

EXPLORATION, DEVELOPMENT, AND GREED: A CHRONOLOGICAL STUDY IN COLORADO RIVER PUBLIC POLICY

Abstract

Overdrawing water in arid Southern Nevada to support aggressive development requires a substantive re-balance of hydrological efforts with economic desires. Other environmental benefits will follow.

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Today, I will address a five-year legal dispute between the owner of Paradise Canyon (DBA Wolf Creek Golf Course) and the Virgin Valley Water District Board, ostensibly over rate-setting expectations.

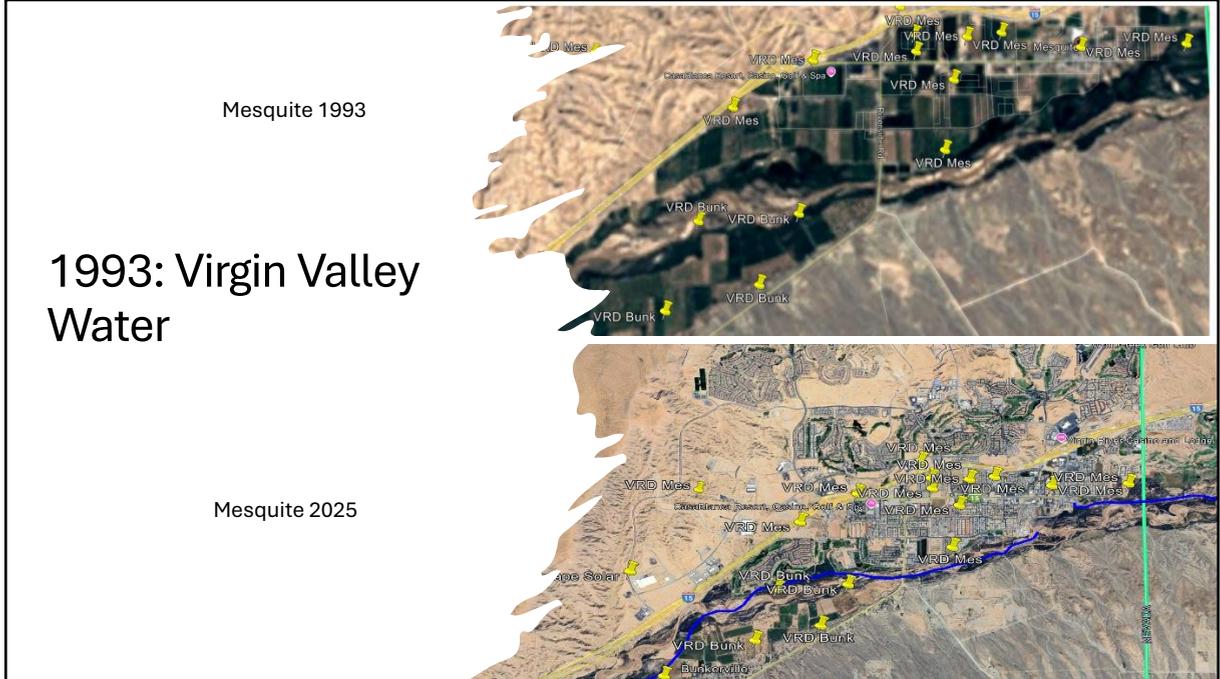
However, the case was not simply about rate setting; it was about what the Paradise Canyon attorneys referred to as the Covenant of good faith and fair dealing when setting those rates.

As the case unfolded, it became clear that, from my perspective, the case was a public trust issue in which public officials diverted public funds to manipulate and benefit the price of publicly owned but decreed water stock shares.

Unfortunately, both the issue of fair dealing and the potential problem of public trust were overlooked, as Virgin Valley Water District Board members diverted public funds to their marginally qualified water Attorney, in an attempt to outspend the owners of Paradise Canyon with misleading and out-of-context motions and acquisitions.

I frame the issue by following the money, from which I hope one can judge the degree to which those public officials responsible for rate setting complied not only with good faith but also under Nevada's Public Trust doctrine.

The information presented is from a draft of a public policy book I am writing, which addresses the exploration, development, and management of the Colorado River within the context of public policy, primarily in Clark and Lincoln counties.



1993: Virgin Valley Water

As mentioned in previous briefings, in 1993, the Nevada legislature created "a single government entity by combining the Bunkerville Water Users' Association and the Mesquite Farmstead Water Association" (stock holding companies known as the Bunkerville Irrigation Company (BIC) and Mesquite Irrigation Company (MIC) to the [Virgin Valley Water District \(VVWD\)](#) as a political subdivision of this State, ostensibly to deliver groundwater for domestic use by the growing population of Mesquite and Bunkerville, Nevada.

Over time, the historical need for highly polluted surface water for irrigation, as represented above in green, essentially gave way to the demand for large amounts of somewhat cleaner groundwater for domestic use. The green sections in the lower picture primarily represent golf courses.

The overlying abbreviations show the location of the Virgin River Decree (VRD) to either MIC (Mes) stockholders or to BIC stockholders (Bunk)



If the case had a starting point, it was in 1993, when the Southern Nevada Water Authority Board of Directors agreed to reimburse the Las Vegas Valley Water District for all costs incurred in acquiring unused Decreed stock shares from the Virgin River.

And because the Virgin River is a tributary to the Colorado River, that source would eventually become eligible for contracting by holders of stock shares issued under the 1927 Virgin River Decree for irrigation, but no longer used for that beneficial use.

1995: Dairy to Golf Courses



As the economy began to move away from supporting an the agrarian life style on January 25, 1995, Kraig D. Hafen and his brother, Maxwell D. Hafen, sons of Bryan Hafen, ended their historic Hafen Dairy and formed River View LLC to market MIC and BIC river water stock shares, which the family formerly used to grow alfalfa and provide water to their family's dairy operation.

A few months later, in November 1995, construction began on the Cal Olson-designed CasaBlanca golf course, situated on an alfalfa field formerly owned by Bryan Hafen. The course opened in October 1996 as part of the Players Island complex, now known as the CasaBlanca Resort.

Also, in 1995, Arnold Palmer designed the Palmer & Canyons 36-hole Golf Courses operation for Si Redd as part of Redd's Mesquite Vistas Land Development Co. and the Oasis Golf Course operation.

Marketing River Water (1996-1997)

SNWA in 1997 spent \$21,578,045.02 for 2,603.02 Lower Muddy River shares at \$8,289.62 per share.

Samuel Rebr, Crescent Hardy, Cecil Leavitt, Paul Jensen and Vinnie Leavitt.	1	\$5,524.90	4/18/1996	Terry & Theresa	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	
Totals	179	\$1,098,990.40				\$6,139.61

When forming the VVWD in 1993, board members John Lee, Crescent Hardy, J.L. Bowler, Todd Leavitt, and Sam Reber recorded only the MIC value of Virgin River Decreed stock at between \$ 900 and \$2,200 per share.

However, in 1996, Virgin Valley Water District Board members Reber, Hardy, Paul Jensen, along with Cecil and Vinnie Leavitt, began using public funds to market Decreed water as if it were stock, rather than marketing water based on the actual value as measured in acre-feet per year.

In creating a stock value, they distorted the acre-feet per year value of water by pricing MIC stock shares with 70 original decreed individuals holding 7,727.710 acre-feet, or 110.39 acre-feet per person, of less stock value than the 46 decreed initially individuals carrying 6,485.51 acre-feet of BIC stock shares, 140.99 acre-feet per stock share.

