

FILED

BY SUPERIOR COURT OF CALIFORNIA,
COUNTY OF NEVADA

05/07/2026

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NEVADA

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RISE GRASS VALLEY, INC.,

Petitioner,

CASE NO: CU0001386

**MEMORANDUM DECISION AND
ORDER REGARDING PETITION
FOR WRIT OF ADMINISTRATIVE
MANDAMUS**

vs.

BOARD OF SUPERVISORS OF THE
COUNTY OF NEVADA, and the COUNTY
OF NEVADA, et al.,

Respondents.

Introduction

Before the Court is the first cause of action of a writ of administrative mandate by Petitioner Rise Grass Valley, Inc. (“Rise” or “Petitioner”) to compel Respondents Nevada County and the Board of Supervisors of Nevada County (“County” or “Respondents”) to “(1) set aside its December 14, 2023 decision with respect to the vested right to conduct mining activities at the Idaho-Maryland Mine, and (2) bring its conduct into compliance with all applicable law and regulations by recognizing Rise’s vested right to conduct mining activities at the Idaho-Maryland Mine without the need for a conditional use permit.” Pet. Opening Brief (POB) 3:24-4:1. The matter was submitted for decision following argument heard on March 9, 2026. For the reasons noted below, the request for relief in the first cause of action is denied.

Discussion

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2 1. This is “an administrative mandamus case where a fundamental vested right is at
3 stake.” *Handyman Connection of Sacramento, Inc v. Sands* (2004) 123 Cal. App.4th 867, 880.
4 The Court “must exercise independent judgment” in reviewing the County’s denial of
5 Petitioner’s alleged vested right to mine at the Idaho-Maryland mine. *Ibid.*¹ “[T]he trial court
6 not only examines the administrative record for errors of law but also exercises its independent
7 judgement upon the evidence disclosed in a limited trial de novo.” *Bixby v. Pierno* (1971) 4
8 Cal.3d 130, 143. “[A] trial court exercising its independent judgment is empowered and
9 obliged to weigh the evidence at the administrative hearing ...” *Seibert v. City of San Jose*
10 (2016) 247 Cal.App.4th 1027, 1063 (quotations omitted). “The trial court [is] permitted to
11 draw its own reasonable inferences from the evidence and make its own credibility
12 determinations.” *Candari v. Los Angeles Unified School Dist.* (2011) 193 Cal.App.4th 402,
13 407. “At the same time, it [must] afford a strong presumption of correctness to the
14 administrative findings and require the challenging party to demonstrate that such findings
15 were contrary to the weight of the evidence.” *Ibid.*

16 2. As part of independent judgment review, “the trial court must ... determine whether a
17 preponderance of the evidence supports the administrative findings of fact.” *Handyman*
18 *Connection of Sacramento, Inc.*, 123 Cal.App.4th at 880. That said, the County has the burden
19 of proving abandonment by clear and convincing evidence. *See Gerhard v. Stephens* (1968)
20 68 Cal.2d 864, 890 (“the trier of fact, before decreeing an abandonment [of valuable property
21 rights], must find that the owner’s conduct clearly and convincingly demonstrates the
22 necessary intent.”)² “[T]he standard of proof known as clear and convincing evidence ...
23 requires proof making the existence of a fact highly probable.” *Conservatorship of O.B.*
24 (2020) 9 Cal.5th 989, 995, 1011.

25 3. The Court grants Respondents’ *unopposed* request to judicially notice Exhibit 1.

26 4. The Court sustains the objections of Respondents to Petitioner’s request to judicially
27 notice Exhibits A-H. Assuming, *arguendo*, the objections were overruled, the Court would
28 conclude, in the exercise of its discretion, that the vested rights decisions of other government
bodies in other jurisdictions based on the unique circumstances of those matters, are entitled to
no credibility and no evidentiary weight in connection with the unique circumstances of the
vested rights decision at issue in this writ.

5. “A legal nonconforming use is one that existed lawfully before a zoning restriction
became effective and that is not in conformity with the ordinance when it continues
thereafter.” *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533,
540, n. 1. A use must be present *at the time* a new law takes effect, to be considered a
nonconforming use. *Id.* at 540-568; *McCaslin v. City of Monterey Park* (1958) 163

¹ During argument the County conceded that this Court must exercise independent judgment review.

² During argument the County conceded that the clear and convincing evidence standard applied to the issue of abandonment.

