

*"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).*

## Overview

On April 24, 2025, Nevada Supreme Court Justice Lidia S. Stiglich, with Ron D. Parraguirre and Linda Marie Bell concurring, gave the Virgin Valley Water District Board (VWDB) in Mesquite, Nevada, **sole and absolute discretion to set the rental rate on irrigation water they delivered after January 1, 2020.**

The ruling, at best, is careless at its worst; it condones the taking of \$68,582,891.59 of public funds to enrich a few stockholders of publically owned but appropriated Water as ethical, sound fiduciary practices and in compliance with Nevada's public trust statutes.

The decision derived from an appeal to the higher court from a lower court decision where the attorneys for the owners of Paradise Canyon (DBA Wolf Creek golf course) argued that VWDB failed to comply with the covenant, good faith, and fair dealing contractual provisions by raising their irrigation rate by 346% from \$250/share to \$1,115/share <sup>1</sup>.

In government parlance, the covenant falls within the Public Trust Doctrine by enshrining the principle that the State owns the public trust resources (Water in this case), and the State cannot use them for just any purpose. Instead, in this case, the State (elected members of the VWDB and administrators of the Southern Nevada Water Authority (SNWA)) must act ethically as a fiduciary.

Acting ethically by elected officials is also governed by the [Nevada Commission on Ethics](#), which often refers to a case where Petitioner vs. Michael A. Carrigan, the U.S. Supreme Court held that:

*"[A] public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in consideration of, a matter on which the independence of judgment of a reasonable person in his*

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<sup>1</sup> A share is a stock.

situation would be materially affected by . . . [h]is a commitment in a private capacity to the interests of others." Nevada law requires public officers and employees to:

1. *Disclose their conflicts of interest every time a matter implicating the interest "is considered," and,*
2. *Abstain from voting or advocating on any matter "materially affected by, "among other things, the officer or employee's **familial relationship within the third degree of consanguinity i or affinity.***<sup>2</sup>

So, in considering the covenant, good faith, and fair dealing argument, legislated issues come into play, including compliance with the Public Trust, acting as a fiduciary, and doing so ethically.

## Follow the Money: The Paradise Canyon vs. the Virgin Valley Water District Board (VWVDB): A contractual dispute.

This case involves the use of public funds to manipulate the value of Virgin River Decreed water shares held by stockholders in the Mesquite Irrigation Company (MIC) and the Bunkerville Irrigation Company (BIC) appropriated initially under the 1927 Virgin River Decree for irrigation along with Virgin River in the Mesquite and Bunkerville areas.

In 2018, then Virgin Valley Water District Board (VWVDB) members Nephi Julien, Ben Davis, Richard Bowler, Randy Laub, and Travis Anderson, later supported by Brian Bingham and Gary Elgort, moved to increase the irrigation rate for the use of Decreed Water by the owners of the Wolf Creek golf course from \$250-\$300 per share to \$1,246 per share the amount that the SNWA paid for a Virgin River water "credit" to increase the amount of Water flowing into Lake Mead under the Intentionally Created Surplus Doctrine (ICS) doctrine.

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<sup>2</sup> Affinity is "a spontaneous or natural liking or sympathy for someone or something)."

On May 15, 2018, the owners of Paradise Canyon LLC filed a civil action (A-18-774539-B) against the VVWDB in the Eighth District Court of Nevada in Las Vegas, seeking a jury decision on whether or not the Water Board applied the covenant of good faith and fair dealing in setting irrigation rates in contract negotiations.

After five years of legal wrangling, Judge Timothy Williams turned the rate-setting decision over to a jury.

On June 5, 2023, the Jury concluded that when the owners of Paradise Canyon signed a contract with the VVWDB in June 2011, they had a justified expectation that the local market around the City of Mesquite on and after January 1, 2020, would exclude rates paid by SNWA upon which the Water District based its increased price to \$1,200 per share. The Jury then set a fair rate of leased irrigation shares at \$300 and awarded the owners of Paradise Canyon \$811,000 in damages.

## Supply and Demands: A Public Trust.

In this case, The Justices said the Water Board had **sole and absolute discretion to set the rental rate on irrigation water they delivered after January 1, 2020**. That decision ignores the critical historical relationship between rate-setting, supply and demand, and profiteering.

In 1993, the population of Mesquite was about 3,200 people.<sup>ii</sup> However, a dying dairy and agriculture market required rebuilding the community into a tourist and gaming mecca, thus shifting the water supply and demand balance from highly polluted surface water for declining irrigation to somewhat cleaner groundwater for rising domestic requirements.

In 1993, the Nevada Legislature established the Virgin Valley Water District (VVWD), requiring them to move away from primary dependence on polluted river water and deliver better quality groundwater from Virgin River Basin 222 for domestic needs.

However, that Basin only has a perennial yield of 3,600 acre-feet annually <sup>3</sup>, iii with a manner of overuse of 12,547.95 acre-feet, which exceeds the perennial yield by 8,947.95 acre-feet.

Under normal circumstances, the Public Trust doctrine requires board members as fiduciaries to find other domestic Water, cut deliveries, or attempt to clean polluted river water.

Attempts to find alternative domestic Water failed, and the drive for growth continued to a point where by 2018, the Water Board delivered 6,529 acre-feet to a population of 22,557 by overburdening the Basin by 2,929 acre-feet.

In the meantime, the declining need for irrigation meant that the source would flow undiverted downstream to Lake Mead.

MIC and BIC stock shareholders sitting on the newly formed Water Board arguably saw the problem as one in which they could allege the need to use public funds to acquire MIC and BIC stock shares for a future time when they would tax the rate holders to pay for the cleaning of the Water necessary to convert it to domestic use,<sup>4</sup> by manipulating the value of that Water to their benefit.

Effectively, acquiring water stock from MIC and BIC made the VVWDB stockbrokers.