For example, they gifted Anna Hardy Bowler \$8,287.00 for a BIC stock share, and the same amount to Eldred and Ruby Leavitt for one BIC stock share. On the other hand, Sam Reber received \$15,010.00 for 2,500 MIC stock shares, at \$6,000 per share, and previous Board member J.L. Bowler received \$12,000 for 2 MIC shares, the lesser

value of \$6,000 per share.

Along the Muddy River, by June 1997, the Southern Nevada Water Authority followed a similar pattern, spending \$21,578,045.02 for 2,603.02 shares of the Lower Muddy River, at \$8,289.62 per share.

To be clear, pricing water as a stock is not the same thing as pricing water based on the amount of water to cover an acre-foot of irrigated land per year.

For example, whereas BIC stockholders received a total of 6,485.510 acre-feet in the Decree, it covers 895.780 harvest acres, which equals 7.24 acre-feet of water per year. MIC stockholders had 7,727.710 acre-feet of water to cover 1,067.36 harvest acres, also amounting to 7.24 acre-feet per year. Under that traditional pricing strategy, each BIC and MIC stock has equal water value.

As a note, SNWA believes that the Decree misrepresents the acre-foot value, which they estimate to be 9.06 acre-feet per year.



SNWA Pricing strategy

Yet with only a \$2.32 cent difference between stock shares rates paid by the Virgin Valley Water District Board and the SNWA Colby Pellegrino, Deputy General Resources Manager for the SNWA, during litigation between the owners of the Paradise Canyon Golf Course and the Virgin Valley Water District denied that SNWA attempts to predict where the market will go; instead, they were trying to apply the time value of money (TVM)

In other words, Pellegrino alleged that SNWA was not pursuing a market value for irrigation water; instead, they were engaging in a 'spend-now' policy because water prices were expected to increase in the future.

1996-2001
Paradise
Canyon
brief history

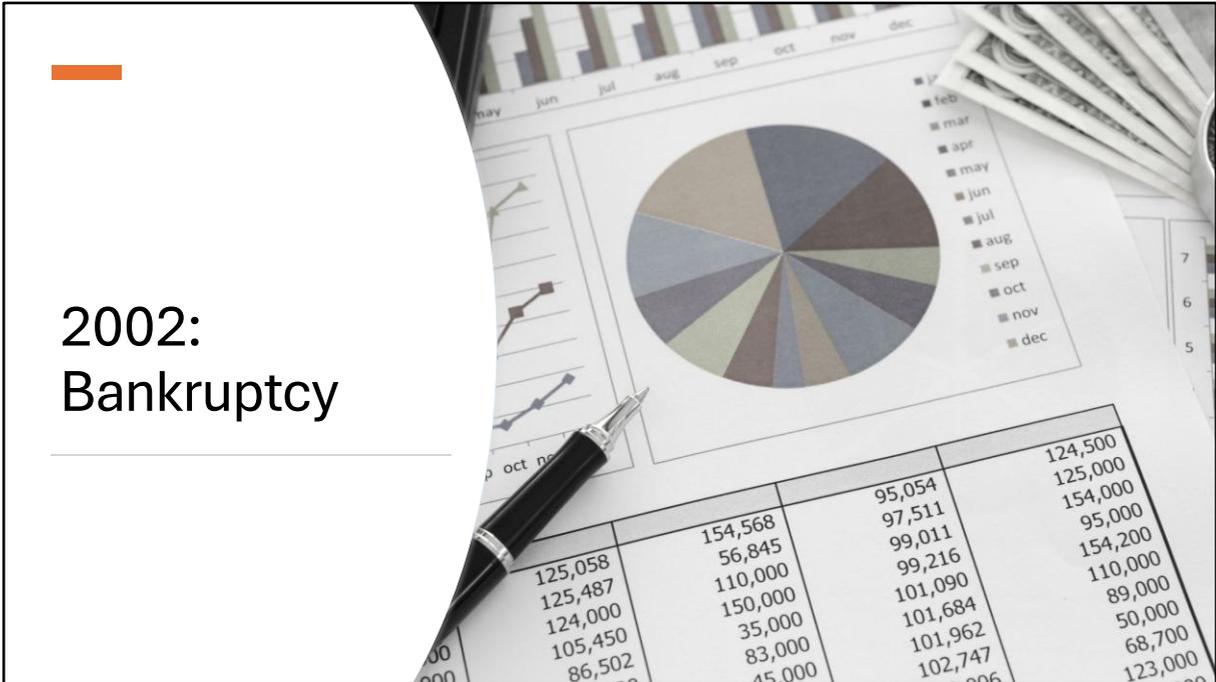


Californians Cory and Chad Clemetson formed NevDex Properties in Reno in 1996 as an LLC to lease, construct, acquire, develop, finance, and operate Nevada Properties.

In 1999, the Clemetson brothers formed Paradise Canyon to do business along the length of the Virgin River at Mesquite.

Under the banner of Paradise Canyon, they engaged golf course architect Dennis Rider and his brother John of Las Vegas (dba Mesquite Properties since 1992) to design a “roller-coaster ride” of golf, along with adjacent condos and a housing subdivision, which became the Wolf Creek Golf Course in Mesquite, nationally recognized by Golf Digest as one of the top public golf courses in the country.

The Riders opened Wolf Creek in 2000, and in October 2001, Riders’ Mesquite Properties sold Wolf Creek to the Clemetson brothers’ DBA Canyon LLC for \$9,966,740. Along with the purchase, the Clemetsons received 61 stock shares of Virgin River stock from MIC.



In 2002, the Clemetson brothers, as owners of the Paradise Canyon operation, filed for Chapter 11 bankruptcy after defaulting on a \$10 million loan used to develop the Wolf Creek Golf Course, and in 2003, Cory Clemetson took on the role as managing partner of Paradise Canyon and the Golf Course.

Marketing Virgin River (2002- 2004)

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

Also in 2003, VVWDB members Kraig Hafen, Cecil, and Kenyon Leavitt, Dave Bennett, and Charlene Hughes awarded the Reber family (Gordon, Sue, Larry, and Colleen) \$8,287.30 for a BIC share.

And on April 26, 2004, the Clemetsons sold their 61 stock shares of MIC stock for \$402,600.00 at \$6,600.00 per share (a slight increase from \$6,000.00) under a bankruptcy-approved restructuring deal, under which the Water Board agreed to lease back shares for Golf Course irrigation at \$250.00 per share.

The VVWDB does not deliver water. Delivery is accomplished in this case through historically developed MIC irrigation ditches, combined with golf course irrigation ditches developed and administered by the Clemetsons. Therefore, the irrigation price to the Clemetsons is considerably more than the stock value, making the



2005: SNWA payments for MIC and BIC stock shares begin.

The real test for potential profiteering came in 2005 when During the June 7, 2005, VVWDB meeting, the Water Board's hydrologist, Michael Johnson, informed board members Kraig Hafen, Theron Jensen, Cecil, Kenyon Leavitt, and Dave Benett that the Southern Nevada Water Authority was in the process of purchasing 360 BIC stock for \$31,500 per share.

However, on July 21, 2005, the Southern Nevada Water Authority (SNWA) awarded the Dixie and Ann Leavitt Foundation \$11,686,500 for 350 BIC shares (\$33,390 per stock share).

