

Mesquite, NV., On June 20, 2023, Virgin Valley Water District Board members **Richard Bowler, Ben Davis, Randy Laub, Brian Bingham, and Gary Elgort** voted to divert \$4.8 away from providing scarce Domestic Water from an underground source to their customers in [Mesquite-Bunkerville](#) and continue [a losing legal battle with the owners of Paradise Canyon \(DBA the Wolf Creek Golf Club\) over setting rates for highly polluted Virgin River Water.](#)

**Bowler, Davis, Laub, Brian Bingham, and Elgort** award the law firm of Hutchison and Steffen (not their trial attorney Bo Bingham) \$4.8 million to contest: 1: The lost counterclaim blitzkrieg and 2: The Covenant issue.

## The counterclaim

Bo Bingham, a trust attorney with no water litigation experience hired to represent the board in 2009, convinced **Julien, Davis, Bowler, Laub, and Anderson** to take ratepayer funds from domestic water development so he could file a counterclaim "blitzkrieg" against the owners of the Golf Club to fight the Covenant acquisition. The four-part "blitzkrieg" allegation had nothing to do with the Covenant doctrine. Bo Bingham's "blitzkrieg" allegations included:

1. Effluent use: The owners of Paradise Canyon failed to use the city-provided effluent (wastewater) before using the water board to provide river water for irrigation.
2. Beneficial use: The owners of Paradise Canyon had a requirement to prove that they used the irrigation water beneficially.
3. Sub-lease: The owners of Paradise Canyon incorrectly sub-leased irrigation water to a Home Owners Association (HOA) adjacent to their golf course.
4. Perpetuity: Paradise Canyon owners cannot lease river water in perpetuity.

For five years, as the water board struggled to pay for delivering domestic Water from the local underground source Bo Bingham continued losing ([see Table 3](#)) his "Blitzkreig" motions in his contest with the more able Plaintiffs' attorneys. Trial Judge Timothy Williams continuously told Bingham that the "Covenant" case was separate from the "blitzkrieg" effort and warned that prolonging the Case was costly. Still, Bo Bingham ignored the legally sound advice.

The appeal decisions (Blitzkrieg and Covenant) were not surprising. Bo Bingham, and by default, **Bowler, Davis, Laub, Brian Bingham, and Elgort** planned to continue taking money from domestic water development to enrich their losing attorneys through appeals to defend their involvement in Virgin River Water issues. 1

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1 Under the federal Intentionally Credited Surplus Doctrin, SNWA for a cash payment to Virgin and Muddy River shaeholders takes a "flow credit" for that water (after deductions for evapotranspiration) and uses the reduced credit to take and clean water from Lake Mead to serve the domestic needs of the growing Las Vegas Metropolitan community.

Judge Williams told Bingham that the Covenant Case would be over if they won in front of a jury, and the VVWDB could raise the rate from \$300 and charge the Southern Nevada Water Authority (SNWA) "market" rate " of \$1,246 with no need to appeal. Not so, Bo Bingham said. "We will appeal even if we win," because the District would lose all its future Water because the Judge allowed Wolf Creek a perpetual right to Water. The perpetuity motion was one of 13 separate blitzkrieg counterclaim arguments concerning the four issues lost by Bingham over the five years of pre-trial. (See Table 3 in the appendix)

And during a June 14, 2021, counterclaim hearing on the perpetuity contract language and Bo Bingham wrote, Plaintiff's attorney Jeff Sylvester, addressed the perpetuity language in the contract, telling Judge Williams that Bingham lied 150 times to the Judge while simultaneously improperly adding 25 new cases and new arguments and new legal theories during his lengthy oral presentation on the most recent motion.

The Paradise Canyon attorney suggested that when attorneys present demonstrably false information, a Judge is no longer bound to accept the veracity of those statements. Sylvester argues that the language in the Bingham drafted Lease grants the owners of the Wolf Creek Golf Club rights to use the irrigation water in perpetuity as long that they pay a rate set by the water board during their annual budget meeting.

Sylvester argued that lying and offering new arguments in a motion hearing requires the Plaintiffs to present [costly] counterarguments concerning the factual nature of those statements. "When you add 25 new cases and new arguments during oral presentations, it denies us our due process right and denies you [Judge Williams] as the arbitrator of the law, the opportunity to properly judge the case," Sylvester said.

After considering Bo Bingham's use of the perpetual term in the contract, Judge Williams dismissed the motion, saying the Plaintiffs had a right to renew their Lease if they paid the appropriate rate per share.