## Water stock pricing and Affinity relationships

Strong kinships in the population, mainly consisting of others with the same religious ties, provided election support to MIC and BIC stockholders to take seats in the newly established Water District, thus forming the power base to establish the market value of the declining polluted Virgin River's decreed surface water.<sup>5</sup>

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<sup>3</sup> The maximum amount of groundwater that can be withdrawn annually from a groundwater reservoir without depleting it.

<sup>4</sup> Current plans project cleaning Decreed river water for domestic use in 2035, continuing to 2061, for \$60 million in capital expenses. The effort remains highly speculative for a number of reasons, including costs and overappropriation of surface water primarily by the Southern Nevada Water Authority.

<sup>5</sup> The Leavitt family, in particular, held 25.5 % of the harvest acres of Virgin River water appropriated under the Decree (as measured in acre-feet), and

Familial Relationship				
Leavitt	Relationship	Via	In turn to:	Via
	Abbot	Eathel Leavitt	Reber	Leah Abbott
	Bowler	Mary Ann Leavitt	Jensen	Sidona Bowler
	Hardy	Betsy Leavitt, Emma Leavitt	Wittwer	Vira Eva
	Hafen	Martha Lovena Leavitt	Hafen	Emma Estelle Bowler
	Hughes	Orilla Luella Leavitt	Hughes	Lenna Grace Bowler
	Laub	Judy Leavitt	Laub	Mary Elizabeth
	Pulsipher	Dolores Leavitt	Also related to Bowler and	
	Reber	Daisy Ina Leavitt	See Abbott	
	Wittwer	Elizbeth Leavitt	See Hardy	

*Table 1 Virgin Valley Water District Board kinship relationship through 2010.*

## Virgin Valley Water District Board Pricing 1993-2010 <sup>6</sup>

Once formed, the newly formed Virgin Valley Water District Board members and Decreed stockholders John Lee, Cresent Hardy, J.L. Bowler, Todd Leavitt, and Sam Reber immediately established a baseline water stock price by accounting for a \$900.00 payment to MIC stockholder Warren Hughes.<sup>iv, 7, 8</sup>

Thus began the Water Board's practice of supplementing Irrigation Companies as a leasing agent, effectively making the Water Board a stockbroker.

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they played a significant role in establishing rates during the critical rate-setting period from the formation of the Water Board and rate setting to 2010.

<sup>6</sup> In 2010, the VWDB halted their purchasing of River Water claiming that they had enough, while at the same time marketing that water to the Southern Nevada Water Authority (SNWA).

<sup>7</sup> The VVWDB does not deliver the water; they profit from leasing (renting) stock shares paid for with ratepayer funds. Local delivery of that source comes via traditional ditches and pipes constructed by the Irrigation Companies.

<sup>8</sup> Following Todd Leavitt, family members Cecil, Vinnie, Kathryn, and Kenyon Leavitt served, generally in twos, the water board through 2010.

By 2005, VVWDB members and decreed stockholders Kraig Hafen, Theron Jensen, Kenyon, and Cecil Leavitt, and non-stockholder Dave Bennett paid Abbe Green and Don Lee \$68,418 for three MIC shares or \$22,806 Per share and 2,534% increase over 1993 MIC rate.

To increase the market rate for polluted river water further, they paid Kelly & Karla Jensen \$126,000.00 for four BIC shares, setting the BIC per share value at \$31,500.

Then, to raise the higher rate, in 2007, the Board gave Steve Tietjen 214,268.16 for three shares of MIC stock at \$71,422.72 per share.

Virgin Valley Water		District Board Payments to 2010		
Member years	Board members	Payments to:	Purchase price	Shares
1988-1992	Farmstead years. Shares transfer to VVWD Board members included: <b>John Lee, Cresent Hardy, J.L. Bowler, Todd Leavitt and Sam Reber</b> (acted as first VVWD board)	<b>Ed Davis, Hildreth &amp; Tonks, Warren Hughes, Ken Jensen, Paul Jensen</b>	\$75,800.00	46
1996-1997	<b>Samuel Rebr, Cresent Hardy, Cecil Leavitt and Vinnie Leavitt, Paul Jensen.</b>	Terry & Theresa Neville, Laren & Elaine Abbott, Jimmie Warren and Archie Hughes, Rita and Bruce Pulsipher, David Hamaker, Anna Bowler (Hardy), J.L. Bowler, Bruce and Melissa Jensen, Kevin & Kim Nielsen, Eldred & Ruby Leavitt, Ron Dodd, Sam Reber, Bruno Biasi, Sheila Hatridge, Bob Draskovich.	\$1,098,990.40	179
1998	Board members <b>Samuel Reber, Harold Wittwer, Bill Tanner, Michael Waite, Cecil Leavitt</b>	<b>Warren Hughes, DeMar Hughes, Jay Hardy, Doug Hafen Kids.</b>	\$84,846.80	13
1999	<b>Sam Reber, Harold Wittwer, Cecil Leavitt, Charlene Hughes, Kathryn Leavitt.</b>	Bill Turner, Rowena Adams, Gail & Lorraine, <b>Dannie &amp; Sharon Leavitt and Leavitt Land &amp; Development,</b> Lou Babcock, <b>Doug Hafen Kids,</b> Joe & Betty Dodenbier, B&V Knight Family Trust M. Evan Wilson, Daniel W. Holden, Wittwer Family Trust, <b>Lyman B. Abbott, Sheldon Hardy.</b>	\$439,060.01	63
2000	<b>Harold Wittwer, Cecil Leavitt, Kraig Hafen, replaced Sam Reber, Kathryn Leavitt, Charlene Hughes,</b>	<b>Rosalie W. Bunker, Mike &amp; Lisa Woods, Vincent L. Leavitt</b>	\$24,861.90	3
2002-2004	<b>Kraig Hafen, Cecil Leavitt, Dave Bennett, Charlene Hughes, Kenyon Leavitt</b>	B. Biasi 1983, Trust, <b>Gordon &amp; Sue Reber,</b> Jack Faught, Paradise Canyon.	\$763,458.79	106
2005-2006	<b>Kraig Hafen, Theron Jensen (replaced Charlene Hughes), Cecil and Kenyon Leavitt, and Dave Bennett</b>	<b>Lyman B. Abbott, Abbe Green/Don Lee, Kelly &amp; Karla Jensen, Larry Reber, Marilyn Baier, Trustee, K.G. Mills, James A. Barnum, Robert T. Wiese</b>	\$394,845.00	15
2007-2009	John Paul, Ted Miller (replaced Kraig Hafen), <b>Kenyon Leavitt, Cecil Leavitt, Dave Bennett</b> (replaced by Robert (Bubba Smith in 2008)	<b>Erik &amp; Judy Laub,</b> Oasis Golf Club, Steve Tietjen, Leona Tanner, Bunk Farm LLC: (Duane E. and Ivona H. Magoon, <b>Ron and Carlyn Leavitt,</b> and John Derrick Anderson), and Mike Black: Bunk Compound LLC: (Scott Bulloch and <b>Cresent Hardy</b> ).	\$9,068,807.96	121
2010	John Paul, Karl Gustavson, <b>Kenyon Leavitt, Ted Miller</b> and Mark McEwen, who replaced Cecil Leavitt.	<b>Staci (Hughes) Frei,</b> Michael & Lynnette Waite	\$209,000.00	3
Total			\$12,159,670.86	549.00
Average			\$164,319.88	7.32
Median			\$12,000.00	1
Mode			\$8,287.30	1
Statistical averages, median and mode from complete list not summary.				