Nonetheless, on September 9, 2005, the Water Board paid Kelly and Karla Jensen \$126,000.00 for four BIC stock shares, thereby increasing the BIC amount from \$8,287.30 to \$31,500 per stock share.

Then, in December 2005, the water board awarded the Marily Baier Trustee \$94,500.00 for 3 BIC stock shares, also at \$31,500 per stock share.

Here again, I want to stress that these are stock values. In acre feet, the SNWA paid the Leavitts \$4,611.88 per acre-foot, and the VVWDB paid the Jensens and the Baier

\$4,350.83, again reflecting some understanding between SNWA and VVWDB pricing.



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 use their public funds to entice Virgin River Stockholders 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" as a "conservation measure" to increase, on paper, the Lake Mead water level.

2008: water costs per acre foot

Average Purchased Water Cost (\$ Per Acre-Foot) for Farms Using Off-Farm Surface Water, by Farm Size and State, for 2008 Irrigated Farms

State	Farm size classes based on farm sales ¹				All Farm Size Classes
	1=Small	2=Medium	3=Large	4=Largest	
ARIZONA	17.02 *	25.13 *	26.91 *	25.67 *	25.38 *
CALIFORNIA	39.84 **	33.34 **	65.26 ***	40.67 *	41.41 *
COLORADO	12.8 *	5.28 **	8.47 **	8.57 **	9.2 *
IDAHO	15.51 *	13.88 **	8.84 *	13.48 *	13.36 *
KANSAS		32.83 **		11.05 **	18.88 **
MONTANA	11.55 **	13.48 *	8.9 *	7.33 *	10.27 *
NEBRASKA		8.23 ****	28.2 *	22.43 *	19.15 *
NEVADA	7.78 **	6.78 **	9.24 *	6.47 ***	7.2 *
NEW MEXICO	14.18 **	15.13 **	19.99 *	10.41 **	12.67 *
NORTH DAKOTA	d	d	18.81 *	14.2 *	15.31 *
OKLAHOMA	d	d	42.17 ***	83.83 ***	70.44 **
OREGON	10.55 **	5.62 **	18.28 *	9.35 *	10.47 *
SOUTH DAKOTA	15.68 *	10.23 *	8.47 **	5.02 **	8.77 *
TEXAS	10.02 **	14.16 **	9.58 *	18.77 *	16.8 *
UTAH	12.95 *	5.27 **	13.82 **	6.02 *	9.69 *
WASHINGTON	22.04 *	34.51 *	22.96 *	24.05 *	24.16 *
WYOMING	6.48 *	3.6 **	6.1 *	3.04 *	4.66 *
Total: 17 Western States	15.06 *	14.79 *	22.58 *	27.17 *	23.52 *

Source: Farm and Ranch Irrigation Survey (2008), National Agricultural Statistics Service, U.S. Department of Agriculture. Data were summarized by the Economic Research Service, USDA.

In 2008, the U.S. Department of Agriculture published its Farm and Ranch Irrigation Survey (2008). In Nevada, for all classes of farm sizes, from small to large, the amount of purchased water per acre-foot amounted to \$ 7.20, with prices reaching \$ 23.50 across all 17 western states, far below the \$4,611.88 per acre foot the SNWA paid the Leavitts in 2005 and the \$4,350.83 VVWDB paid the Jensens and the Baier family trust.

In Nevada, therefore, SNWA and the VVWDB were paying about 640 times the per-acre-foot water costs for off-farm surface water for 2008 Nevada irrigated farms.

The asterisk * refers to statistical coefficient variations.

Marketing Virgin River 2007-2010

Board members and stock-share holders Board	Shares	Purchase price	Purchase date	Individual	B=BIC, M= MIC	Price per share
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 Leavitt, Cecil Leavitt, Robert (Bubba) Smith replaced Dave Bennett.	1	\$86,000.00	8/6/2008	Leona Tanner	B	\$86,000.00
	4	\$320,224.92	9/10/2008	Bunk Farm, LLC: Duane E. and Ivona H. Magoon, Ron and Carlyn Leavitt, and John Derrick	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 Crescent 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.	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

Regardless of such variations, with the Interim Guidelines in place, Water District Board members continued to divert public funds away from domestic groundwater development.

In 2007, John Paul, Ted Miller (who replaced Hafen), Cecil and Kenyon Leavitt, and Dave Bennett gave \$31,500.00 (\$4,350 per acre foot) to Erik and Judy Laub for a BIC share closely resembling the \$33,390.00 per share price SNWA paid the Dixie and Ann Leavitt Foundation for BIC shares in 2005.

The Board increased the value of a MIC share to \$71,422.72 when they gifted the Oasis Golf Club \$4,285,363.20 for 60 MIC stock shares (\$9,865.02 per acre foot) and paid Steve Tietjen \$214,268.16 for three MIC shares, which amounted to \$71,422.72 per MIC share (\$9,865.02 per acre foot) A far cry from the \$6,600.00 per MIC share paid to the owners of Paradise Canyon in 2004 for a MIC share.

However, they adjusted the relationship between a MIC and BIC share when, in 2008, Paul Miller, the Leavitts, and Robert (Bubba) Smith (replacing Bennett) gave Leona Tanner \$86,000.00 for 1 BIC share (\$11,878.45 per acre foot).

Also in 2008, the board enriched Duane and Ivona Magoon, John Derrick, and Carlyn

Leavitt DBA Bunk Farm LLC with \$320,224.92 for 4 BIC shares, amounting to \$80,056.23 per share (\$11,057.49 per acre foot).

Scott Bullock and Crescent Hardy teamed up to form Bunk Compound LLC. In October 2009, Paul Miller, the Leavitts, and Smith gifted them \$2,801,968.05 for 35 BIC shares, again at a per-share price of \$80,056.23 again amounting to \$11,057.49 per acre foot)

The Bunk Farm team returned in early 2009, receiving \$638,089.84 for 8 BIC shares at a somewhat lower per-share value of \$79,761.23 (\$11,057.49 per acre foot). They returned in December 2009 to receive \$619,971.07 for 8 BIC shares at a slightly reduced value of \$77,496.38 per share.

By 2010, Pau, Karl Gustaveson, who replaced Smith, Kenyon Leavitt, Miller, and Mark McEwen, slightly reduced the value by giving Staci (Hughes) Frei \$65,000.00 for one MIC share. They gave \$144,000.00 to Michael and Lynette Waite, \$144,000.00 for two BIC shares, bringing the price down to \$72,000.00 per BIC share (\$9,944.75 per acre-foot).

2011: Leasing Agreement



With stock share prices at a high of \$65,000.00 for one MIC stock share and BIC stock at \$72,000.00 per share in 2011, the owners of Paradise Canyon LLC worked towards and received a perpetual lease agreement from the Virgin Valley Water District Board members Gustaveson, McEwen, Miller, Kenyon Leavitt, and new board member Sandra Ramaker arguably to ensure that when they lease the shares they sold to the Board the per share value would continue to range from \$250 to \$300 per share or between \$34.53 and \$41.44 per acre foot per year. While somewhat higher, these prices are not orders of magnitude above \$23.52 per acre-foot across all western states.