Then in September 2021, Bingham brought Mark A. Hutchison from the Hutchison & Steffen law firm at additional expense, to petition the Nevada Supreme Court to tell Judge Williams that he had no business overruling him and confirm that **Bowler, Davis, Laub, Brian**

Virgin Valley Water Board Attorney fees	
Virgin Valley Litigation Costs	
Year	Amount
2018	\$120,000.00
2019	\$120,000.00
2020	\$190,000.00
2021	\$520,000.00
2022	\$355,000.00
2023 attorney fees budgeted	\$1,130,000.00
June 20, 2023 augmentation	\$4,800,000.00
<b>Total</b>	<b>\$7,235,000.00</b>

*Table 1 Attorney fees in Paradise Canyon vs. the Virgin Valley Water District Board*

**Bingham, and Elgort**, acting as the Government, had the unrestricted right to set rates as they liked. Hutchison tried three times to get the Nevada Supreme Court to rule in favor of Bingham. Still, on May 4, 2022, the full court denied Hutchison's last attempts ([see Table 4](#)), thus confirming Judge Williams's role in the litigation.

After three days of motion hearing before the October 10, 2022, scheduled trial date, Bo Bingham, acting for **Davis, Brian Bingham, Bowler, Laub, and Elgort**, said he was not ready after four and one-half years of litigation and 11 previous vacated trial delays to go to trial.

Nonetheless, Judge Williams set aside Thursday, October 27, 2022, to begin hearing a series of pre-trial evidentiary motions in limine 2 before a trial set for Monday, October 31, 2022.

But because of more Bingham's delays, that date fell by the wayside. Finally, the attorneys and the Judge agreed to the May 1, 2023 trial date to last no later than May 19, a promise made to the Jury. When Bingham asked for further delays, Judge Williams said, "We agreed to a trial date. I gave you the date, and you are stuck with it unless there is something beyond contemplation.

## Trial

Bo Bingham did equally poorly in the trial. After five years of losing his counterclaim arguments and being told on numerous occasions that they were irrelevant to the Case before the Jury, Bo Bingham, with a Hutchison-Steffen attorney sitting silently at the attorney table, continued to delay the proceedings by attempting to argue counterclaim issues ruled out of bounds for the trial. Those disrespectful, irreverent actions resulted in numerous objections from the Plaintiff's attorneys.

In 89.33 percent of the objections, Judge Williams agreed (sustained) Plaintiff's objections against arguments made by Bo Bingham. In almost equal terms, the Judge, 84.29 percent of the time, condoned (overruled) objections made by Bingham against plaintiff arguments before the Jury. <sup>3</sup> Judge Williams recognized the lopsided rulings since he told the Jury not to consider the rulings a "scorecard" of attorney behavior, but it is.

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<sup>2</sup> Motions in limine ask the court to order the opposing party, its counsel, and witnesses not to talk about, or even mention, certain facts or evidence in the presence or hearing of the jury.

<sup>3</sup> The scorecard kept by the author is subject to error only in the few cases where the Judge would call the attorneys to the Bench, and without an audible ruling, the attorneys would proceed with interrogating a witness.

The Jury looked at two versions of irrigation water pricing. One is a set of polluted Virgin River prices ranging from \$150 to \$300 for local irrigation and a \$1,246 value set by SNWA for taking a water-flow credit and providing Lake Mead Water to their customers for domestic use.

After five years of costly litigation and counterclaim delays by Water District Attorney Jedediah (Bo) Bingham, a Las Vegas Jury ruled that the Water Board members violated the Covenant of Good Faith and Fair Dealing provision in contract law by raising the owner's irrigation rates from a historical local rate of \$300 per share for polluted irrigation water to \$1,246 per share paid by the Southern Nevada Water Authority (SNWA) for which they take a water-flow credit and provide Lake Mead Water provided to their customers for domestic use.

Paradise Canyon vs. Virgin Valley Water District Board Objections, sustained and overruled						
Dates	Plaintiff (Sylvester and Kneeland)			Defense (Bingham) objections to		
	Objections	Sustained	Overruled	Objections	Sustained	Overruled
May 10,2023	numerous	numerous		few	few	
11-May-23	49	41	8			
15-May-23	7	4	3	16	3	13
16-May-23	12	3	9	40	5	35
17-May-23	34	33	1			
May 18-19 2023	150	145	7	3	1	2
22-May-23	113	99	14	7		7
24-May-23	10	9	1	4	2	2
25-May-23	106	96	10			
26-May-23	62	56	6	8	3	5
30-May-23	63	56	7	9	1	8
31-May-23	128	114	14	69	12	57
1-Jun-23	100	89	12	63	8	55
Totals	834	745	92	70	9	59
Objection percentages		89.33%	11.03%		12.86%	84.29%
<small>In the law of the United States of America, an objection is a formal protest raised in court during a trial to disallow a witness's testimony or other evidence in violation of the rules of evidence or other procedural law.</small>						
<small>The judge then makes a ruling on whether the objection is "sustained" (the judge agrees with the objection and disallows the question, testimony, or evidence) or "overruled" (the judge disagrees with the objection and allows the question, testimony, or evidence).</small>						

Table 2 Jury trial objection scorecard.