Table 2 Virgin Valley Water District Board Virgin River irrigation water allocations to 2010. Bold lettering suggests some of the familial relationship between individuals.

That Board followed with a gift of \$320,224.92 to Duane E. and Ivona H. Magoon, Ron and Carlyn Leavitt, and John Derrick Anderson (DBA Bunk Farm) for four BIC stock shares at \$80,056.23 per share in 2008.

Going even higher, later in 2008, VVWD Board Members Paul, Miller, the Leavitt's, and Robert (Bubba) Smith (replaced Bennett) v gifted \$86,000.00 to Leona Tanner for one Bunkerville Irrigation Company (BIC) stock share.

Then, in 2009, that same Board gave \$2,801,968.05 to Scott Bulloch and Cresent Hardy (DBA Bunk Compound) for 35 BIC stock shares (\$80,056.23 per share).

By May 2010, VVWD accounting records reflected total payments of \$12,159,670.86 paid over the years for 549 stock shares with a median price of \$12,000.00 for one stock share, which would increase the capital costs of cleaning polluted river water should that time ever come.

While acquiring these stocks, the VVWDB began renting shares to recover some costs.

However, at an average price of \$164,319.88, the median (middle) price of \$12,000, or the Mode of \$8,287.30 (most frequent), the Board's ability to recover \$12,159,670.86 with interest exceeded the courage of even the most ardent rate proponent.

Lacking the courage to make a complete return on their investment to the ratepayers, the Water Board auctioned or "rented" shares or engaged in leaseback agreements.

## Lease Backs

In 2004, the owners of the Wolf Creek Golf course sold 61 shares of MIC stock they had acquired over the years to the VVWD for \$402,600.00 (\$6,600 per share) under an agreement with the Board members Kraig Hafen, Cecil, and Kenyon Leavitt, Charlene Hughes, and Dave Bennett that they could lease back shares for irrigation at \$250 per share.

In 2008, W. Kirk Lee<sup>9</sup> (DBA Greencope I, LLC: Oasis Golf Club) sold 60 shares of MIC stocks to the VVWD, but instead of \$6,600 per share, Board members John Paul, Ted Miller (replaced Hafen) the Leavitts and Bennett received \$71,42.72 per share giving the club

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<sup>9</sup> Kirk Lee Greencope I, the Oasis golf course on 1/12/2004

owners \$4,285,363.20 in total. Again, they had a leaseback agreement to receive irrigation water at \$250 per share.

Then, in 2008, SNWA authorities also paid Greenscop \$749,938.56 for 10.5 MIC stock shares at the same \$71,422.72 per stock share rate.

## Pre-2008 Non-Irrigation Company Acquisitions

In the Las Vegas Metropolitan area, the SNWA began using its public funds to purchase or lease publically owned but appropriated Water from Irrigators appropriations on the Virgin, Muddy, and Coyote Springs in a vain attempt to increase the volume in the declining Lake Mead.

### Virgin River appropriations

In 2005, SNWA authorities paid Dixie and Anne Leavitt \$11,686,500.00 for 350 shares of BIC water stocks at \$33,390.00 per share.

On the VVWDB that year, Kraig Hafen, Theron Jenson, Cecil, Kenyon Leavitt, and Dave Bennett paid Marilyn Baier \$94,500.00 for three BIC shares or \$31,500.00 per share, suggesting that SNWA authorities and VVWD members had at least a passing understanding of each other rate-setting strategies.

In January 2008, Michael Johnson, representing the VVWDB, contacted John Entsminger about acquiring permit numbers [3085](#) and [54383](#) from the Lonetti Trust. Entsminger told Johnson that the SNWA is interested in the 1,062.26 acre-feet in permit 3085 with a priority date of August 17, 1914, but had no interest in the 1,200 acre-feet (permit 54383) due to the 1990 priority date.

Johnson told Entsminger that the VVWDB would trade 890 acre-feet of water stocks they acquired from BIC with an earlier priority date for the 1,200 acre-feet to SNWA if SNWA first purchased the Water from Lonetti.