2011:
VWDB
leasing
revisions

Price comparisons					
Irrigation Company	AFA at 7.24 per share	Shared leased by VWDB	Value of shares at \$1,246	Value of shares at \$300	Difference
BIC	933.96	129	\$160,734.00	\$38,700.00	\$122,034.00
MIC	2,917.72	403	\$502,138.00	\$120,900.00	\$381,238.00
Total	3,851.68	532	\$662,872.00	\$159,600.00	\$503,272.00

2011 Southern Nevada Water Leasing from Virgin Valley Water District profile							
Lessee	MIC or BIC	Number of shares	Rent amount per share	Total annual (share income)	AFA at 9.06 AFA per share	Value per AFA	Total annual AFA income
SNWA	BIC	14	\$1,512.50	\$21,175.00	126.84	\$166.94	\$21,175.00
SNWA	BIC	8	\$1,203.00	\$9,624.00	72.48	\$132.78	\$9,624.00
SNWA	MIC	17	\$1,246.00	\$21,182.00	154.02	\$137.53	\$21,182.00
SNWA	MIC	1	\$933.00	\$933.00	9.06	\$102.98	\$933.00

In 2009, Dora, Jearld, and Keith Hafen each sold 1.20 MIC shares at \$71,422.71 per share, earning a total of \$85,953.20. And between 2009 and 2011, various members of the Hafen Clan, including Tilman Hafen, leased MIC shares to SNWA in per-share prices ranging from \$2,643.13 to \$2,491.41 per share, earning the clan in total \$4,582,537.52

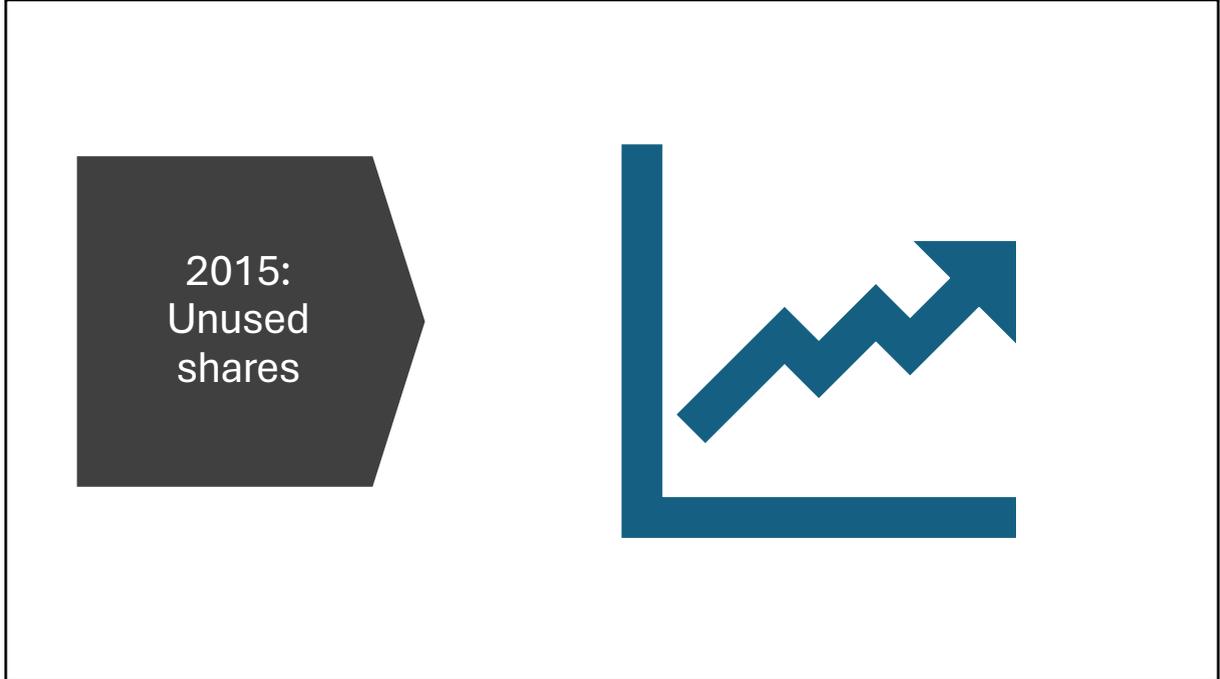
During an August 16, 2011, meeting of the VWDB, Ken Rock, the VWWD manager, led an effort to consider revising the \$300-per-share rates it charged lessees of MIC and BIC shares, while leasing BIC or MIC shares it held to SNWA at rates between \$933 and \$1,512.50 per share, amounts considerably lower than the Hafen clan rates.

Also, during the meeting, Board members Karl Gustaveson, Mark McEwen, Kenyon Leavitt, Ted Miller, and Sandra Ramaker raised the issue of whether individuals, such as the Hafens, were leasing water from VWWD at low prices and then leasing similar water to SNWA at higher prices.

While the Leavitt Family Trust had earned \$64,776.66 leasing 26 shares at \$2,491.41 per share in 2011, it was Jedidiah (Bo) Bingham, who was both VWWD's and Hafen's counsel, quelled the Board's dissent and stated that the Board could only inquire into how the lessee would use the water and not whether other water would be leased to

SNWA.

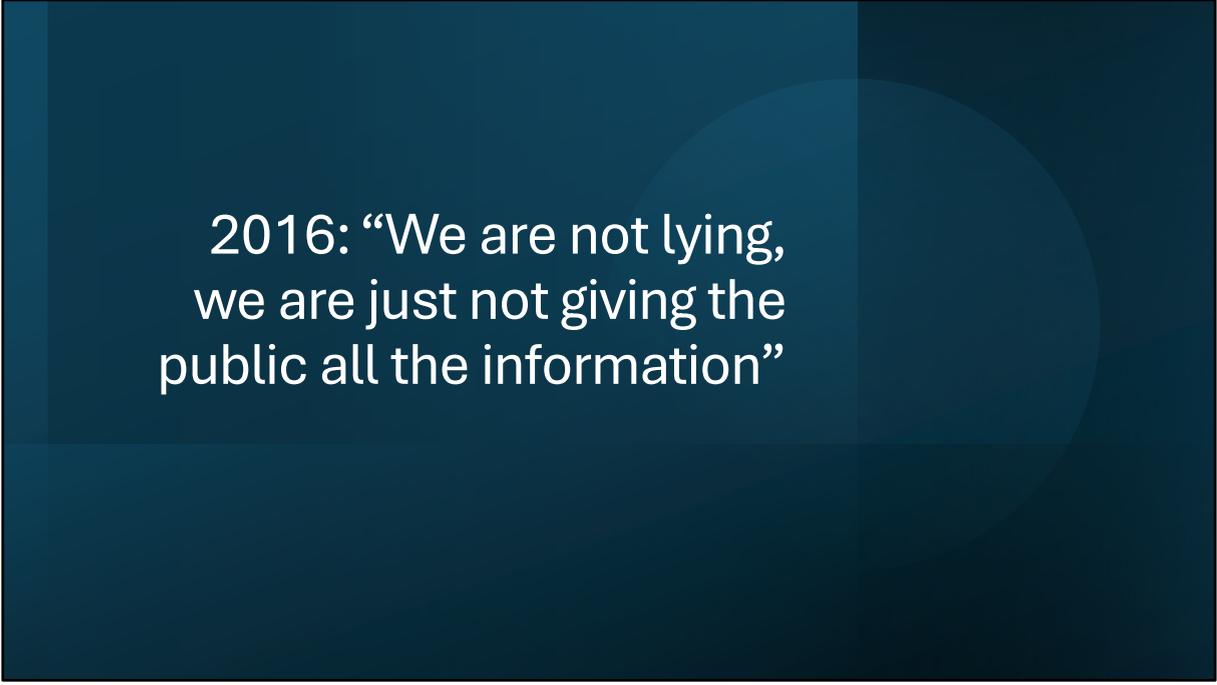
Nonetheless, as if to prove the concern, the board decided to lease 17 shares of MIC stocks to Tillman Hafen for \$250 per AFA.



