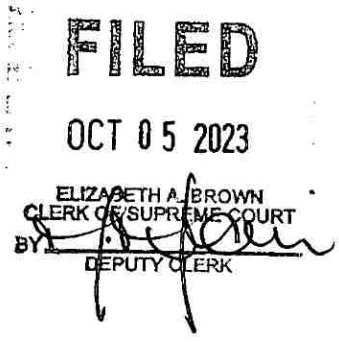
IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF FERNLEY,
Petitioner,
vs.
THE TENTH JUDICIAL DISTRICT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CHURCHILL; AND THE HONORABLE JIM C. SHIRLEY, DISTRICT JUDGE,
Respondents,
and,
TRUCKEE-CARSON IRRIGATION DISTRICT,
Real Party in Interest.

No. 85900



ORDER GRANTING PETITION

This original petition for a writ of mandamus challenges a district court order denying a motion to intervene and granting a motion to strike a peremptory challenge.

The underlying dispute involves the Truckee Canal. The Canal currently is an open, unlined ditch created over 100 years ago to carry irrigation water. As water flows through the Canal, some seeps through the bottom of the Canal. The seepage provides a large source of recharge to the local aquifer used by Petitioner City of Fernley and its residents.

Real party in interest Truckee-Carson Irrigation District ("TCID") maintains the Canal pursuant to a contract with the United States Bureau of Reclamation ("the Bureau"). The Bureau seeks to place an impermeable liner in the Canal where it traverses through Fernley. TCID and the Bureau entered into a repayment agreement for the construction. Under the agreement, TCID's members, including Fernley, will be required to repay the Bureau an amount not to exceed $35,000,000 to construct the

liner in the Canal. The contract was ratified in a special election by TCID's members.

TCID filed a petition with the district court pursuant to NRS 539.305. The petition seeks a determination that the repayment contract is valid and that TCID had the proper authority to enter into the contract. The petition was filed in the Tenth Judicial District. In response to the petition, Fernley sought to intervene and filed an answer. Fernley also filed a peremptory challenge of the district court judge. As a result of the peremptory challenge, the case was transferred to District Court Judge Jim Shirley. The newly assigned judge denied Fernley's motion to intervene and struck the peremptory challenge. Fernley now challenges the district court's order in this petition for a writ of mandamus.

A writ of mandamus is available "to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station." NRS 34.160; *Walker v. Second Judicial Dist. Court*, 136 Nev. 678, 679-80, 476 P.3d 1194, 1196 (2020). A writ of mandamus is only issued when there is no "plain, speedy and adequate remedy" at law. NRS 34.170; *Walker*, 136 Nev. at 680, 476 P.3d at 1196. This court only issues mandamus when: (1) the petitioner establishes a legal right to have the act which their petition requests done; (2) the respondent has a duty to perform the requested action; and (3) "the petitioner has no other plain, speedy, and adequate remedy." *Walker*, 136 Nev. at 680, 476 P.3d at 1196. The decision to entertain a petition for writ of mandamus is within this court's discretion. *Id.* at 679, 476 P.3d at 1196.

Here, we exercise our discretion to entertain this petition because Fernley has no other plain, speedy, or adequate legal remedy to challenge the district court's refusal to allow it to intervene in the

underlying suit. *See, e.g., Am. Home Assur. Co v. Eighth Judicial Dist. Court*, 122 Nev. 1229, 1234, 147 P.3d 1120, 1124 (2006) (stating that a petition for a writ of mandamus was appropriate to challenge a district court's denial of a motion to intervene). If Fernley is unable to participate in the instant action, the city likewise will be unable to appeal any determination regarding the validity of the repayment contract. *See, e.g., Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446-47, 874 P.2d 729, 734 (1994) (noting there is no standing to appeal if an entity was never a party to the underlying lawsuit).

Fernley contends it is authorized to intervene as a matter of right because the city has a significant interest in the case's subject matter and Fernley's interests are not adequately represented by the existing parties. We agree.

NRCP 24(a)(2) provides the court must permit anyone to intervene who:

> claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

To intervene under NRCP 24(a)(2), an applicant must demonstrate: "(1) that it has a sufficient interest in the litigation's subject matter, (2) that it could suffer an impairment of its ability to protect that interest if it does not intervene, (3) that its interest is not adequately represented by existing parties, and (4) that its application is timely." *Am. Home Assur. Co.*, 122 Nev. at 1238, 147 P.3d at 1126.

First, at issue is whether Fernley has a "sufficient interest in the litigation's subject matter." *Id.* To demonstrate a sufficient interest, an

applicant must show a "'significantly protectable interest,'" *id.* at 1239, 147 P.3d at 1127 (quoting *Donaldson v. United States*, 400 U.S. 517, 542 (1971)), which is defined as "one that is protected under the law and bears a relationship to the plaintiff's claims." *Id.* (citing *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002)). Here, under the terms of the repayment contract, Fernley is required to pay additional assessments to cover the annual installments imposed by the repayment contract. Although the district court concluded Fernley's interest in avoiding the assessments was not ripe until the assessments had been levied, we disagree. Under NRS 539.690(5), when a special assessment is approved, "the board *shall immediately* proceed to apportion the benefits, if that apportionment is to be made, and to *levy an assessment sufficient to raise the amount voted.*" (Emphases added.) The assessments are not speculative because they are mandated by statute. Fernley's clear obligation to pay the assessments creates a sufficient interest in the litigation's subject matter.

Next, we consider whether Fernley could "suffer an impairment of its ability to protect that interest if it does not intervene." *Am. Home Assur. Co.*, 122 Nev. at 1238, 147 P.3d at 1126. In Fernley's answer to the petition, the city challenged the validity of the repayment contract, including a claim of violation of the single-subject doctrine on the ballot question for ratification of the contract. As Fernley is challenging the validity of the contract and the assessments it will have to pay under the contract, we conclude the city will be impaired in protecting its interest if not allowed to intervene.

Further, Fernley's interest is not adequately represented by any other party, as TCID is the only party to the petition. Finally, it is undisputed Fernley's motion to intervene was timely. Accordingly, we

conclude that the district court erred in denying Fernley's motion to intervene.[1] Given this, we also conclude that the district court erred in granting the motion to strike the peremptory challenge because the ruling was based on the erroneous denial of Fernley's motion to intervene as a party to the action. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order denying Fernley's motion to intervene and granting the motion to strike the peremptory challenge.

Stiglich, C.J.

Cadish, J.

Pickering, J.

Herndon, J.

Lee, J.

Parraguirre, J.

Bell, J.

cc: Taggart & Taggart, Ltd.
Truckee-Carson Irrigation District
Churchill County Clerk

[1]Based on our disposition, we need not address Fernley's remaining arguments regarding intervention.