SNWA eventually paid Lonetti \$8,416,506 for 602 acre-feet of Virgin River surface water (83 shares at 7.24 acre-feet per share).vi



## Southern Nevada Water Authority Enters the ICS Market

Any consideration about cleaning Virgin River decreed Water for local needs and returning the practice of leasing (renting) irrigation water to the Irrigation companies went out the window when, on December 13, 2007, Secretary of the Interior Dirk Kempthorne signed the Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead Record of Decision (ROD).

Effectively, the guidelines allowed the Southern Nevada Water Authority (SNWA) to contract with holders of Virgin River Decreed stock shares.<sup>10</sup>

Under the contract, SNWA personnel use their public funds to entice Virgin River Stockholder to stop diverting its Water for local irrigation as required in the Decree and allow that source to flow downriver as an "Intentionally Created Surplus (ICS)" "credit" to, at a certain percentage, increase the Lake Mead water level.<sup>11</sup>

When acquiring ICS credits, Colby Pellegrino, Deputy General Resources Manager for the SNWA, explained pay rate determinations along the Colorado River as hearsay.

She said they were not trying to predict where the market would go; they were attempting to apply the time value of money. vii

She noted that SNWA uses the time value of money,<sup>12</sup> such as consumer price interest, to adjust rates [to a market value].

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<sup>10</sup>And Muddy River Decreed and Coyote Springs appropriators.

<sup>11</sup> The actual amount (a credit) is derived from SNWA's conclusion that the land irrigated has been fallowed.

<sup>12</sup> The time value of money (TVM) The time value of money is a core financial principle known as the present discounted value assuming that money is worth more now than at a future date based on its earning potential.

## Rate Setting

Regarding MIC stock shares, in September 2008, VVWDB members Paul, Miller, the Leavitt's, and Smith paid Duane E. and Ivona H. Magoon, Ron and Carlyn Leavitt, and John Derrick Anderson. (DBA Bunk Farm, LLC) \$320,224.92 for four BIC stock shares at \$80,056.23 each.

In 2009, SNWA authorities purchased 1 BIC stock share from Edward Leavitt at \$80,056.23 and made a partial purchase for 5 BIC shares from Robert and Janice Draskovich for \$400,281.15 also amounting to \$80,056.23 per share.

Thus, it appears that SNWA authorities, contrary to Ms. Pellegrino's statement, SNWA payments, even to 2023, generally seem to mirror those established by the VVWDB between 2008-2010.

## SNWA ICS Virgin River Summary

Through 2023, the SNWA authorities gifted \$56,423,220.73 of their public funds to Virgin River Decreed stockholders for 19,560.54 shares of Virgin River water to create ICS credits to increase the flow into Lake Mead.

They determine ICS rates based on a theoretical reduction in agricultural acreage <sup>13</sup> as follows:

1. Decrease in total Decreed agriculture in the Bunkerville or Mesquite Irrigation Companies,
2. Calculated using Geographic Information System (GIS) remote sensing,
3. As limited by the acreage shares controlled by SNWA,
4. Multiplied by their decreed duty of 9.06 acre-feet per acre of surface water per share.

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<sup>13</sup> Stockholders of Virgin River Decreed irrigation appropriations also abandoned agricultuland in favor of housing development and golf courses.

### *SNWA Purchase, leases, and exemptions breakdown*

SNWA authorities gave \$23,919,195.24 to Virgin River Decreed stock for 531.33 shares of Virgin River irrigation water (including the 2005 purchase from Dixie and Anne Leavitt).

On average, they paid \$1,328,844.18 per share with a median price of \$232,845.50. The value most often paid (Mode) of \$85,707.26 was only \$292 lower than the highest value of \$86,000.00 VWDB members John Paul, Ted Miller, Kenyon, and Cecil Leavitt, and Robert Smith paid to Leona Tanner on August 6, 2008, for one BIC share.

Tying VVWDB rates closer to the SNWA purchases included an \$85,056.23 payment to Robert and Janice Draskovich for MIC shares and a similar payment amount to Edward Lee Leavitt for a BIC share.

SNWA authorities paid out an additional \$1,705,989.43 for 862.97 stock shares exceptions with an average price of \$131,229.96, with a median value of \$34,392.44 and a mode of \$21,175.00.

The median value for the exceptions closely resembles the \$31,500 Paul, Miller, Hafen, and Bennett paid Erik & Judy Laub on August 13, 2007.

Lease payments to Virgin River decreed stockholders through 2023 totaled \$20,017,651.62 for 11,230.16 shares with an average payment of \$41,877.94, a median value of \$6,930.69 and a mode of \$1,021.00 for an average term year of 8.29 years.

Lease extensions reached a total of \$10,780,384.42 through 2023 with a average of \$33,170.41, a median of \$7,474.23 and a mode value of \$1,620.00

As a family group, SNWA paid the Leavitt's for purchases, leases, and extensions \$14,577,613.03 (\$10,356.73 per share for \$1,619.79 ) or 25.84% of SNWA public funds paid through 2023 for 1,407.55 in stock shares<sup>14</sup> they held in MIC and BIC.

The Hafen family received \$14,102,211.79 (24.99%) from SNWA in purchases, leases, and extensions through 2023 for their 8,706.19 stock shares (or \$1,619.79 per share) in MIC and BIC.

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<sup>14</sup> Stock share are totals over time, not individual holdings, so that a holding would multiply over years of ICS credits.

SNWA authorities paid the Bunker family and, in some cases in association with Brian D. Haviland, 14.85 percent of the total, amounting to \$8,377,379 for 4,734.50 BIC shares (\$1,769.22 per share).

SNWA authorities paid the Burns family \$8,020,103.08 (14,21%) to purchase 119.50 shares held in MIC, amounting to \$67,113.83.

