

2016

## **Enervest, Ltd., Appellant, v. Utah State Engineer, and Michael Carlson, Appellees**

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc2](https://digitalcommons.law.byu.edu/byu_sc2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

---

### **Recommended Citation**

Legal Brief, *Enervest v. Carlson*, No. 20160394 (Utah Supreme Court, 2016).  
[https://digitalcommons.law.byu.edu/byu\\_sc2/3333](https://digitalcommons.law.byu.edu/byu_sc2/3333)

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (2000– ) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

---

**IN THE UTAH SUPREME COURT**

---

IN THE MATTER OF THE GENERAL  
DETERMINATION OF ALL THE  
RIGHTS, BOTH SURFACE AND  
UNDERGROUND, WITHIN THE  
DRAINAGE AREA OF THE UINTAH  
BASIN

**NINE MILE CREEK DIVISION  
AREA 90, CODE 47**

---

ENERVEST, LTD

Appellants,

v.

UTAH STATE ENGINEER and  
MICHAEL CARLSON

Appellees.

PUBLIC

**REPLACEMENT BRIEF OF  
APPELLEE MICHAEL CARLSON**

Appellate No. 20160394-CA

Dist. Ct. No. 560800056

**ORAL ARGUMENT REQUESTED**

---

**APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT,  
IN AND FOR DUCHESNE COUNTY, STATE OF UTAH  
HONORABLE JUDGE SAMUEL P. CHIARA, DISTRICT COURT JUDGE**

---

John H. Mabey, Jr. (4725)  
David C. Wright (5566)  
Jonathan R. Schutz (13352)  
**MABEY WRIGHT & JAMES**  
175 South Main, #1330  
Salt Lake City, Utah 84111  
Telephone: (801) 359-3663  
[jmabey@mwjlaw.com](mailto:jmabey@mwjlaw.com)  
[dwright@mwjlaw.com](mailto:dwright@mwjlaw.com)  
[jschutz@mwjlaw.com](mailto:jschutz@mwjlaw.com)

*Attorneys for Appellant  
EnerVest, LTD*

Justin P. Matkin (8847)  
Matthew E. Jensen (10693)  
**PARR BROWN GEE &  
LOVELESS**  
101 South 200 East, #700  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7840  
Facsimile: (801) 532-7750  
[jmatkin@parrbrown.com](mailto:jmatkin@parrbrown.com)  
[mjensen@parrborwn.com](mailto:mjensen@parrborwn.com)

*Attorneys for Appellee  
Michael Carlson*

Benjamin J. Jensen (14216)  
Sarah M. Shechter (15357)  
**ASSISTANT ATTORNEYS  
GENERAL**  
Sean D. Reyes (7969)  
**UTAH ATTORNEY GENERAL**  
1594 W. North Temple, #300  
Salt Lake City, Utah 84116  
Telephone: (801) 538-7227  
[bjensen@utah.gov](mailto:bjensen@utah.gov)

*Attorneys for Appellee  
Utah State Engineer*

## LIST OF PARTIES

### Parties in *EnerVest v. Utah State Engineer et al.* (Section 24 petition filed Feb 28, 2012)

1. EnerVest, LTD, successor in interest to Bill Barrett Corporation – Appellant (“**EnerVest**”)
2. Michael Carlson – Appellee (“**Carlson**”)
3. Utah State Engineer – Appellee (“**State Engineer**”)
4. The Willis A. and Wilma Hammerschmid Trust (participated in the district court, and filed an appeal, but their appeal has been dismissed)
5. Garry and Nancy Motte (participated in the district court, but did not file an appeal)
6. Leroy Mead (did not actively participate in the district court or file an appeal)
7. KFJ Partnership (did not actively participate in the district court or file an appeal)
8. Iriart Properties, LLC (did not actively participate in the district court or file an appeal)
9. Richard Calder (did not actively participate in the district court or file an appeal)

This matter, *EnerVest v. Utah State Engineer* (the “**Section 24 Hearing**”) comes to the Court under [Utah Code Ann. § 73-4-24](#), which allows for an expedited resolution of certain water rights issues within a general water rights adjudication. Thus, the Section 24 Hearing is just a subset of the above-captioned *In the Matter of the General Determination of All Rights, both Surface and Underground, within the Drainage Area of the Uintah Basin* (the “**General Adjudication**”).

The General Adjudication was commenced on March 20, 1956. And in 1964, the State Engineer’s Office issued the Proposed Determination of Water Rights by the State Engineer, Nine Mile Creek Division (Code No. 47) (the “**Proposed Determination**”). The State Engineer served the Proposed Determination on water claimants within the Nine Mile Creek Division. Relevant to this case, four objections to the Proposed Determination were timely filed in 1964: the Louis Motte Objection, the Amber Keel

Objection, the Iriart-Thayn-Dause Objection, and the Sprouse- Hammerschmid Objection (collectively the “**Objections**” with the parties filing the Objections, and their successors, denoted “**Objectors**”). Neither EnerVest, nor its predecessors in interest, filed an objection.

In 2012, under [Utah Code Ann. § 73-4-24](#), EnerVest’s predecessor sought expedited resolution of the water ownership issues raised in the Objections. The district court granted EnerVest’s petition and started the Section 24 Hearing. As claimants to water from Minnie Maud Creek—and therefore parties that would be “directly affected by the [Objections],” [Utah Code Ann. § 73-4-24\(2\)](#)—EnerVest and Carlson were also parties to both the General Adjudication and the Section 24 Hearing. [See Order Granting Stipulation to Proceed with [Utah Code Ann. § 73-4-24](#) Petition for an Expedited Hearing on Objections (“**Section 24 Order**”), R2 000263, ¶ 2.]