1 Cal.App.2d 339, 346 (“A nonconforming use is a lawful use existing *on the effective date* of
2 the zoning restriction and continuing since that time in nonconformance to the ordinance”) (italics added).

3 6. “The ultimate purpose of zoning is...to reduce all nonconforming uses within the zone
4 to conformity as speedily as is consistent with proper safeguards for the interests of those
5 affected.’ [G]iven this purpose, courts should follow a strict policy against extension or
6 expansion of those uses. That policy necessarily applies to *attempts to continue nonconforming*
7 *uses which have ceased operation.*” *Hansen Brothers Enterprises, Inc.*, 12 Cal.4th at 568
8 (italics added.) “[A]bandonment of a nonconforming use ordinarily depends upon a
9 concurrence of two factors: (1) An intention to abandon; and (2) an overt act, or failure to act,
10 which carries the implication the owner does not claim or retain any interest in the right to the
11 nonconforming use. Mere cessation of use does not of itself amount to abandonment although
12 the duration of nonuse may be a factor in determining whether the nonconforming use has
13 been abandoned.” *Id.* at 569 (citations omitted). Because demand for mined aggregates
14 fluctuates with the market, a temporary closure during a business slowdown does not
15 necessarily constitute abandonment. *Id.* at 545-546. For example, an intention to resume
16 nonconforming use after a recession can demonstrate no abandonment of a vested right.
17 *Pardee Construction Co. v. California Coastal Com.* (1979) 95 Cal.App.3d 471, 475.
18 “Nonuse is not a nonconforming use, however, and reuse may be prohibited if a
19 nonconforming use has been voluntarily abandoned.” *Hansen*, 12 Cal.4th at 552. While
20 fluctuating mineral prices may induce an operator to temporarily close a mine while retaining
21 the right to reopen, not every operator who closes a mine due to economic reasons retains such
22 intention. *Id.* at 545-546.

23 7. In its December 2023 decision/resolution, the County concluded that “Petitioner has
24 not met its burden to establish a vested right.” See AR000001-7. The County erred. In the
25 exercise of its independent judgment, the Court finds and concludes that a vested right to
26 conduct at least *some* mining activities at the Idaho-Maryland Mine came into existence in
27 1954. Petitioner established, by a preponderance of evidence, that the Idaho-Maryland Mine
28 Corporation was conducting nonconforming mining activities at the time Nevada County
Ordinance No. 196 (the zoning law at issue requiring, *inter alia*, use permits for mining) went
into effect on October 10, 1954. See All Administrative Record (AR) references cited at POB,
19:24-20:22.

8. The Court assumes, *arguendo*, that Petitioner Rise has proven the scope of its 1954
vested right to mine *as prayed*.³ See POB, 5:22-6:15.

9. In the December 2023 decision/resolution the County also concluded “the evidence,
viewed under any applicable legal standard, demonstrates that any right to mine the
Subject Property was subsequently abandoned” ... “over the period of 1956
through 1963.” See AR000003-4. The County did not err. In the exercise of its independent
judgment of the evidence (including weighing and drawing inferences from the same), the
Court finds and concludes that the County, by clear and convincing evidence, established that

³ The Court need not reach this issue. Suffice it to say that Respondents have presented a
substantial argument contrary to the argument of Petitioner.

1 Idaho-Maryland Mine Corporation (Corporation) abandoned any vested mining right by no
2 later than 1963. In short, by 1957, the Corporation had ceased all underground mining
3 operations, and had auctioned/sold nearly all mining equipment/buildings at the mine.
4 By 1963, the Corporation had auctioned/sold all the remaining mine property, including surface
5 parcels and mineral rights. See All AR references cited at Respondent’s Opposition Brief
6 (ROB), 21:27-22:27, 24:24-25:20. These actions establish both: an intention to abandon by
7 the owner Corporation; and numerous overt acts by the owner Corporation, which carry the
8 implication the owner did not claim or retain any interest in the right to the nonconforming
9 mining use. See *Hansen*, 12 Cal.4th at 569. These actions were *not* reflective of a mere
10 temporary cessation of mining use by the Corporation with an intention to resume the use in
11 the future.