By February 2015, VVWDB members Nephi Julien, Barbara Ellestad, Sandra Ramaker, Richard Bowler, and Robert (Bubba) Smith were actively engaged in attempts to reclaim allegedly unused irrigation shares that had been leased to Clemetson, to lease those reclaimed shares to SNWA under the ICS strategy.

On Feb 2, 2015, Clemetson answered a letter from Kevin Brown, who had replaced Rock as the Water District Manager, demanding the return of the alleged unused shares. Clemetson told Brown that bankruptcy agreements would not allow for the return of shares.

Furthermore, such leases violate current ICS accounting procedures and potentially provisions of the 1927 Virgin Valley Water Decree, which initially granted the shares to pioneer settlers.



2016: “We are not lying,
we are just not giving the
public all the information”

During a May 2016 meeting of the VVWB, board member Robert (Bubba) Smith, in a rare outburst, said: “No, we are not lying (about water and finances), we are just not giving them (the public) all the information. We are not going to tell you the whole story.” He mocked. “Anytime someone tries to deceive people, it is lying.” He said.

“Every backdoor meeting, closed-door meeting, they (staff) are conspiring against you,” Smith said. “They are talking about how to give it to you,” he said. They will continue to do this. It is your (the public) job to protect you from them. And that is the truth”, he added.

Smith eventually left the community for Texas and a new job. [

2018: Increase Paradise Canyon rates



Travis Anderson



Richard Bowler



Ben Davis – Vice-President



Gary Elgort



Nephi Julien – President



Randy Laub



Brian Bingham

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 they claimed SNWA paid the Water District for a Virgin River water "credit" under the Intentionally Created Surplus Doctrine (ICS) doctrine.

For whatever reason, the \$1,246 per share was significantly below the \$2,491.41 that SNWA was giving to the Hafen and Leavitts for leasing shares.

2018: The Walker Case

Bingham



Bowler

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 Julien, Davis, Bowler, Anderson, and 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.

Bowler, whose family had been paid \$1,498,238.62 by 2018 for leasing 812 BIC and MIC shares to SNWA, directed 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.

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2018: Paradise vs. Water Board

District Judge Timothy Williams, reacting to comments by Water District Attorney Bo Bingham during the Paradise Canyon vs. VVWDB litigation.



A covenant of good faith and fair dealing

The price of a share of MIC became an issue when, on May 15, 2018, the owners of Paradise Canyon LLC, DBA [The Wolf Creek Golf Club](#), filed a civil action ([A-18-774539-B](#)) against the [Virgin Valley Water District](#) Board (VVWDB).

The Golf Club owners sought a jury decision on whether or not the publicly elected Water Board applies the covenant of good faith and fair dealing in setting irrigation water rates and asked that a Jury decide the issue.

In the meantime, on June 18th, Wes Smith, the VVWD chief financial officer, told the VVWB that payments to Jedediah (Bo) Bingham and his law firm (Bingham, Snow, and Caldwell) for defense against the Paradise Canyon lawsuit will reach \$360,000 his year.

Smith claimed that it is \$240,000 over the board's approved budget. Nonetheless, Smith said, expenditures will be within the 2019 budget.

Judge Timothy C. Williams of the Eighth Judicial Court in Las Vegas, NV, presided over the case for five years of prolonged litigation.

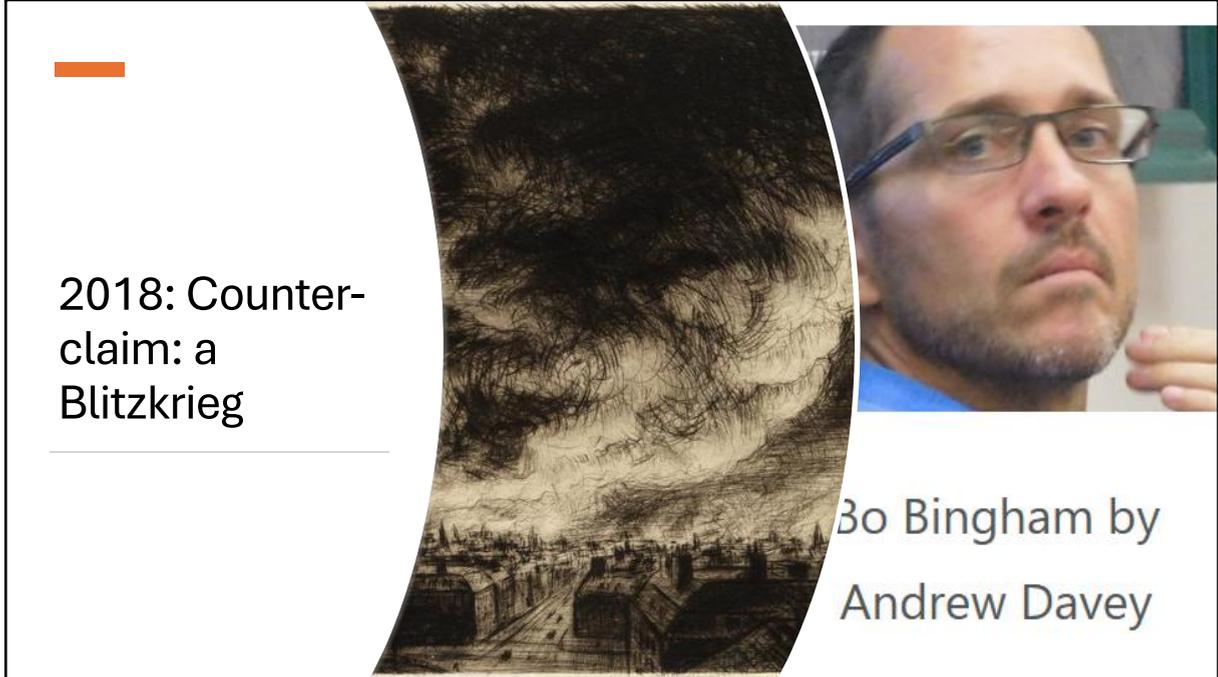


Bingham attempted to involve the City in the litigation against the owners of Paradise Canyon. Indeed, Robert Sweetin, attorney for the City of Mesquite, claimed that the City could intervene on behalf of the water Board because of an alleged default by Paradise Canyon for using City-owned effluent to water the Wolf Creek golf course.

On November 18, 2018, it took less than an hour for Judge Williams to remove the City of Mesquite, NV, from a lawsuit.

The Judge pointed out that he could not legally force such interjection in an action brought by the Plaintiff, and he was not about to be overturned by a higher court for engaging in such practices.

Judge Williams reminded Mesquite City Attorney Robert Sweetin that if the Plaintiff (Paradise Canyon) had wanted the City involved, they would have included them.



