALLOWS THE INTRODUCTION OF SUCH NEW EVIDENCE.

"The general rule is that a hearing on a writ of administrative mandamus is conducted solely on the record of the proceeding before the administrative agency." (*Toyota of Visalia v. New Motor Vehicle Bd.* (1987) 188 Cal.App.3d 872, 881.) Section 1094.5(e) provides a narrow exception. That provision states that if "there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent," the evidence can be made a part of the record. Civ. Proc. Code § 1094.5(e). Section 1094.5(e) "operates as a limitation upon the court's authority to admit new evidence." (*Toyota of Visalia*, 188 Cal.App.3d at p. 881.) "Augmentation of the administrative record is permitted only within the strict limits set forth in section 1094.5, subdivision (e)." (*Pomona Valley Hospital Medical Center v. Super. Court* (1997) 55 Cal.App.4th 93, 101.)

The documents from the Counties of San Bernardino and Merced that are included as Exhibits A, B, C, D, E and F were never provided to the Board. Indeed, those documents certainly could have been produced to the Board in the administrative proceeding if Petitioner had exercised reasonable diligence (as shown by Petitioner's references to the Internet sites), but the

documents were never submitted by Petitioner. Accordingly, the documents identified as Exhibits A, B, C, D, E and F from San Bernardino and Merced Counties were not included in the record, and should not be considered by this Court.

Petitioner also inappropriately submitted documents identified as Exhibits G and H from Riverside County that did not exist at the time the Board made the decision on the vested rights determination, and were not before the Board when it made that determination. As Petitioner readily admits, the County of Riverside's determination discussed in Exhibits G and H "occurred this year [i.e., 2025], and is therefore too recent to have been cited in the proceeding below." (Pet. Reply Brief, 13:26-27.) Submission of Exhibits G and H is improper in this writ proceeding. In *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, the Supreme Court held that "extra-record evidence can never be admitted merely to contradict the evidence the administrative agency relied on in making a quasi-legislative decision or to raise a question regarding the wisdom of that decision." (*Id*. at p. 579.) The exception is that extra-record evidence is admissible in mandamus proceedings where the evidence could not have been produced at the administrative level in the exercise of reasonable diligence. (*Id.* at p. 578.) However, the Court *rejected* the petitioner's argument that this exception allowed the introduction of "any and all expert testimony and reports prepared *after* the [agency] adopted the [challenged] regulations." (*Ibid* (emphasis added).) The Court explained:

> [Petitioner] apparently reasons that because this evidence *did not exist when the* [agency] *made its decision*, it could not have been discovered "in the exercise of reasonable diligence." Such a broad reading of this exception would seriously undermine the finality of quasi-legislative administrative decisions. Any individual dissatisfied with a regulation could hire an expert who is likewise dissatisfied to prepare a report or give testimony explaining the grounds for his disagreement, introduce this evidence in a traditional mandamus proceeding, and, if he can persuade the court that the report raises a question regarding the wisdom of the regulation, obtain an order reopening the rulemaking proceedings. And if the administrative body were to adopt a regulation in the second proceeding that still was not to the individual's satisfaction, he could simply repeat the process. Therefore, although we agree that there is such an exception in traditional mandamus proceedings challenging quasi-legislative administrative decisions, this exception is to be very narrowly construed. Extra-record evidence is admissible under this exception only in those rare instances in which (1) the evidence in question existed *before* the agency made its decision, and (2) it was not possible in the exercise of reasonable diligence to present this evidence to the agency before the

> decision was made so that it could be considered and included in the administrative record. [*Ibid*. (emphasis added).]

While that explanation in *Western States* was made in the context of a quasi-legislative decision, the prohibition to post-hearing evidence is even more applicable in this adjudicatory decision under Code of Civil Procedure section 1094.5 involving Petitioner's petition for a vested rights determination. Simply put, the documents from Riverside County (Exhibits G and H) cannot be considered by this Court. Therefore, this Court should not consider Exhibits G and H, or any argument based on Exhibits G and H.

III. CONCLUSION.

For the reasons explained above, this Court should strike and not consider the following:

1. Declaration of Martin P. Stratte In Support Of Petitioner Rise Grass Valley Inc.'s Request For Judicial Notice, in its entirety.
2. Petitioner Rise Grass Valley Inc.'s Reply Brief In Support Of Petition For Writ Of Administrative Mandamus, page 12, lines 14-28, and page 13, lines 1-12, and footnote 1.

Alternatively, this Court should do the following:

3. Continue the hearing on January 9, 2026; and
4. Provide the County with a reasonable opportunity to submit the following to this Court in response to the Petitioner's New Evidence:
   - (c) A Surreply Brief as to the material raised in the New Evidence;
   - (d) Supplemental evidence with the Surreply Brief that responds to the New Evidence presented by Petitioner.

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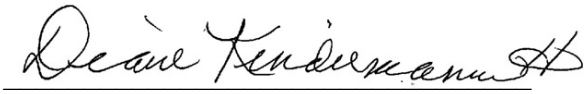
Dated: December 17, 2025

OFFICE OF THE COUNTY COUNSEL

By: /s/ *Katharine L. Elliott*
Katharine L. Elliott, County Counsel
Attorneys for Respondents
BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA and the COUNTY OF NEVADA

Dated: December 17, 2025

ABBOTT & KINDERMANN, INC.

By: 
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PROOF OF SERVICE

I, Karen Scott, declare as follows:

I am employed in the County of Sacramento, over the age of eighteen years and not a party to this action. My business address is 2100 21st Street, Sacramento, California 95818. On the date below, I served the foregoing document described as:

RESPONDENTS BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA AND COUNTY OF NEVADA'S OBJECTIONS TO NEW EVIDENCE IN PETITIONER'S REPLY PAPERS

On the parties listed below:

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Admission Pro Hac Vice

by the following means of service:

BY MAIL: I placed a true copy in a sealed envelope addressed on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

X **BY ELECTRONIC SERVICE [EMAIL]:** Sending a true copy of the above-described document(s) via electronic transmission from EFS and email address kscott@aklandlaw.com to the persons listed above on the date below. The transmission was reported as complete and without error. [CRC 2.251(i)(2), 2.256 (a)(4), 2.260].

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed on December 17, 2025, at Sacramento, California.

Karen Scott
Karen Scott