12 10. Petitioner argues that the Corporation sold/auctioned mining equipment and certain
13 non-essential or ancillary property to preserve its vested mining rights, not to abandon those
14 rights. See POB, 28:1-30:18 and all AR citations noted therein. Per Petitioner, the
15 Corporation specifically reserved the mineral estate in the deeds of various properties sold.
16 POB, 28:18-21.⁴ Ultimately, Petitioner asserts: “the mine owner went to painstaking lengths
17 to ensure that it maintained ownership over mineral deposits connected to the mine and the
18 surface estate necessary to mine those deposits.” POB 30:12-14. “The mine owner’s intention
19 was to preserve the right to mine in the future...” POB 30:16-18. In the exercise of its
20 independent judgment, the Court assigns minimal weight/value to the circumstantial evidence
21 cited by Petitioner in support of its contentions, and ultimately declines to make the inference
22 suggested by Petitioner, *i.e.*, that the Corporation undertook all the sales activities noted above
23 to preserve its vested mining rights and its right to mine in the future. Simply stated, there was
24 insufficient credible, compelling and non-speculative evidence to support Petitioner’s
25 suggested inference.

26 11. Petitioner argues that the County (apparently when issuing conditional use permit U79-
27 41) recognized “that the mine property at that time hosted an ‘existing, non-conforming use’
28 for *mining activities*, and that “*mining activities* are ‘an existing, non-conforming use’ at the
property.” POB 22:23-27 (*italics added*). Per Petitioner, the “County’s own written statement
in 1980” recognized “that a vested right to conduct *mining activities* existed at the Idaho-
Maryland Mine.” POB: 19:20-21 (*italics added*); *see also* POB 3:14-16; 10:4-7; 16:20-21;
17:26 (similar statements). The Court is not persuaded.⁵ County staff processed Use Permit

22 ⁴ The Court assumes, *arguendo*, that Petitioner’s characterization of the deeds is accurate and
23 that, contrary to County’s finding, the mineral estate rights consistently were reserved. See
24 AR000003 ¶(4)(a).

25 ⁵ As a preliminary matter, where a litigant “asserts [a point] but fails to support it with
26 reasoned argument *and* citations to authority, [a court may] treat the point as waived.” *Orange*
27 *County Water Dist. v. Sabic Innovative Plastics US, LLC* (2017) 14 Cal.App.5th 343, 383
28 (*italics supplied*). Here, Petitioner did not cite the Court to any legal authority to support its
argument. In the exercise of its discretion, the Court will *not* deem the contention waived and
will address the merits.

1 U79-41 in 1980 for a “rock crushing and gravel retail sales” operation as “an *alteration* of an
2 existing, non-conforming use.” AR 1774, 1775, 1793 (emphasis added). At the time of the
3 use permit, “[l]arge mine waste stock piles exist[ed] on the surface” of the property. AR 1820.
4 Per County staff: “the property owner has indicated that mine rock has been sold and taken
5 from the property continuously since the mine closed, and so this use permit application is for
6 expansion of an existing, non-conforming use by the addition of a crusher and screening
7 plant.” POB 10:8-13; AR 1831-1832, 4023. Thus, the only existing, non-conforming use of
8 the property recognized by County staff was that “mine rock [was being] sold and taken from
9 the property.” The application was granted to permit “harvesting, crushing, screening, and sale
10 of waste rock left from the Idaho-Maryland Mine” AR 1841. In short, the County’s
11 recognition of a non-conforming use for removing and selling waste rock did not recognize or
12 make any determination as to any sort of “vested right” to engage in “mining activities,”
13 particularly underground mining.

14 12. In light of the disposition above, the Court need not reach any of the other issues raised
15 by the parties.⁶

16 Disposition

17 Petitioner’s requested relief in connection with the first cause of action of the Petition
18 is denied.⁷ A case management conference is set for June 8, 2026, at 09:00, in Department 6.
19 The parties are encouraged to present a stipulation for briefing of the issues in connection with
20 the second cause of action at least two weeks prior thereto.

21 DATED: May 7, 2026



22 S. ROBERT TICE-RASKIN
23 Judge of the Superior Court

24 _____
25 ⁶ The Court would reach the same overall conclusion utilizing: 1) the independent judgment
26 standard of review with a preponderance of the evidence requirement for abandonment; 2) the
27 substantial evidence standard of review with the clear and convincing evidence requirement
28 for abandonment; or 3) the substantial evidence standard of review with a preponderance of
the evidence requirement for abandonment.

⁷ The Court appreciates the comprehensive and thoughtful briefing and oral argument by the parties.