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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 OPPOSITION TO PETITIONER'S REQUEST FOR JUDICIAL NOTICE

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") oppose Petitioner Rise Grass Valley Inc.'s Request For Judicial Notice ("RJN") because (1) Petitioner wrongly seeks judicial notice of factual findings and statements made within the requested documents; (2) Petitioner incorrectly seeks judicial notice of documents about "determinations of vested mining rights by the regulatory bodies of several counties located in California" (RJN, 12:4-6), which determinations have no relevance here; and (3) Petitioner improperly seeks judicial notice in order to inappropriately introduce, for the first time, documents that were never presented to the Board of Supervisors ("Board") when it considered the vested rights determination at issue in this case, and are therefore not in the administrative record.

I. PETITIONER WRONGLY SEEKS JUDICIAL NOTICE OF FACTUAL FINDINGS AND STATEMENTS IN THE REQUESTED DOCUMENTS.

"While courts take judicial notice of public records, they do not take notice of the truth of matters stated therein." (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal. App. 4th 1366, 1375.) "When judicial notice is taken of a document, … the truthfulness and proper interpretation of the document are disputable." (*StorMedia Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9.) Therefore, "the taking of judicial notice of the official acts of a governmental entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom, since in many instances what is being noticed, and thereby established, is no more than the existence of such acts and not, without supporting evidence, what might factually be associated with or flow therefrom." (*Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1134.)

For example, in *Arce v. Kaiser Foundation Health Plan* (2010) 181 Cal.App.4th 471, the court considered a request for judicial notice of "an administrative decision" of the Department of Managed Health Care ("DMHC"), and held: "[W]e do not take judicial notice of the truth of any factual assertions appearing in the documents." (*Id*. at p. 483.) The court explained:

> Pursuant to Evidence Code section 452, subdivision (c), we take judicial notice of the DMHC's written decision as "[o]fficial acts of the legislative, executive, and judicial departments … of any state." (Evid. Code, § 452,

> subd. (c).) We do not, however, take judicial notice of the truth of any factual findings made in the DMHC's decision or in the attached independent medical review determination. [*Id.* at p. 484.]

Here, Petitioner wrongly requests this Court to take judicial notice of the documents identified as Exhibits A, B, C, D, E, F, G and H because they "detail and reflect legal rights and have independent legal significance." (RJN, 1:26-2:3.) But that argument is unavailing. There is nothing about the "legal rights" and "legal significance" of the documents identified as Exhibits A, B, C, D, E, F, G and H that has anything to do with the vested rights determination in this case. The mere existence of those documents, and even the fact that other counties made such vested rights determinations, have no bearing on this case whatsoever.

In truth, Petitioner seeks judicial notice of Exhibits A, B, C, D, E, F, G and H for the improper purpose of asserting the truth of the particular factual findings or the factual statements contained within those documents. (*See* Petitioner's Reply Brief, 12:14-13:12 & fn. 1.) It is axiomatic that a request for judicial notice cannot be used for that purpose. (*See Arce v. Kaiser Foundation Health Plan, supra,* 181 Cal.App.4th at p. 484. *See also Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375 ["'[t]aking judicial notice of a document is not the same as accepting the truth of its contents.'"]) Making matters even worse, Petitioner seeks judicial notice of the documents in order to extrapolate its own historical interpretation and summation of the facts allegedly contained within those documents. (*See* Petitioner's Reply Brief, 12:14-13:12 & fn. 1.) That is patently wrong. (*See Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374 ["Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning."]) This Court should deny the RJN in its entirety.

II. NONE OF THE DOCUMENTS INCLUDED IN THE RJN ARE RELEVANT TO THE VESTED RIGHTS DETERMINATION IN THE CASE AT BAR.

A. This Court May Only Take Judicial Notice Of Relevant Documents.

" 'Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.' " (*Lockley v. Law Office of Cantrell, Green, Pekich,*

Cruz & McCort (2001) 91 Cal.App.4th 875, 882.) "Although a court may judicially notice a variety of matters … , only relevant material may be noticed. 'But judicial notice, since it is a substitute for proof [citation], is always confined to those matters which are relevant to the issue at hand.'" … (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063, *overruled on other grounds by In re Tobacco Cases II* (2007) 41 Cal.4th 1257. *See Arce v. Kaiser Foundation Health Plan, supra,* 181 Cal.App.4th at p. 482 ["We also may decline to take judicial notice of matters that are not relevant to dispositive issues on appeal."] *See also* 2 Jefferson, Cal. Evidence Benchbook (2d ed. 1982) § 47.1, p. 1749 ["Matters otherwise subject to judicial notice must be relevant to an issue in the action."]) *See e.g., State Comp. Ins. Fund v. ReadyLink Healthcare, Inc.* (2020) 50 Cal.App.5th 422, 442 [denying a request for judicial notice of "materials … not relevant to [the appellate court's] determination of the issues on appeal"].)

B. The Documents Attached To The RJN Are Not Relevant Because The Other Counties' Vested Rights Determinations In Other Cases Are Irrelevant Here.

The "legal rights" and "legal significance" of other counties' vested rights determinations (RJN, 3:2-3) are in no way relevant to the facts in this case. Petitioner asserts that the documents discussed in the RJN detail "determinations of vested mining rights by the regulatory bodies of several counties located in California." (RJN, 1:4-6.) However, such determinations by other California counties have any reference or relevance to the abandonment issues in this case, which involve numerous separate and distinct acts of abandonment by the property owners that repeatedly occurred between 1954 and 2017. (See County's Opposition Brief, 21:21-34:13, 37:1-42:21.) Contrary to Petitioner's argument, the documents referenced in the RJN have no "independent legal significance" and no precedential value in this case, whatsoever. Also, as discussed above, the factual information and factual findings in those other counties' administrative determinations are not subject to judicial notice, as a matter of law. (*See Arce v. Kaiser Foundation Health Plan, supra,* 181 Cal.App.4th at p. 484.)

