

1 Case No. 2024-CV-00197

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

9 KINGSBURY GENERAL IMPROVEMENT
10 DISTRICT, a political
11 subdivision of the State of
12 Nevada,

Petitioner.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECREE OF
JUDICIAL CONFIRMATION
(NRS Chapter 43)

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14 _____/

15 THIS MATTER comes before the Court on Kingsbury General
16 Improvement District's (KGID) *Verified Petition for Judicial*
17 *Confirmation (NRS Chapter 43)* filed on September 17, 2024. Tahoe
18 Douglas Fire Protection District (TDFP) filed its *Answer to*
19 *Verified Petition for Judicial Confirmation* on October 23, 2024.
20 State Fire Marshal filed its *Joinder to Tahoe Douglas Fire*
21 *Protection District's Answer to Verified Petition for Judicial*
22 *Confirmation* on November 1, 2024. No other person or entity
23 answered. Oral arguments were presented on December 19, 2024.
24 Good cause appearing, the Court finds and orders as follows:

25 Jurisdiction

26 KGID is a Douglas County, Nevada general improvement district
27 governed by Chapter 318 of the Nevada Revised Statutes. KGID's
28 *Verified Petition for Judicial Confirmation (NRS Chapter 43)*

1 (Petition), prays for a judicial examination and determination of
2 the validity of its power. KGID published and posted notice in
3 compliance with NRS 43.120. See, *Notice of Proof of Publication*
4 *and Posting*, November 4, 2024. The Court has jurisdiction. NRS
5 43.120(3).

6 Discussion

7 KGID owns and maintains fire hydrants installed on private
8 property throughout its district. KGID has no interest in
9 removing obstructions from around its fire hydrants that hinder
10 fire department access, including snow. KGID asks the Court to
11 confirm that it has no duty to remove obstructions from around its
12 fire hydrants and, even if it does, KGID has no authority to go
13 onto private property to remove the obstructions.¹

14 The Court assumes the accuracy of undisputed assertions made
15 by KGID. These include:

16 KGID's enabling ordinances expressly grant KGID the basic
17 powers of paving, curbs, gutters, sidewalks, storm drainage,
18 sanitary sewer improvements, water improvements, street lighting
19 and garbage/refuse collection and disposal.

20 Although not expressly stated in enabling ordinances, KGID's
21 basic powers impose upon KGID a duty to install fire hydrants.
22 KGID had authority to install the fire hydrants on private
23 property. KGID installed fire hydrants on private property
24 throughout its district. KGID owns the fire hydrants.

25 Although not expressly stated in enabling ordinances, KGID's
26 basic powers impose upon KGID a duty to maintain the fire

27
28 ¹ Due to the limited nature of judicial confirmation, the Court does not
assess duties owed by persons or entities other than KGID and makes no
prospective determination regarding KGID's exposure to criminal liability.

1 hydrants. KGID has authority to go onto private property to
2 service the fire hydrants. KGID goes onto private property to
3 inspect and service the fire hydrants.

4 Although not expressly stated in enabling ordinances, KGID's
5 basic powers impose upon KGID a duty to remove snow from the
6 streets. KGID removes snow from the streets.

7 **1. Does KGID have a duty to remove obstacles from around its**
8 **fire hydrants?**

9 While accepting its duty to install and maintain fire
10 hydrants, KGID decries any obligation to clear snow or other
11 obstructions from around the fire hydrants to ensure access by the
12 fire department.

13 The genesis and purpose of KGID's existence is important to
14 answering the question posed. The legislative purpose of general
15 improvement districts (GID's) is to "promote the health, safety,
16 prosperity, security and general welfare of the inhabitants
17 thereof and of the State of Nevada." NRS 318.015(1) (emphasis
18 added). "[T]he acquisition, improvement, maintenance and operation
19 of any project authorized in this chapter is in the public
20 interest and constitutes part of the established and permanent
21 policy of the State of Nevada." *Id.* "For the accomplishment of
22 these purposes the provisions of this chapter shall be broadly
23 construed." *Id.* "This chapter being necessary to secure the
24 public health, safety, convenience and welfare, it shall be
25 liberally construed." NRS 318.040 (emphasis added).