Together, these three familial groups earned 65.68 percent of the total SNWA payments through 2025.<sup>15</sup>

The concept behind an intentionally created surplus originated with the idea that current irrigators would fallow their lands and lease their Water to make a temporary surplus to flow into Lake Mead. Eventually, they would return to irrigation.

Payment Summary 834 transactions from 2005-2023							
Years of Payments	Contract Types	Shares	Paid	Average Paymet	Median payment (Midpoint)	Mode payment (Most Frequent)	Average term years
*2005-2023	Purchases and Partial purchases	531.33	\$23,919,195.26	\$1,328,844.18	\$232,845.50	\$85,707.26	1
2011-2022	Exceptions	862.97	\$1,705,989.43	\$131,229.96	\$34,392.44	\$21,175.00	1
2009-2023	Leases	11,230.16	\$20,017,651.62	\$41,877.93	\$6,930.69	\$1,021.00	8.29
2010-2023	Lease extensions	6,936.08	\$10,780,384.42	\$33,170.41	\$6,851.38	\$1,816.00	2.98
2008-2023	Summary	19,560.54	\$56,423,220.73	\$67,653.74	\$7,474.23	\$1,620.00	23,599.24
Includes 2005 SNWA payment to Dixie and Anne Leavitt Foundation.							

Table 3 Southern Nevada Water Authority ICS payments through 2023.

However, when irrigators, especially in the Mesquite area, gave up their irrigation lands to golf courses, housing developments, and trailer parks, Water flowed downriver, making water appropriations available for purchase.

In addition, leasing over the long term returns the once-irrigated land to its original State, making a return to profitable irrigation largely unsustainable.

## The Walker Lake Public Trust Case

### Prior appropriations over Public Trust

By 2018, VVWDB member Richard Bowler's family, along with the Brotherson, Bunker, Burns, Draskovich, Easton, Faught, Frei,

<sup>15</sup> Family group averages totals vary from as high as \$14,577,613.03 to as low as \$1,117.62 due to a mix of high value purchases with leases, to single lease payments over time.

Hafen, Houston, Jones, Jensen, Hughes, Leavitt, Lee, MIC, Moss, Perez, Pollock, Reber, Robers, Steyee and Brown, Black along with MIC and the Water District had received \$46,515,737.00 selling or leasing 14,053.41 publicly owned but appropriated MIC and BIC shares to SNWA.

On Tuesday, September 18, 2018, four months after the owners of Paradise Canyon filed their civil action against the Water Board, their attorney Jedidiah (Bo) Bingham told members Nephi Julien, Ben Davis, Richard Bowler, Travis Anderson, and Randy Laub to consider joining the Walker Lake (Mineral County) case.

Bingham pointed out that if the Public Trust Doctrine can circumvent, supplement, or replace the prior appropriation doctrine, the impact on these water rights holders could amount to a taking" of the water rights without compensation.<sup>16</sup>

Bowler, whose family by 2018 had been paid \$1,498,238.62 for leasing 812 BIC and MIC shares to SNWA <sup>17</sup>, moved to direct staff to compile more information regarding the Amicus Brief and bring it back to the Board for further review. Laub seconded the motion. The motion passed 5-0.

## Public Trust over Prior Appropriations

On September 17, 2020, Nevada Supreme Court Justice Lidia S. Stiglich, who authored the Paradise Canyon Ruling, this time with Mark Gibbons, James William Hardesty, and Ellisa F. Cadish, ruled after oral arguments in [the Walker Case](#), that **the public trust doctrine does not permit reallocating water rights already adjudicated and settled under the doctrine of prior appropriation.**

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<sup>16</sup> The final decision by the Nevada Supreme court did not include the Virgin Valley Water District in the issue. However, Gregory J. Walch, Steven C. Anderson, and Brittany L. Cermak, Las Vegas, served as an advisors (Amicus Curiae) for the Southern Nevada Water Authority.

<sup>17</sup> Paid to: Joe, Dixie, and Russell Bowler, and the Welfare Farm with Bruce Garnett.

The Justices recognized that the Walker Basin [Like Lake Mead] could not meet the county's needs without reallocating adjudicated water rights. They point out that:

1. **"Our State's water rights statutes forbid reallocation adjudicated water rights.** They added that "water rights holders have certainty and finality in their water appropriations so that they may effectively direct water usage to its beneficial use, without undue uncertainty or waste."
  - i. **"We cannot use the public trust doctrine as a tool to uproot an entire water system, particularly where finality is firmly rooted in our statutes,"** the three majority justices said.
  - ii. The Justices said, **"To allow the state otherwise to allocate waters without due regard for the public trust would permit the state to evade its fiduciary duties, which we cannot sanction."**
  - iii. The Justices highlighted the importance of finality in economic development: **"Municipal, social, and economic institutions rely on the finality of water rights for long-term planning and capital investments."**
  - iv. **"To permit reallocation would create uncertainties for future development in Nevada and undermine the public interest in finality and thus the management of these resources consistent with the public trust doctrine,"** they declared.
  - v. Also, they pointed to NRS 533.045 and NRS 533.060 as ending the right to divert Water when unused. **"When the necessity for the use of water does not exist, the right to divert it ceases, and no person**

**shall be permitted to divert or use the waters of this State except at such times as the water is required for a beneficial purpose,"**

- vi. The Justices pointed to Article 8, Section 9 of the Nevada Constitution, known as the gift clause. That article states: **"The State shall not donate or loan money, or its credit, subscribe to or be, interested in the Stock of any company, association, or corporation, except corporations formed for educational or charitable purposes."**
- vii. [T]he public trust doctrine, like the gift clause, requires the State to serve as trustee for public resources." The Justices said: **"Moreover, we note that the Legislature effectively codified the principles behind the public trust doctrine through NRS 321.0005 and NRS 533.025."**

## Conclusion

In this case, the attorneys for Paradise Canyon relied on substantive civil case law covering "fair dealing" without resorting to the more esoteric "public trust" issue.