Therefore, the documents included in Petitioner's RJN are simply not relevant here, and the RJN should be denied on that basis alone.

C. Petitioner Acknowledges That The Types Of Mining Operations Discussed In The Documents Are Different From The Underground Gold Mining Here.

Petitioner tacitly concedes that the facts involving the vested rights determinations in the documents attached to the RJN are not relevant in this case. In its discussion to the Board of the abandonment of vested rights issue, Petitioner explicitly argued that the "character of property rights associated with [sic] underground gold mining operation" and the "unique character of property rights and what would properly manifest abandonment in this different setting of an underground gold mining operation" are substantially different from other kinds of mining operations, such as a surface aggregate mine. (AR 398.) And yet, the documents that Petitioner attached to the RJN involve only surface mining operations of products other than gold, and they do not include or involve underground gold mining. Specifically,

Exhibit A the RJN involves:
> "[V]ested right to mine aggregate within the area that is currently covered by dredge tailings" (p.1), and "vested right to conduct surface mining operations" (p. 3).

Exhibit B to the RJN involves:
> "[V]ested rights to mine aggregate material" (p.1).

Exhibit C to the RJN involves:
> "Vested Rights Determination for 160 Acres for the Chubbuck Limestone and Dolomite Quarry" (pp. 10 of 72, 33 of 72), and a vested mining right for "surface mining operations on the Properties in order to develop the limestone resources" (p. 32 of 72).

Exhibit D to the RJN involves:
> "vested mining rights based on past and anticipated future land use on a 160-acres portion of the Chubbuck Mine" (p. 2 of 3).

Exhibit E to the RJN involves:
> Vested mining right sought by "El Cajon Associates, LLC," allowing "surface mining operations on the Properties in order to develop the dolomitic limestone resources" (p. 4 of 6).

Exhibit F to the RJN involves:
> "Vested Mining Rights Rights Based on Past and Anticipated Future Land Use" applied for by "El Cajon Associates , LLC" (p. 2 of 3).

Exhibit G to the RJN involves:
> The "Mead Valley Vesting Mine Determination Findings" for "vested activities related to mining aggregate mining" (p.1 of 5), "Vested Rights to continue conducting surface mining activities" (p. 3 of 5), the "mineral estate encompassing rock, sand, and gravel" (p. 3 of 5), and "vested use may continue aggregate mining operations" and "an aggregate surface mine" (p. 4 of 5).

Exhibit H to the RJN involves:

> Approval of "Mead Valley Vesting Mine Determination Findings" (Item 3.37, p. 8/19).

Thus, the mining operations discussed in the documents attached to the RJN are very types of mining operations that Petitioner has already argued to the Board are materially different from the underground gold mining at issue here. Therefore, according to Petitioner's own arguments, the facts in the documents attached to the RJN are simply not relevant to the abandonment issue in the case at bar.

Furthermore, the historical facts and the factual findings in the other counties' vested rights determinations in the RJN documents are completely different from the facts in this case. It is axiomatic that every 'abandonment' analysis involves the unique facts of each case. Indeed, the mining operations discussed for each of the different determinations is completely unique and different from the others. Accordingly, none of the factual findings or mining operation facts in the vested rights determinations by other counties are in any way relevant to the facts in this case.

III. BECAUSE THE DOCUMENTS REQUESTED BY PETITIONER WERE NOT BEFORE THE BOARD OF SUPERVISORS WHEN THE VESTED RIGHTS DETERMINATION WAS MADE, THEY MAY NOT BE USED BY PETITIONER TO CHALLENGE THE BOARD'S DETERMINATION.

A. The Documents From San Bernardino And Merced Counties Were Never Provided To The Board, And So Cannot Be Allowed Via The RJN.

"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 in Petitioner's RJN fail to comply with those rules for two reasons.

First, the information contained in Exhibits A, B, C, D, E and F is irrelevant, for the reasons discussed above.

Second, Exhibits A, B, C, D, E and F 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 (AR 132, 147-148, 399, 3581-3582, 3597), but Petitioner never actually provided such documents 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 Petitioner never actually did that. 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 are not admissible now. On that basis alone, the RJN must be denied as to Exhibits A, B, C, D, E and F.

B. Several Of The Requested Documents Did Not Even Exist When The Board Made Its Determination.

In its RJN, Petitioner seeks to add documents identified as Exhibits G and H from Riverside County that are not only irrelevant, as discussed above, but also did not even exist and therefore were not before the Board at the time the Board made the decision on the vested rights determination. That is because, as Petitioner readily admits, the County of Riverside determination "occurred this year, and is therefore too recent to have been cited in the proceeding below." 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 is made in *Western States* in the context of a quasi-legislative decision, the prohibition to post-hearing evidence is even more applicable in this adjudicatory decision involving Petitioner's petition for a vested rights determination. Simply put, the documents from Riverside County (Exhibits G and H to the RJN) cannot be considered by this Court. The RJN must be denied as to Exhibits G and H.

Accordingly, this Court should deny the RJN in its entirety.

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Dated: December 17, 2025 OFFICE OF THE COUNTY COUNSEL

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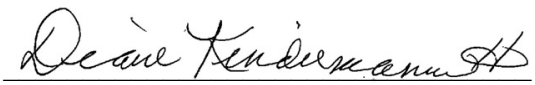
BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA and the COUNTY OF NEVADA

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 OPPOSITION TO PETITIONER'S REQUEST FOR JUDICIAL NOTICE

On the parties listed below:

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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