26 KGID's powers are those expressed in Douglas County
27 Ordinances 140 and 144; those powers necessarily or fairly implied
28 in or incident to the powers expressly granted; and those powers

1 essential to the accomplishment of the declared objects and
2 purposes of the county and not merely convenient but
3 indispensable. NRS 244.137(3); See also, *Sadler v. Eureka County*,
4 15 Nev. 39, 42 (1880).² KGID "shall have and exercise all rights
5 and powers necessary or incidental to or implied from the specific
6 powers granted in this chapter. Such specific powers shall not be
7 considered as limitation upon any power necessary or appropriate
8 to carry out the purposes and intent of this chapter." NRS
9 318.210. In accord, KGID "may construct or otherwise acquire any
10 improvement appertaining to any such basic power which the
11 district may exercise..." NRS 318.100(1). KGID "may also furnish
12 services pertaining to any such basic power which the district may
13 exercise." NRS 318.100(2).

14 KGID has the power to "operate, maintain and repair the
15 improvements acquired by the district, **including, without**
16 **limitation,**...all facilities of the district relating to any basic
17 power which the district is authorized to exercise, and in
18 connection therewith to exercise from time to time any one, all or
19 any combination of the incidental powers provided in this chapter
20 and any law supplemental thereto, except as may be otherwise
21 provided in this chapter or in any such supplemental law." NRS
22 318.145 (emphasis added). KGID argues NRS 318.145's specific
23 reference to the removal of snow from streets proves that KGID
24 cannot be bothered to remove snow from fire hydrants, i.e., "[The
25 Nevada Legislature] could have provided the same authority
26 regarding snow around hydrants. It did not." *KGID's Reply*, p. 6,

27
28 ² The statutory presumption favoring BOCC's power as to matters of local concern, found in NRS 244.137(6)(b) and modifying Dillon's Rule, do not extend to KGID, NRS 244.139(7). The Court employs no such presumption here.

1 footnote 1. KGID's argument is without merit given the bolded
2 language from NRS 318.145 as emphasized above.

3 KGID is a GID created by ordinance of the Douglas County
4 Board of County Commissioners (BOCC) upon declaration of an
5 emergency. "[T]he general purpose for which [KGID] is created and
6 the powers which it shall have shall be for...water improvements..."
7 Douglas County Ordinance 144, Section 2(c). "In the improvement
8 of the lands of this proposed district **it is necessary that the**
9 **improvements herein proposed by [sic] provided for the protection**
10 **of public health, safety and general welfare."** *Id.* at Section 3
11 (emphasis added). The power over water improvements is within the
12 powers appropriately conveyed to a GID. NRS 318.116(15); NRS
13 318.144(1) (The board may acquire, construct, reconstruct, improve,
14 extend or better a works, system or facilities for the supply,
15 storage and distribution of water for private and public
16 purposes).

17 KGID understands that its express power over "water
18 improvements" encapsulates a duty to provide and maintain a water
19 system and/or water facilities including fire hydrants, although
20 not expressly stated. KGID argues, however, that while it is
21 duty-bound to install and maintain fire hydrants, it has no
22 obligation to ensure fire fighter access to the same.

23 KGID's position is without legal support. KGID has the power
24 to maintain its fire hydrants. NRS 318.175(2). The primary, if
25 not sole purpose of a fire hydrant is to provide a water source
26 for fire fighters for use in suppressing fires, thereby protecting
27 the public health, safety and general welfare. *See, e.g.,* NAC
28 477.1035 defining "fire hydrant" as "a water supply system with a

1 valve connection that has at least one outlet that is used to
2 supply water to a hose or pumper tanker for a fire department."
3 An inaccessible fire hydrant is incapable of use for its intended
4 purpose. If KGID does not clear obstructions from about its fire
5 hydrants, it fails its basic duty of protecting public health,
6 safety and general welfare. Indeed, an inaccessible fire hydrant
7 no more promotes public safety than a non-existent or
8 malfunctioning fire hydrant. This conclusion is consistent with
9 the State Fire Marshal's opinion and the authorities relied upon
10 therein.