Nonetheless, the extent of "fair dealing" and "public trust" as practiced by the VVWDB from its origin in 1993 revealed itself during the five years it worked its way through Judicial wrangling as a complete breakdown in public Trust as adjudicated by Justice Stiglich, Gibbons, Hardesty, and Cadish in the Walker Case.

### **Questions of ethics, public Trust, and fiduciary responsibilities**

The Justice Stiglich, Parraguirre, and Bell rulings suggest gifting \$12,159,670.86 in public funds to those holding stocks in MIC and BIC through rate setting, which set the terms for SNWA to gift another \$56,423,220.73 in public funds to the stockholders of MIC and BIC for a total of 68,582,891.59 funds for publically owned but not longer used

appropriated irrigation water complies with fiduciary ethical requirements, as governed by the [Nevada Commission on Ethics](#).

Further, the Justices seem to feel that contrary to the Walker ruling, the VVWDB has sole and absolute discretion to set rates that ultimately allow for reallocating appropriated water rights away from the Decreed area to benefit the population of the Las Vegas Metropolitan area.

### **Future options**

The Attorneys for Paradise Canyon have several options if approved by the Wolf Creek Golf course owners. First, they can appeal to the entire Supreme Court for a review of the three Justices ruling.

Since the three judges remanded the case to the lower court, it could result in a new trial.

In either case, the potential may exist to define the VVWDB rate-setting strategy as a violation of the covenant of good faith, leading directly to SNWA's question of purchasing and leasing of Decreed water for reappropriation to Lake Mead an explicit public trust and fiduciary violation as stated by Stiglich, and the other Justices in the Walker Case,



# Appendix

Shareholder by family summary							
Years	Shareholder group	Contract Type	Irrigation Co.	Shares Common	Total Cost	Per Share	Percent of cost
2005; 2009-2023	Leavitt	Purchases, leases and extensions	MIC and BIC	1,407.55	\$14,577,613.03	\$10,356.73	25.84%
2009-2023	Hafen	Leases, Partial Purchases and Lease Extensions	MIC and BIC	8,706.19	\$14,102,211.79	\$1,619.79	24.99%
2009-2023	Bunker	Leases and Extensions	BIC	4,734.50	\$8,376,379.34	\$1,769.22	14.85%
2009	Burns	Purchase	MIC	119.50	\$8,020,103.08	\$67,113.83	14.21%
2009-2023	Bowler	Leases and Extensions	MIC and BIC	1,244.50	\$2,081,567.46	\$1,672.61	3.69%
2008-2022	Green scope	Purchase and Exception	MIC	20.50	\$1,355,437.36	\$66,118.90	2.40%
2009-2023	Draskovich	Leases and Extensions	MIC and BIC	293.00	\$1,159,979.13	\$3,958.97	2.06%
2011-2021	VVWD	Lease, extensions and exceptions	MIC and BIC	843.47	\$1,146,797.60	\$1,359.61	2.03%
2017-2022	NLH LLC	Purchase	MIC	52.00	\$828,173.97	\$15,926.42	1.47%
2009-2023	Reber	Purchase, lease and lease extensions	MIC	273.00	\$759,307.58	\$2,781.35	1.35%
2022	Seeklus	Purchase	BIC	7.00	\$497,072.38	\$71,010.34	0.88%
2009-2023	Pollock	Lease	MIC	248.00	\$452,646.08	\$1,825.19	0.80%
2009-2023	Hughes	Lease and Extensions	MIC	293.50	\$420,613.79	\$1,433.10	0.75%
2010-2023	Black	Lease and Extensions	MIC	252.00	\$351,593.82	\$1,395.21	0.62%
2009-2023	Jensen	Leases and Extensions	MIC and BIC	253.25	\$322,096.92	\$1,271.85	0.57%
2022	Hardy	Purchase	BIC	4.00	\$284,041.36	\$71,010.34	0.50%
2009-2023	Steyee and Brown	Lease and Extensions	MIC	150.00	\$220,244.00	\$1,468.29	0.39%
2009-2023	Jones	Leases and Extensions	Mesquite Irrigation Co.	90.75	\$197,976.48	\$2,181.56	0.35%
2022	Obsidian Real Estate,	Purchase	MIC	3.00	\$181,649.64	\$60,549.88	0.32%
2009-2023	MIC	Leases and Extensions	MIC	109.50	\$152,295.40	\$1,390.83	0.27%
2009	Easton	Purchase	MIC	1.83	\$130,917.85	\$71,422.72	0.23%
2009-2023	Faught	Leases and Extensions	MIC and BIC	65.25	\$97,620.42	\$1,496.10	0.17%
2009-2016	Moss	Lease and extensions	BIC	55.00	\$86,784.20	\$1,577.89	0.15%
2009-2012	Roberts	Lease and extensions	BIC	32.00	\$81,549.44	\$2,548.42	0.14%
2009	Kamandy	Purchase	Mesquite Irrigation Co.	1.00	\$71,422.72	\$71,422.72	0.13%
2022	Cowart	Purchase	MIC	1.00	\$60,549.88	\$60,549.88	0.11%
2009-2023	Lee	Leases and Extensions	MIC	37.50	\$55,061.03	\$1,468.29	0.10%
2018-2023	Dorsett	Leases and Extensions	MIC	42.00	\$47,616.59	\$1,133.73	0.08%
2018-2023	Ellett	Leases and Extensions	MIC	42.00	\$47,616.59	\$1,133.73	0.08%
2009-2023	Brotherson	Leases and Extensions	MIC and BIC	26.00	\$38,764.01	\$1,490.92	0.07%
2017-2023	Haviland	Lease	BIC	21.00	\$28,550.34	\$1,359.54	0.05%
2009-2023	Frei	Leases and Extensions	MIC	17.00	\$27,156.70	\$1,597.45	0.05%
2009-2023	Perez	Lease and Extension	BIC	15.00	\$26,003.91	\$1,733.59	0.05%
2009-2023	Sandoval	Lease and Extensions	BIC	15.00	\$26,003.91	\$1,733.59	0.05%
2017-2023	Toquop	Lease	MIC	21.00	\$23,470.11	\$1,117.62	0.04%
2009-2023	Shaner	Lease and Extensions	MIC	15.00	\$22,250.86	\$1,483.39	0.04%
2017-2023	LDS Bishops	Leases	MIC	14.00	\$15,646.74	\$1,117.62	0.03%
2013-2020	American Bank of the North	Lease extensions	BIC	6.00	\$10,896.00	\$1,816.00	0.02%
2017-2023	Stokes	Lease	MIC	8.75	\$9,779.23	\$1,117.63	0.02%
2009-2012	Gleaves	Lease	MIC	4.00	\$9,320.69	\$2,330.17	0.02%
2017-2023	Harding	Lease	MIC	7.00	\$7,823.37	\$1,117.62	0.01%
2017-2023	Woods	Lease	MIC	7.00	\$7,823.37	\$1,117.62	0.01%
2009	Houston	Lease	BIC	1.00	\$2,792.56	\$2,792.56	0.00%
Total				19,560.54	\$56,423,220.73		100.00%