For violating the owner's expectations of a lower rate, charging them the higher rate, and failing to reimburse the owners for unused Water, the Jury told **Bowler, Davis, Laub, Brian Bingham, and Elgort** to pay \$811,000.00 in damages. And the Jury set the fair market rate for leased irrigation shares as of January 1, 2020, back to the local historical rate of \$300.

### It's all about River Water Shareholder profiteering.

*All water sources within the boundaries of Nevada, whether above or beneath the ground's surface, belong to the public." Nevada Revised Statutes (NRS) 533.025*

As Mesquite grew from a farming-dairy community to a retirement-recreational center, the need for cleaner underground Water for domestic use gradually replaced (with a few exceptions) the need for highly polluted Virgin River water administered for shareholders by the Mesquite Irrigation Company (MIC) and the Bunkerville Irrigation Company (BIC).

The Nevada legislature established the Virgin Valley Water District in 1993. And from that year until 2020, Virgin River Water Shareholders on the Water Board used their rate setting and purchasing authority to divert \$12,159,670.86 of public funds needed to develop underground Water to acquire 551 shares of (\$22,068.36 per share) Virgin River stock shares.

The rates hit an all-time high between 2008 and 2009 when **John Paul, Steve Miller, Kenyon and Cecil Leavitt, and Robert (Bubba) Smith** gifted \$80,056.23 per share to the Bunk Compout LLC: **Scott Bulloch and Crescent Hardy** the same amount per share to Bunk Farm

**LLC Duane E. and Ivona H. Magoon, Ron and Carlyn Leavitt and John Derick.** See: [profiteering in "Paradise Canyon vs. Virgin Valley Water District pg. 5-9."](#)

Historically and currently, the VVWDB pretends they purchased the Virgin River water for the time, now estimated at 2034. <sup>i</sup> The water board does not own an infrastructure to deliver Water, even for irrigation. MIC or BIC performs those tasks through their irrigation ditches i.

According to Jeff Sylvester, lead attorney for the owners of the Golf Course, it is not their job [VVWDB] to provide irrigation water to the golf courses. They "lease" "shares" to golf courses. Maybe a time not enough water underground, they might build a facility for about \$40 million or more and deliver it as drinking Water. Cost prohibitive to pay a high price for underground drinking water.<sup>ii</sup>

Even if it was cost-effective to provide domestic Water from polluted river water, there was no need to acquire shares far ahead of the requirement since river water between 2000 and 2022, the Virgin River flowed at an average of flows at 154,321.21 Acre Feet annually, more than enough to meet the appropriation need.

And in 2007, the Department of Interior -Bureau of Reclamations established a secondary market for Virgin River Water Shares under the Intentionally Created Surplus (ICS) Doctrine and Developed Shortage Supply (DSS) as a theoretical way to avoid Lower Basin shortages and benefit Lake Mead and Lake Powell.

Under the Tributary Conservation ICS and in return for cash, Virgin River stockholders of MIC or BIC stocks sign a "Forbearance Agreement with the SNWA iii; and the [Nevada Water Engineer](#), and the [Colorado River Commission of Nevada \(CRCN\)](#), attest that they have "fallowed" their land and allow their historical irrigation shares of to flow freely into Lake Mead (through the Overton inlet). iv After paying for the river water stock shares, SNWA takes a credit that allows them to add more Colorado River main flow water to serve their growing Las Vegas Metropolitan community. As of 2019, Virgin River Water shareholders earned \$57,998,817.99 for diverting local river water to Las Vegas. See: [profiteering in "Paradise Canyon vs. Virgin Valley Water District pg. 9-16."](#)