11 The Court confirms that KGID has a legal duty to maintain its
12 fire hydrants without exception. Inherent in this duty is KGID's
13 obligation to ensure access to its fire hydrants for use by fire
14 fighting personnel. This obligation includes the removal of
15 obstructions such as, but not limited to, snow, branches, bushes,
16 fencing, boulders, landscaping, locks, etc., from around KGID's
17 fire hydrants.

18 **2. Does KGID have authority to enter private property to remove**
19 **obstacles from around its fire hydrants?**

20 KGID posits that even if it has a duty to clear its fire
21 hydrants of obstruction, KGID has no authority to enter upon
22 private property to do so. Notably, KGID chose to install most,
23 if not all, of its fire hydrants on private property. KGID does
24 not say what legal authority it relied upon when entering private
25 property to install its fire hydrants. Likewise, KGID accepts
26 responsibility for maintaining its fire hydrants and goes on
27 private property to conduct hydrant inspections but does not cite
28 the source of its legal authority.

1 The Court will not guess at the legal authorities relied upon
2 by KGID. It is incomprehensible, however, for KGID to argue it
3 has authority to enter private property to install and maintain
4 fire hydrants but it is without authority to enter private
5 property to clear fire hydrants from obstruction. The Court has
6 already held that KGID's duty to maintain fire hydrants includes
7 an obligation to remove obstructions. Thus, if KGID is correct in
8 its assertion that it has authority to install and maintain fire
9 hydrants on private property, then it must also have authority to
10 clear obstructions.

11 If KGID does not already have authority to enter private
12 property to remove obstructions from around its fire hydrants, as
13 KGID now claims, KGID may not shirk its fire hydrant maintenance
14 duties by refusing to obtain authorization to enter private
15 property. KGID "shall have and exercise all rights and powers
16 necessary or incidental to or implied from the specific powers
17 granted..." NRS 318.210 (emphasis added). The law supplies KGID
18 with multiple avenues for carrying out its fire hydrant duties,
19 ranging from consent to condemnation. See, e.g., NRS 318.160
20 ("[T]he board shall have the power to acquire, dispose of and
21 encumber real and personal property, and any interest therein,
22 including leases, easements, and revenues derived from the
23 operation thereof. The constitutional and inherent powers of the
24 legislature are hereby delegated to the board for the acquisition,
25 disposal and encumbrance of property"); NRS 318.170(1) ("The board
26 may, in connection with a district with basic powers relating
27 to...water facilities...(d) Make and enforce all necessary regulations
28 for...the proper use of water within the district"); NRS 318.190

1 ("The board shall have and may exercise the power of eminent
2 domain and dominant eminent domain in the manner proved by law for
3 the condemnation by a city of private property for public use to
4 take any property necessary to the exercise of the powers granted,
5 both within and without the district"); NRS 318.197(1) ("The board
6 may fix...rates, tolls or charges other than special assessments...for
7 services or facilities furnished by the district..."); NRS 318.205
8 ("The board shall have the power to adopt and amend bylaws, not in
9 conflict with the Constitution and laws of the State (2)
10 Regulating the use ore right of use of any project or
11 improvement"); NRS 318.101(1) ("As an alternative procedure
12 for...improving...any public improvement, and for defraying all cost
13 thereof...the district, acting by and through the board, is vested
14 with the powers granted to municipalities by chapters 271..."); NRS
15 360.830 (re: interlocal agreements).

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1 The Court confirms that not only does KGID have a duty to
2 clear the area around its fire hydrants of obstructions but is
3 also obligated to take measures to fulfill its duty. As for the
4 latter, it is not for the Court to decide amongst options
5 available or otherwise exercise KGID's discretion, particularly
6 given KGID's insistence that it does not have or seek to have
7 authorization to enter private property and remove obstructions.
8 TDFPD and the State Fire Marshal ask the Court to imply easements
9 but have left the Court without sufficient evidence to decide that
10 issue.

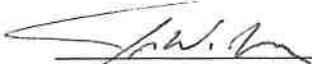
11 IT IS SO ORDERED.

12 DATED this 6th day of January, 2025.

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THOMAS W. GREGORY
DISTRICT JUDGE

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