Table 4 Virgin River Stockholder family summary.

Virgin Valley Water District Board Virgin River Decree purchases to 2010						
Board members and stock-shareholders Board members	Shares	Purchase price	Purchase date	Individual	B=BIC, M=MIC	Price per share
Farmstead years. Shares transfer to VVWD Board members included John Lee, Crescent Hardy, J.L. Bowler, Todd Leavitt, and Sam Reber (acted as first VVWD board)	8	N/A	1/1/1988	Ed Davis	M	NA
	26	\$52,000.00	8/1/1991	Hildreth & Tonks	M	\$2,000.00
	2	\$1,800.00	1/18/1992	Warren Hughes	M	\$900.00
	4.5	\$9,900.00	12/31/1992	Ken Jensen	M	\$2,200.00
	5.5	\$12,100.00	12/31/1992	Paul Jensen	M	\$2,200.00
1996-1997						
Samuel Rebr, Crescent Hardy, Cecil Leavitt, Paul Jensen, and Vinnie Leavitt.	1	\$5,524.90	4/18/1996	Terry & Theresa Neville	B	\$5,524.90
	1	\$4,018.20	8/8/1996	Laren & Elaine Abbott	M	\$4,018.20
	84	\$504,000.00	12/20/1996	Jimmie Hughes	M	\$6,000.00
	5	\$30,000.00	12/20/1996	Archie Hughes	M	\$6,000.00

	41	\$246,000.00	1/22/1997	Rita Pulsipher	M	\$6,000.00
	0.5	\$3,000.00	1/30/1997	David Hamaker	M	\$6,000.00
	1	\$8,287.00	2/6/1997	Anna Bowler (Hardy)	B	\$8,287.00
	2	\$12,000.00	2/6/1997	J.L. Bowler	M	\$6,000.00
	2	\$12,000.00	2/11/1997	Bruce Jensen	M	\$6,000.00
	1	\$8,287.30	2/20/1997	Melissa Pulsipher	B	\$8,287.30
	2	\$12,000.00	3/5/1997	Bruce Jensen	M	\$6,000.00
	0.5	\$3,000.00	3/10/1997	Kevin & Kim Nielsen	M	\$6,000.00
	1	\$8,287.30	3/17/1997	Eldred & Ruby Leavitt	B	\$8,287.30
	1	\$6,000.00	4/21/1997	Ron Dodd	M	\$6,000.00
	2.5	\$15,000.00	4/24/1997	Sam Reber	M	\$6,000.00
	8	\$66,298.40	8/1/1997	Bruno Biasi	B	\$8,287.30
	10	\$60,000.00	8/4/1997	Sam Reber	M	\$6,000.00

	1	\$6,000.00	8/18/1997	Warren Hughes	M	\$6,000.00
	1	\$8,287.30	10/6/1997	Sheila Hatridge	B	\$8,287.30
	13.5	\$81,000.00	12/12/1997	Bob Draskovich	M	\$6,000.00
1998						
Board members Samuel Reber, Harold Wittwer, Bill Tanner, Michael Waite, Cecil Leavitt	1	\$6,000.00	1/8/1998	Warren Hughes	M	\$6,000.00
	2	\$11,656.00	2/4/1998	DeMar Hughes	M	\$5,828.00
	4	\$32,198.80	2/12/1998	Jay Hardy	B	\$8,049.70
	6	\$34,992.00	7/23/1998	Doug Hafen Kids	M	\$5,832.00
1999						
Sam Reber, Harold Wittwer, Cecil Leavitt, Charlene Hughes, Kathryn Leavitt.	1	\$8,055.00	2/2/1999	Bill Turner	B	\$8,055.00
	1	\$8,055.00	2/12/1999	Rowena Adams	B	\$8,055.00
	1	\$8,055.00	2/18/1999	Gail & Lorraine Leavitt	B	\$8,055.00
	3	\$18,000.00	4/27/1999	Lou Babcock	M	\$6,000.00

