

CHRISTOPHER L. POWELL
SENIOR COUNSEL
DIRECT DIAL (916) 551-2804
DIRECT FAX (916) 442-2348
E-MAIL Cpowell@hansonbridgett.com



December 1, 2023

20163385.1

Katharine Elliott
County Counsel
Nevada County
950 Maidu Avenue, Suite 240
Nevada City, CA 95959

Clerk of the Board
Board of Supervisors
Nevada County
950 Maidu Avenue, Suite 200
Nevada City, CA 95959

Re: Idaho-Maryland Mine Vested Rights Petition

Dear Ms. Elliott and Board of Supervisors:

We represent Rise Grass Valley, Inc. ("RISE") in connection with its September 1, 2023 Vested Rights Petition ("Petition") submitted to Nevada County ("County"). As you know, RISE's Petition concerns operations at the Idaho-Maryland gold mine ("IMM"), and the Nevada County Board of Supervisors have scheduled a hearing on December 13 to deliberate and vote on whether to approve the Petition.

We write regarding Supervisor Heidi Hall, who has demonstrated an animus towards reopening the IMM, specifically and mining projects and mining in general. Furthermore, her comments made at a public hearing regarding a vested rights determination for another mine in the County suggest that Supervisor Hall believes that no mining operations should be able to utilize the vested rights doctrine, denigrating the established legal doctrine a mere "loophole" that the County should not apply. This position is not only contrary to settled law but also demonstrates an unacceptable probability of bias on the part of Supervisor Hall that will prevent her from adjudicating the Petition before the Nevada County Board of Supervisors in an unbiased manner. Accordingly, we request that Supervisor Hall recuse herself from the upcoming proceedings.

As the County is well aware, an impartial tribunal is a basic requirement of administrative procedural due process, guaranteed under both the federal and California Constitutions.¹ In order to ensure the constitutional rights of applicants, California courts have repeatedly recognized that any unacceptable probability of bias on the part of any official who has decision making power over an administrative matter is a violation of an applicant's due process rights.² The law does not require a demonstration of actual bias to show a violation of due process; rather, even an "unacceptable probability" of actual bias is sufficient to deprive an applicant of

¹ See *Gibson v. Berryhill* (1973) 411 US 564, 578, 93 S Ct 1689; *Haas v. County of San Bernardino* (2002) 27 C4th 1017; *Golden Day Sch., Inc. v. State Dep't of Educ.* (2000) 83 CA4th 695; *Applebaum v. Board of Dirs.* (1980) 104 CA3d 648, 657.

² *BreakZone Billiards v. City of Torrance* (2000) 81 CA4th 1205, 1236; *Nasha, LLC v. City of Los Angeles* (2004) 125 CA4th 470, 483.

Hanson Bridgett LLP

500 Capitol Mall, Suite 1500, Sacramento, CA 95814 hansonbridgett.com

its constitutional rights.³ This legal requirement for unbiased decision making is especially acute in the upcoming hearing in which the Board of Supervisors' role in adjudicating the Petition differs from other legislative, ministerial, or administrative acts that the Board typically takes – it is specifically charged with applying the relevant legal principles as determined by the California Supreme Court to the historical facts in an objective manner. In this context, with no room for a discretionary decision, a non-biased hearing body is critical. The historical record of Supervisor Hall's comments and participation in anti-mining groups establishes an unacceptable probability of bias, and therefore she should recuse herself from presiding over RISE's Petition for its vested rights to be recognized.

Supervisor Hall has been deeply involved in organizing anti-mining. In 2008, Supervisor Hall was a founding director of the anti-mining group Citizens Looking at Impact of Mining in Grass Valley (CLAIM-GV)⁴, which was formed for the specific purpose of opposing the re-opening of IMM. In November of 2008, less than two weeks before Supervisor Hall signed the CLAIM-GV Articles of Incorporation as Director, an article was published in the Union Newspaper, titled: "New Group Targets Impacts of Potential Reopening of Gold Mine."⁵ In the article, CLAIM-GV President, Ralph Silberstein stated, "We do not believe that the Idaho-Maryland Mine Project (mine and/or ceramics plant and/or aggregate plant) is a good fit for our community."⁶ The same article mentioned Supervisor Hall as a CLAIM-GV Board member.⁷ Another article critical of the IMM Project – published by the same Union Newspaper on November 20, 2009 – described a slogan contest for CLAIM-GV.⁸ According to the article, titled: "New Slogans for CLAIM," several possible slogans were voted on during a local potluck.⁹ Those slogans included the following: "Green, not gold."; "Got Cyanide."; "Extraction is no longer attraction."; "Celebrate our Past, don't relive it."¹⁰ During the meeting, attendees were also provided with information on how to obtain one of the group's "...classic bumper stickers[:] 'GV – No Mine, No Shaft.'" At the time of this meeting, Supervisor Hall remained on the CLAIM-GV Board of Directors.