## Tables Appendix

<a href="#">A-18-774539-B Paradise Canyon LLC (Plaintiff(s) vs. Virgin Valley Water District (Defendants(s)</a>	
Jedidiah (Bo) Bingham	Judge Timothy Williams
<a href="#">Dismiss case (Water Board has absolute authority to set rates)</a>	<a href="#">This is a case for the jury to decide</a>
<a href="#">Must involve City in this suit</a>	<a href="#">Judge Williams reminded Mesquite City Attorney Robert Sweetin that had the Plaintiff (Paradise Canyon) wanted the City involved, they would have included them.</a>
<a href="#">Must prove beneficial use</a>	<a href="#">"It is not a breach of the lease by failing to establish beneficial use or refusing to amend the Lease to divest itself of all or portions of leased irrigations shares."</a>
<a href="#">Must use effluent</a>	<a href="#">The lease did require the Golf Course owners to use available effluent water. However, the Judge noted that the "conduct" of Water Board officials " has resulted in a waiver of such condition. Therefore, the failure to use available recycled or effluent water was an immaterial provision under the lease."</a>
<a href="#">Must not sublease</a>	<a href="#">The Lease does address the sub-leasing of Irrigation Shares. However, the Judge pointed to "uncontroverted evidence" that the Virgin Valley Water District (VVWD) had noticed, was aware of, and accepted the water use arrangements in 2011, 2012, and 2014. Judge Williams noted that the VVWD inaction resulted in a waiver, even if the water usage prohibition was a material term in the Lease.</a>
<a href="#">Have complied with Covenant and Good Faith by holding meetings</a>	<a href="#">Must comply with Nevada's Covenant and Good Faith law, the Judge said. Issue for the jury to decide</a>
<a href="#">Perpetuity does not apply</a>	On June 24, 2021, Judge Williams issued a minute order declaring the unambiguous Lease enforceable. He said the unambiguous terms of the Lease explicitly provide Paradise Canyon with a right to renew on a perpetual basis. He said it is not in breach by paying the annually established rental amount, and Paradise Canyon did not forfeit this right to renew the Lease in perpetuity. He filed the official findings on On September 13, 2021.
<a href="#">Dismiss Paradise Canyon appraiser</a>	Denied Bingham's motion to exclude the appraiser. Judge Williams said the Court would permit Paradise Canyon attorneys to directly examine him at trial and lay the foundation for Anderson's expert opinions and valuations.
<a href="#">Exclude deposition testimony of Karl Gustaveson</a>	Granted
Perpetuity re-do motion to re-consider	VVWD is rearguing Court's contract interpretation and declaratory judgment without citing any newly discovered evidence or change in controlling law, let alone demonstrating any "clear error," which provides no basis for relief. The Motion for Reconsideration on Order for Wolf Creek's Perpetuity Claim" is denied in its entirety. September 6, 2022
Effluent re-do	Denied December 6, 2021
sub-lease re-do	Denied December 6, 2021
Absolute authority to set rate to Supreme Court	Denied. See below
Lack of subject matter jurisdiction	Motion for Partial Dismissal for Lack of Subject Matter Jurisdiction by Hutchison Set for 9/28/2022

Table 3 Bo Bingham Loss Summary

Virgin Valley Water District Board Attorney Actions in front of the Nevada Supreme Court Paradise Canyon (DBA as the Wolf Creek Golf Course) vs. Virgin Valley Water District (A-18-774539)-contesting the Water Boards attempt to increase their irrigation water rates by 500 %.		
Date	Action	Document
12/20/2021	Attorney Marck Hutchison for Water Board Attorney Jedidiah (Bo) Bingham files petition for extraordinary writ relief	21-36260
2/18/2022	Order Denying Petition. "ORDER the petition DENIED." fn1[The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.] RP/JH/MG (SC)	22-05446
3/4/2022	Hutchison files for a rehearing	22-07073
4/5/2022	Filed Order Denying Rehearing. "Rehearing Denied." NRAP 40(c). (SC)	22-10627
4/18/2022	Hutchison files for en blanc (full court ) reconsideration	22-12208
5/4/2022	Filed Order Denying En Banc Reconsideration. Having considered the petition on file herein, we have concluded that en banc reconsideration is not warranted. NRAP 40A. Accordingly, we "ORDER the petition DENIED." Stiglich, J., dissenting. (SC)	22-14-174

*Table 4 Hutchison and Steffen loss summary*

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i Bowen and Collins and Associates, Virgin Valley Water District 2020 Master Plan, pg. 4-6

ii Sylvesrer, Jeffery, Opening comments, Paradise Canyon vs. The Virgin Valley Water District, Las Vegas District Court, May, 9, 2023.

iii November 17, 1994, and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this Forbearance Agreement and, pursuant to its contract issued under Section 5 of the Boulder Canyon Project.

iv The Colorado River Commission of the State of Nevada (CRCN) is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 and Act of 1928, SNWA has the right to divert ICS released by the Secretary for use within the State of Nevada pursuant to the Consolidated Decree. 538.251. CRCN is authorized by N.R.S. § 538.161