	5	\$30,000.00	5/27/1999	Doug Hafen Kids	M	\$6,000.00
	19	\$157,458.51	7/22/1999	Leavitt Land & Development	B	\$8,287.29
	10	\$60,000.00	7/22/1999	Leavitt Land & Development	M	\$6,000.00
	1	\$8,287.30	8/26/1999	Joe & Betty Dodenbier	B	\$8,287.30
	16	\$96,000.00	8/26/1999	B&V Knight Family Trust	M	\$6,000.00
	1	\$8,287.30	9/3/1999	Dannie & Sharon Leavitt	B	\$8,287.30
	1	\$8,287.30	9/13/1999	M. Evan Wilson	B	\$8,287.30
	1	\$8,287.30	9/23/1999	Daniel W. Holden	B	\$8,287.30
	1	\$8,287.30	9/23/1999	Wittwer Family Trust	B	\$8,287.30
	1	\$6,000.00	9/28/1999	Lyman B. Abbott	M	\$6,000.00
	1	\$6,000.00	11/9/1999	Sheldon Hardy	M	\$6,000.00
2000						
Harold Wittwer, Cecil	1	\$8,287.30	1/7/2000	Rosalie W. Bunker	B	\$8,287.30

Leavitt, and Kriag Hafen replaced Sam Reber, Kathryn Leavitt, Charlene Hughes,	1	\$8,287.30	3/24/2000	Mike & Lisa Woods	B	\$8,287.30
	1	\$8,287.30	11/3/2000	Vincent L. Leavitt	B	\$8,287.30
2002-2004						
Kraig Hafen, Cecil Leavitt, Dave Bennett, Charlene Hughes, Kenyon Leavitt	32	\$265,193.60	12/12/2002	B. Biasi 1983 Trust	B	\$8,287.30
	1	\$8,287.30	2/13/2003	Gordon & Sue Reber	B	\$8,287.30
	1	\$2,287.29	2/13/2003	Jack Faught	M	\$2,287.29
	-1	\$0.00	8/7/2003	Jack Faught	B	\$0.00
	1	\$8,287.30	9/8/2003	Larry & Colleen Reber	B	\$8,287.30
	1	\$8,287.30	10/22/2003	Nels & Carol Jacobson	B	\$8,287.30
	61	\$402,600.00	4/26/2004	Paradise Canyon LLC	M	\$6,600.00
	9	\$59,400.00	6/7/2004	Martin Development	M	\$6,600.00
	1	\$9,116.00	12/6/2004	Larry & Colleen Reber	B	\$9,116.00
2005-2006						

Kraig Hafen, Theron Jensen (replaced Charlene Hughes), Cecil and Kenyon Leavitt, and Dave Bennett	0.5	\$3,300.00	4/20/2005	Lyman B. Abbott	M	\$6,600.00
	3	\$68,418.00	7/25/2005	Abbe Green/Don Lee	M	\$22,806.00
	4	\$126,000.00	9/9/2005	Kelly & Karla Jensen	B	\$31,500.00
	1	\$22,806.00	10/3/2005	Larry Reber	M	\$22,806.00
	3	\$94,500.00	12/28/2005	Marilyn Baier Trustee	B	\$31,500.00
	2	\$45,612.00	1/11/2006	K.G. Mills	M	\$22,806.00
	0.5	\$11,403.00	1/24/2006	James A. Barnum	M	\$22,806.00
	1	\$22,806.00	4/3/2006	Robert T. Wisne	M	\$22,806.00
	2007-2009					
John Paul, Ted Miller (replaced Kraig Hafen), Kenyon Leavitt, Cecil Leavitt, Dave Bennett	1	\$31,500.00	7/13/2007	Erik & Judy Laub	B	\$31,500.00
	60	\$4,285,363.20	7/24/2008	Oasis Golf Club	M	\$71,422.72
	3	\$214,268.16	7/25/2008	Steve Tietjen	M	\$71,422.72
John Paul, Ted Miller, Kenyon	1	\$86,000.00	8/6/2008	Leona Tanner	B	\$86,000.00

Leavitt, Cecil Leavitt, Robert (Bubba) Smith replaced Dave Bennett.	4	\$320,224.92	9/10/2008	Bunk. Farm, LLC: Duane E., Ivona H. Magoon, Ron and Carlyn Leavitt, and John Derrick Anderson.	B	\$80,056.23
	1	\$71,422.72	9/30/2008	Mike Black	M	\$71,422.72
	8	\$638,089.84	3/5/2009	Bunk. Farm, LLC	B	\$79,761.23
	35	\$2,801,968.05	10/27/2009	Bunk. Compound LLC: Scott Bulloch and Cresent Hardy	B	\$80,056.23
	8	\$619,971.07	12/1/2009	Bunk Farm LLC	B	\$77,496.38
2010						
John Paul, Karl Gustaveson, Kenyon Leavitt, Ted Miller, and Mark McEwen, who replaced Cecil Leavitt.	1	\$65,000.00	4/29/2010	Staci (Hughes) Frei	M	\$65,000.00
	2	\$144,000.00	5/4/2010	Michael & Lynnette Waite	B	\$72,000.00
Totals	549	\$12,159,670.86				
Average	7.32	\$164,319.88	\$17,895.41			
Median	1	\$12,000.00	\$12,000.00			



Mode	1	\$8,287.30		\$6,000.00
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- i The property of being from the same kinship as another person.
  - ii Virgin Valley Water District Conservation Plan, 2023.
  - iii Reconnaissance Report rpt51-lower\_virgin\_river\_valley.pdf
  - iv McGreer, Michael M., “Virgin River Water Board Stock Purchase Tables”: Source: Virgin Valley Water District Accounting Records obtained through a Freedom of Information Act request.
  - v All references to Board Members from Virgin Valley Water District Board meeting records correlated with acouting records.
  - vi The river water aquired from Lonetti was not part of the Virgin River Decree, therefore the purchase rate, although high, was not a factor in decreed rate setting.
  - vii Pellegrino, Colby, Deputy General Resources Manager for the Southern Nevada Water Authority (SNWA), trial testifimony in Paradise Canyon (dba Wolf Creek Golf Course) vs. Virgin Valley Water District Board, May 11, 2023, Las Vegas, Nevada District Court.