In September of 2018, VVWDB members Ben Davis, Richard Bowler, Travis Anderson, and Randy Laub and Nephi Julien agreed with the Board's Bingham to spend ratepayers' funds to launch a costly counterclaim (blitzkrieg) against the owners of Paradise Canyon, arguing that the Board had an absolute right to set rates and alleging that the owners of Paradise Canyon violated several provisions of their irrigation water contract with the Board.

The four-part "blitzkrieg" litigated over five years had nothing to do with the Covenant doctrine or with rate setting. Bingham's "blitzkrieg" allegations against the owners of Paradise Canyon primarily included:

1. Effluent use: Bingham claimed that 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: Bingham claimed that the owners of Paradise Canyon had a requirement to prove that they used the irrigation water beneficially.
3. Sub-lease: Bingham claimed that the owners of Paradise Canyon incorrectly sub-leased irrigation water to a Home Owners Association (HOA) adjacent to their golf course.

4. Perpetuity: Bingham claimed that the Paradise Canyon owners cannot lease river water in perpetuity.

These issues required 13 separate counterclaim arguments, each addressing one of the four issues, over the course of the five years of pre-trial proceedings.

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.

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) the "market" rate of \$1,246 with no need to appeal.



2021: Wastewater (Effluent) issue

Mesquite, Nevada Wastewater
plant.

Bingham attempted to claim, among other things, that the owners of Wolf Creek breached their lease with the VVWD by not using city-owned effluent before using district-provided irrigation water.

On February 2, 2021, Judge Williams noted that the lease required the Golf Course owners to utilize available effluent water. However, the Judge pointed out 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."

The Judge wrote that, as early as March or June 2011, the VVWDB was aware of the effluent issue, thereby raising the statute of limitations under NRS 11.190(b) which has passed.

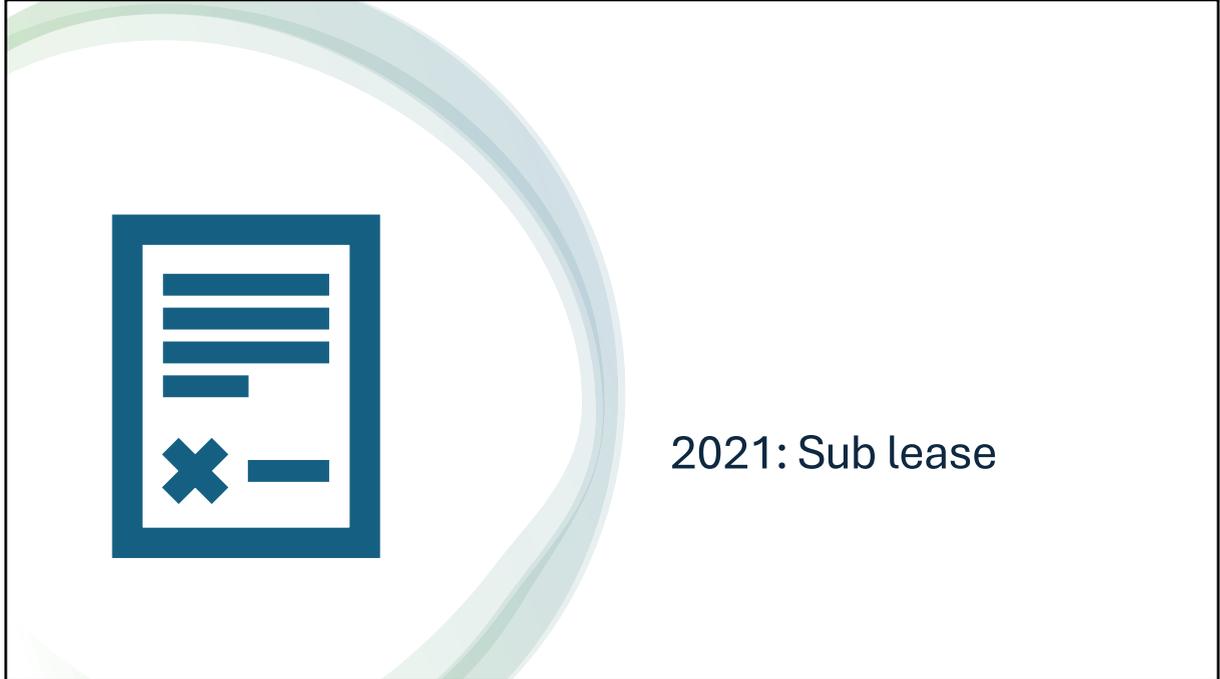
Judge Williams denied a do over request on December 6, 2021



2021: In
perpetuity

Photo by Chris Lovato

On June 24, 2021, Judge Williams issued a minute order finding that the unambiguous terms of the Lease explicitly grant Paradise Canyon the 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.



On August 9, 2021, Judge Williams addressed Bingham’s claim the owners of Paradise Canyon violated the contract by sub-leasing irrigation water shares to two Master Homeowners Association (M-HOA).

Not so, Judge Williams said. According to the Judge, the contract does not prohibit Paradise Canyon from using a small fraction of the leased Irrigation Shares to irrigate the common areas adjacent to its golf course.

The Judge pointed to “uncontroverted evidence” that the Virgin Valley Water District (VWWD) had noticed, was aware of, and accepted the water use arrangements in 2011, 2012, and 2014. Judge Williams noted that the VWWD inaction resulted in a waiver, even if the water usage prohibition was a material term in the Lease.



Bingham knew that the contract and other correspondence between the owners and Paradise Canyon and the Water District Board did not contain any requirement for beneficial use consent.

He also knew that the Mesquite Irrigation Company (MIC) administers the shares appropriated to the VVWB and Bingham had participated in a February 24, 2020, deposition of Colby Pellegrino, Director of Water Resources for SNWA, confirming that in 2018, the Nevada Water Engineer granted MIC employees a -5-year extension to prove beneficial use.

Regardless, in November 2021, Bingham talked for 9 hours, rambling over 496 PowerPoint Slides, trying to convince Judge Williams that the owners of Paradise Canyon must prove the beneficial use of the irrigation water leased to them by the VVWDB.

Not so, Judge Williams eventually ruled. "It is not a breach of the lease by failing to establish beneficial use," he ruled.

Jedidiah (Bo) Bingham	Judge Timothy Williams
Chenies case (Water Board has absolute authority to set rates)	This is a case for the jury to decide, the Judge said
Must involve City in this suit	Judge Williams reminded Mesquigen City Attorney Robert Sweeten that had the Plaintiff (Paradise Canyon) wanted the City involved, they would have included them.
Must prove the beneficial use	"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."
Must use effluent	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."
Must not sublease	The Lease does address and prohibits the sub-leasing of Irrigation Shares. However, the Judge pointed to "uncontroverted evidence" that the Virgin Valley Water District (VWD) had noticed, was aware of, and accepted the water use arrangements in 2011, 2012, and 2014. Judge Williams noted that the VWD's inaction resulted in a waiver even if the sub-lease applied.
Must Comply with Nevada's Covenant and Good Faith in various meetings	Must comply with Nevada's Covenant and Good Faith law. Issue for the jury to decide
Perpetuity does not apply	Judge Williams granted Plaintiff a perpetual right of renewal.
Dismiss Paradise Canyon appraisals	The Judge 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 by the foundation for Anderson's expert opinions and evaluations.
Exclude Appraiser testimony of Rent	Granted December 02, 2021
Perpetuity redo	Set for 9:30 a.m. March 9, 2022
Effluent redo	Denied December 6, 2021
sub-lease redo	Denied December 6, 2021
Absolute authority to set rate to Supreme Court	Set for 9 a.m. February 16, 2022

2021-2022: Re-Do

Despite continued losses before Judge Williams, Bingham asked for and received permission from Judge Williams to rehear his arguments.