On January 6, 2009, at a hearing in front of the City of Grass Valley Planning Commission, Supervisor Hall disparaged the previous operator of the IMM site, Emgold, and its proposed reopening of the IMM. She stated, "A big entity, often foreign-owned like Emgold, comes into a rural city or a county and proposes to run a dirty industrial business such as coal, copper or gold mining."¹¹ She stated further, "Be clear that these corporations count on one thing, our

³ *Hall v. Superior Court* (2016) 3 Cal.App.5th 792, 808; *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021 ("the rule against bias has been framed in terms of probabilities, not certainties"); *Nasha, LLC v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 483 (member of planning commission was author of newsletter attacking project).

⁴ See Claim-GV's 2008 Secretary of State Articles of Incorporation. (Attached hereto as Exhibit 1).

⁵ Moller, *New Group Targets Impacts of Potential Reopening of Gold Mine*, Union Newspaper (Nov. 2, 2008). (Attached hereto as Exhibit 2).

⁶ *Id.*

⁷ *Id.*

⁸ CLAIM-GV Board of Directors, *New Slogans for CLAIM*, Union Newspaper (Nov. 20, 2009). (Attached hereto as Exhibit 3).

⁹ *Id.*

¹⁰ *Id.*

¹¹ City of Grass Valley Planning Commission, *Planning Commission Hearing*, (Jan. 6, 2009).

ignorance. They count on rural areas to be unsophisticated, uninformed and easily bought by the promise of jobs."¹²

The entity Claim-GV was formally dissolved in 2017 and was folded into the Community Environmental Advocates ("CEA"), which describes itself as "a conceptual unification of three local advocacy groups: Rural Quality Coalition (RQC), Citizens Looking At Impacts of Mining (CLAIM-GV), and Citizens Advocating Responsible Development (CARD)."¹³ The CEA is currently opposing attempts to restart operations at IMM and has submitted documents to the County opposing the Petition.

Supervisor Hall has not only demonstrated animus towards mining in general and Rise's project in particular, she has also rejected the legitimacy of the doctrine of vested rights. Prior to Supervisor Hall's position a County Supervisor, she addressed the County Planning Commission on the subject of vested mining rights at a May 27, 2010 County Planning Commission meeting considering whether to grant a vested rights determination for 74 Acres of the Blue Lead Gold Mine: "Mining is one of the last industries in this country to be regulated, if not the last one.... Why is it that miners need to be allowed to dig for gold and not abide by the regulations that every other business small and large in this county is being asked to abide by?"¹⁴ Supervisor Hall then falsely asserted that the law of vested rights can be superseded by policy preferences:

You're being asked to decide, can [Blue Lead Gold Mine] go through the very last loophole that exists for the very last set of businesses in this country, practically, to not abide by the whole set of regulations that all the other miners are being asked to abide by [...] You can deny the vested rights and ask this miner to come in and get use permit like everyone else has to.

Contrary to Supervisor Hall's comments, a vested right is not a "loophole" to avoid zoning regulations, it is property right protected by the federal and California Constitutions that has been formally recognized under the law since the advent of zoning regulations in the early twentieth century.¹⁵ At the December 13, 2023 hearing, the Board of Supervisors is required to review the evidence before it and determine if a preponderance of the evidence supports the existence of a vested right. Contrary to Supervisor Hall's assertion, the Board of Supervisors cannot deny RISE's Petition as a matter of policy preference. Supervisor Hall's publicly stated view that the County, as a matter of policy, can and should deny vested rights petitions to ensure that all mining operations undergo the use permit process create a high probability that she is unable to make an unbiased decision on RISE's Vested Right Petition, and her

¹² *Id.*

¹³ Community Environmental Advocates Foundation, *About Us*, available at: <https://cea-nc.org/about-us/> [as of Nov. 30, 2023.]

¹⁴ Nevada County Planning Commission, *Planning Commission Hearing* (May 27, 2010) (available at: <https://nevco.granicus.com/player/clip/1987>, beginning at 3:32:50).

¹⁵ See, e.g., *Village of Terrace Park v. Errett* (1926) 12 F.2d 239; *Jones v. City of Los Angeles* (1930) 211 Cal. 304, 307; *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 558-559; *County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 686; *Edmonds v. County of Los Angeles* (1953) 40 Cal.2d 642, 651 ["*Edmonds*"]; *Livingston Rock etc. Co. v. County of L.A.* (1954) 43 Cal.2d 121.

Katharine Elliot
Board of Supervisors

Page 4

participation in the December 13, 2023 proceedings threaten to violate RISE's due process rights.

Taken in sum, Supervisor Hall's past anti-mining advocacy efforts and public statements demonstrate a strong bias against mining operations in the County in general, and efforts to re-open IMM in particular. Supervisor Hall's past statements questioning the legitimacy of vested rights as a legal concept and urging the County force all mining projects to undergo the use permit process are of particular concern given RISE's Petition currently pending before the County. Supervisor Hall's actions demonstrate, at the very minimum, that she has an unacceptable probability of actual bias against RISE's Petition and the reopening of IMM. Accordingly, we urge Supervisor Hall recuse herself from RISE's Vested Rights Petition proceedings. Failure to do so would be a violation of RISE's right to due process and could subject to County to future legal action.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Powell", is written in a cursive style.

Christopher L. Powell
Senior Counsel