After hearing Bingham's arguments, Judge Williams on December 6, 2021, denied both motions to relitigate the effluent and sub-lease issue.

Then, on March 9, 2022, Judge Williams reheard the perpetuity argument, which he again deemed irrelevant to the case.

With nothing to lose, Bingham, with help, applied to the Supreme Court to hear the rate-setting argument. With the first hearing set for February 16, 2022.

Appeal to Supreme Court



Mark Hutchison



Seated (left to right):
Chief Justice Ron D. Paragymis, Justice Kristina Pickering, Justice Mark Gibbons (Retired)
Standing (left to right):
Justice Allen Silver, Justice Elissa F. Cohen, Justice Luke S. Singh, Associate Chief Justice James W. Harberty
Not Pictured:
Justice Douglas Henderson

Bingham needed help going before the Supreme Court. So on Monday, September 13, 2021, Bingham brought in Las Vegas Attorney Mark Hutchison to petition the Nevada Supreme Court and argue to the Justices that Judge Williams had no business overruling him. And instruct the Supreme Court that the Water District had the unrestricted right to set rates as they like.

Hutchison attempted three times to persuade the Nevada Supreme Court to rule that the Water Board could set public water rates as it saw fit, whenever it chose, and in any manner it deemed necessary.

But on May 4th, the full court denied Hutchison's last motion.



Jury Decision

During the five years of litigation, Judge William agreed (sustained) 89.33 percent of the objections by the attorneys for Paradise Canyon over Bingham's ramblings, masked as legal arguments.

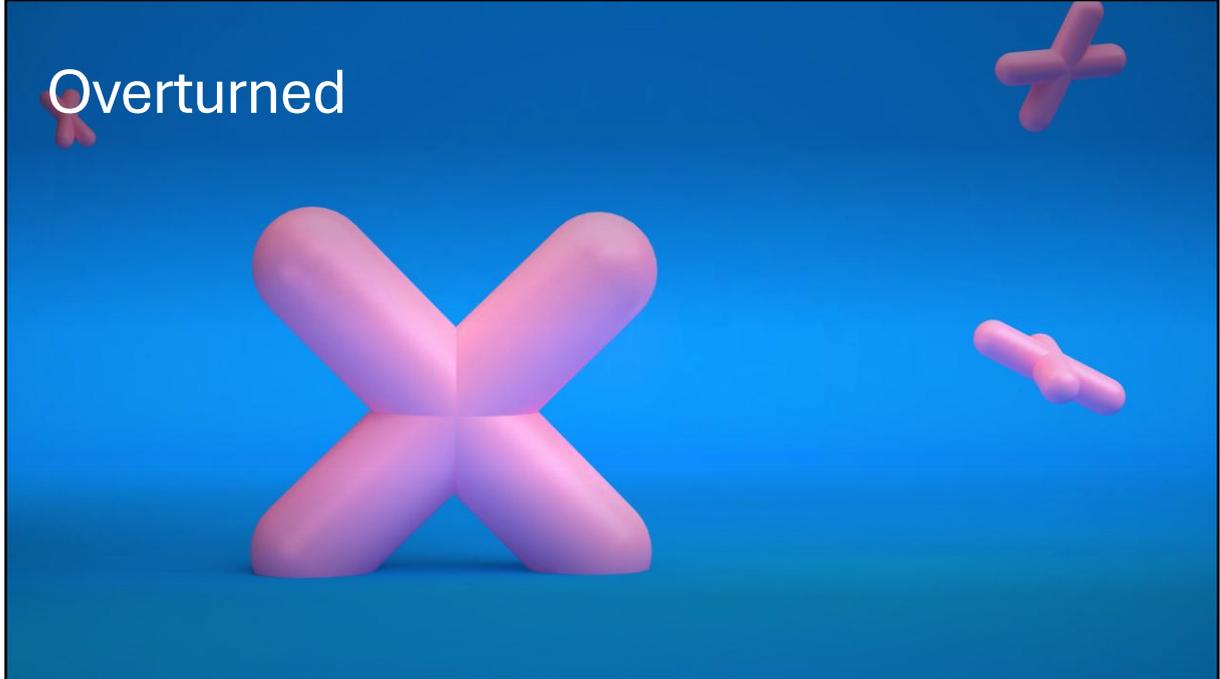
In almost equal terms, the Judge, 84.29 percent of the time, condoned (overruled) objections made by Bingham against plaintiff arguments heard before the empaneled Jury.

Judge Williams recognized the lopsided rulings and told the Jury not to consider them a "scorecard" of attorney behavior, but they are.

On June 5, 2023, the Jury concluded that when the owners of Paradise Canyon 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 Board 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 \$811,000.00 in damages.



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 million away from providing scarce Domestic Water and pay law firm of Hutchison and Steffen (not their trial attorney Bo Bingham) to appeal the Jury's ruling.



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**, and by default giving those with profit motives acting as government rates setters on publicly owned water an absolute power to profits.



The Stiglich, Parraguirre, and Bell ruling highlights a fundamental flaw in appeals, namely the practice of jumping to a simple solution without considering the impact of the decision on public trust, as well as its implications for previous water decisions and constitutional provisions.

Stiglich, at the very least, overlooked the fact that the case involved not only profiteering but also the diversion of water from one designated source and specific use to another area for different purposes, both of which are constitutionally protected public trust violations..

On September 17, 2020, Justice Lidia S. Stiglich, this time joined by 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 that have already been adjudicated and settled under the doctrine of prior appropriation.

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

"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," the justices said.

And Article 8, Section 9 (the Gift Clause) of the Nevada Constitution prohibits the use of public funds to acquire stocks. Both the Virgin Valley Water Board and SNWA use public funds to purchase river water stock shares.



In these three briefings, I have questioned the ability of elected officials on the City Council, the Virgin Valley Water District Board, and officials from the Southern Nevada Water Authority and the Department of the Interior to properly balance growth with water availability in the Virgin River Basin. And I question Nevada's Supreme Court ruling that overturned a jury verdict in the Paradise Canyon Case, all of which have led to a false understanding of water availability and sustainability in addition to profiteering all at the expense of the Public.

There are several actions required that remain unaddressed, including updating all requirements associated with the Mesquite Land Act, to ensure that potential environmental issues especially water issues, required under that act and the Federal Land Policy and Management Act, which appear unmet, are met thus avoiding not only a dry future, with the potential that a future Secretary of Interior does not put land acquired under the Act up for auction.

In addition, Basin 222 is a Designated Basin, which means that the Nevada Water Engineer has designated it as such, indicating that groundwater rights are approaching or exceeding the basin's estimated average annual recharge.

Further, (SB150) requires a county or city government to develop a water resource plan that not only must address, in collaboration with both the USGS and the Nevada Engineer, the water budget, but also manage water resources conjunctively.

I am often asked, When will we run out of water? And that is the proper question to which I can only answer, "We live in an ever-hotter climate, and our water sources are overappropriated, and officials prefer to ignore the consequences or even worse give self-serving, unqualified assumptions about the future of water while in far too many cases profiteering.

Our future requires, at a minimum, a comprehensive, all-source study, not by self-serving contractors, but by the U.S. Geological Survey working in conjunction with the Nevada Water Engineer to comply with SB 150.

My original thought was to present the issue as a federal ICS contracting violation and request a Department of the Interior IG review. Trump fired the IG's, putting that idea to rest at least for now. There is an additional argument to be made to the Nevada AG concerning the potential fraudulent use of public funds, as well as violations of public trust and the stock market.

Any or all of these potential actions can be accomplished through Senator Catherine Cortez Masto, Senator Jacky Rosen, Representative Stephen Horsford, and other relevant parties.

To paraphrase the Justices in the Walker Case, "To allow the allocation of waters without due regard for the public trust evades fiduciary duties, which we cannot sanction."

Bio



Michael Manford McGreer retired from government service in 2006. He moved from his home in Northern Virginia to Mesquite, NV., to pursue his writing and lecturing career.

Mike taught graduate and undergraduate programs at the University of South Dakota, George Washington University, and Western Governors University.

He is the Past President of the Stuttgart, Germany, Chapter of the Armed Forces Communications and Electronics Association (AFCEA). He has Fifty-five awards and commendations, including an award for Exceptional Civilian Service from The Defense Threat Reduction Agency (DTRA) for his contributions to reducing Weapons of Mass Destruction (WMD).

Mike has worked extensively with members of the international intelligence community in activities associated with the strategic and tactical deployment of Command, Control Communications, Computer, Intelligence, Surveillance, and Reconnaissance (C4ISR) systems. He also served as Chief Information Officer for the Defense Threat Reduction Agency (DTRA). The agency provides combat support, operations, and research and development activities concerning chemical, biological, and nuclear weapons of Mass Destruction (WMD).

He is the Past President of the Stuttgart chapter of the Armed Forces Communications and Electronics Association (AFCEA).

He has numerous articles published in online magazines and newspapers on federal policy and alternative energy strategies."

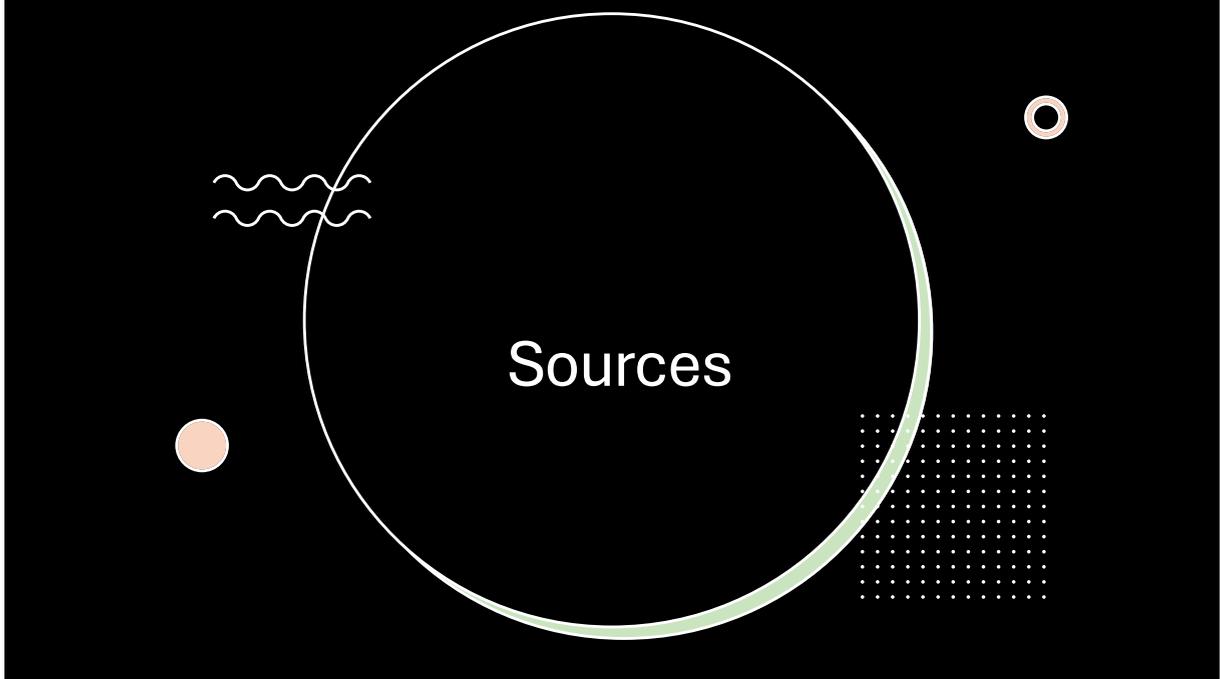
He stays current on public policy issues through collaboration in professional online discussions. He is the founder and managing editor of mesquateralliance.com

He is the author of "No Harm, No Foul," a fictional account of biological warfare in the 21st Century, and has authored historical and genealogy books. He is currently working on a public policy case study of water management along Colorado River Basin 34 Hydrographic Region No. 13, Basin 222, a tributary of the Southern portion of the Colorado River.

Mike holds a Bachelor's Degree in Criminal Justice Administration, a Master's Degree in Public Administration (emphasis on Public Policy analysis) from Boise State University, Boise, Idaho, and a Doctorate in Public Administration (emphasis on (Operations Research and Systems Analysis)from Nova Southeastern University, Davie, Fla.

He is married to Bonnie Jean LaJeunesse McGreer. They are the parents of one son, one daughter, four grandchildren, and four great-grandchildren. His recreation interests include motorcycle touring, classic cars, golf, genealogy, and travel.

Mike can be reached at manfordmcgreer@gmail.com.



Sources for these briefings include:

1. Virgin Valley Water District from accounting records between 1993 and 2019, provided from a FOIA request, and council meeting records available on the VWD website.
2. Mesquite City Council meeting records on their website,
3. SNWA accounting records through 2023, various Southern Nevada Water Authority (SNWA) documents and board meetings received through a FOIA request, email, and zoom conversations with Bronson Mack, Media Relations & Public Outreach Manager for the SNWA.
the Virgin River decree tables misrepresented the acre-foot formula.
4. Other. Court records include those from the Fifth District Court in Las Vegas, the Nevada Supreme Court, and other Federal court documents, along with various records and reports from the office of the Nevada Water Authority, the Department of Interior-Bureau of Reclamation, U.S Geological Survey, Bureau of Land Management, and various press reports.

While accuracy is critical when reporting on numbers and identifying who said what and when, the conclusions are mine and mine alone, and likely reflect my biases from some 40 years of government service, training, and academic experience both as a student and a college professor.

In terms of water availability and sustainability, the researched material reflects serious issues, based on poor, and in far too many cases, self-serving profit-making decisions, in opposition to the public trust.

The community, as a public trust issue, deserves to know exactly how much growth is available and sustainable within a publicly owned but limited all-source water resource, as determined not by locally funded studies but by the U.S. Geological Survey, in conjunction with the Nevada Water Authority, the Bureau of Reclamation, and the Bureau of Land Management.

Further, confidence demands a thorough legal analysis of current pricing and profiteering decisions formerly and currently made, given the availability and sustainability of publicly owned but appropriated water resources.

surrounding.

Further