**Relevant Parties in the General Adjudication**  
**(Started on March 20, 1956, Objections Filed in 1964, and still ongoing)**

1. State Engineer
2. Minnie Maud Reservoir and Irrigation Company (AKA Minnie Maud Irrigation Company) (“**Minnie Maud**”)
3. Louis Motte – Objector
4. Amber Keel – Objector
5. Bernard Iriart, Albert Thayn, and William C. Dause – Objectors
6. Clyde and Myrtle Mae Sprouse and Willis and Wilma Hammerschmidt – Objectors

The full General Adjudication is not on appeal; only the Section 24 Hearing issue (i.e., the ownership question raised in the Objections) is before this Court. Thus, the full list of parties for the General Adjudication is irrelevant to this case. Nevertheless, that list is available in case number 560800056 in the Eighth District Court.

**Parties in *Davis v. Christensen et al.***  
**(Complaint filed May 3, 1957)**

1. Ernest E. Davis
2. Minnie Maud
3. Thomas A. Christensen and Bud Christensen
4. Louis Motte
5. Amber Keel
6. Bernard Iriat

*Davis v. Christensen* is not before the Court, but is somewhat relevant to decisions that were made in the Section 24 Hearing. This was a private lawsuit brought in 1957 by Plaintiff Ernest Davis against Defendants Tom Christensen, Bud Christensen, Louis Motte, Amber Keel, and Bernard Iriat. Minnie Maud later intervened as co-Plaintiff. The lawsuit sought an order allocated the water rights at issue in this case, and alleged that the water rights were owned by Minnie Maud, that water users could only use as much water as authorized by their number of shares, and that Defendants had been illegally using water beyond their right. After filing answers and motions, the parties did not further pursue this case because of the pending General Adjudication.

## **TABLE OF CONTENTS**

<b>LIST OF PARTIES .....</b>	<b>ii</b>
<b>TABLE OF CONTENTS .....</b>	<b>v</b>
<b>TABLE OF AUTHORITIES.....</b>	<b>vi</b>
<b>STATEMENT OF JURISDICTION .....</b>	<b>1</b>
<b>ISSUES PRESENTED FOR REVIEW .....</b>	<b>1</b>
<b>STATEMENT OF THE CASE .....</b>	<b>2</b>
<b>SUMMARY OF ARGUMENTS .....</b>	<b>14</b>
<b>ARGUMENT .....</b>	<b>16</b>
I.    ENERVEST LACKS STANDING TO APPEAL AND HAS CONCEDED THE FUNDAMENTAL ISSUE OF MINNIE MAUD’S EXISTENCE .....	18
A. EnerVest Lacks Standing to Appeal Where No Objector Has Appealed.....	18
B. EnerVest Has Not Challenged the Legal Existence of Minnie Maud .....	23
II.   THE DISTRICT COURT CORRECTLY FOUND WAIVER ON THE UNDISPUTED FACTS.....	26
III.  ENERVEST’S ARGUED INCONSISTENCY WITH THE PROPOSED DETERMINATION WAS NOT RAISED BELOW AND IS AN INAPPROPRIATE EXPANSION OF THE SECTION 24 HEARING .....	30
A. Failure to Preserve this Argument Below .....	30
B. Inappropriate Attempt to Expand the Scope of the Section 24 Hearing.....	31
IV.  ALTERNATIVE GROUNDS EXIST TO AFFIRM THE DISTRICT COURT’S RULING. ....	33
A. The Doctrine of Laches Bars EnerVest from Challenging Minnie Maud’s Authority to Receive and Own the Water Rights .....	34
B. Estoppel Precludes EnerVest from Challenging Minnie Maud’s Authority to Receive and Own the Water Rights .....	36
<b>CONCLUSION .....</b>	<b>39</b>

## TABLE OF AUTHORITIES

### Cases

<i>U.S. Fuel Co. v. Huntington-Cleveland Irrigation Co.</i> , 2003 UT 49, 79 P.3d 945 .....	21, 22, 33
<i>Allen v. Friel</i> , 2008 UT 56, 194 P.3d 903 .....	24, 25
<i>Am. Towers Ass’n Inc. v. CCI Mechanical Inc.</i> , 930 P.2d 1182 (Utah 1996) .....	24
<i>Am. Vending Servs., Inc. v. Morse</i> , 881 P.2d 917 (Utah Ct. App. 1994) .....	38, 40
<i>Bailey v. Bayles</i> , 2002 UT 58, 52 P.3d 1158 .....	1, 2, 3, 4, 35
<i>Bank of America v. Adamson</i> , 2017 UT 2 .....	25
<i>Bowman v. Wathen</i> , 42 U.S. 189 (1843) .....	36
<i>Cabaness v. Thomas</i> , 2010 UT 23, 232 P.3d 486 .....	30
<i>Donjuan v. McDermott</i> , 2011 UT 72, 266 P.3d 839 .....	32
<i>Fower v. Provo Bench Canal &amp; Irr. Co.</i> , 99 Utah 267, 101 P.2d 375 (1940) .....	27
<i>Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne</i> , 2012 UT 66, 289 P.3d 502 .....	35
<i>Glenn v. Reese</i> , 2009 UT 80, 225 P.3d 185 .....	27
<i>Green River Canal Co. v. Thayn</i> , 2003 UT 50, 84 P.3d 1134 .....	21
<i>Gregory v. Shurtleff</i> , 2013 UT 18, 299 P.3d 1098 .....	23, 24, 28
<i>Harding v. Indus. Comm’n of Utah</i> , 83 Utah 376, 28 P.2d 182 (1934) .....	38
<i>Harvey v. Cedar Hills City</i> , 2010 UT 12, 127 P.3d 256 .....	1
<i>Heslop v. Bear River Mut. Ins. Co.</i> , 2017 UT 5, ____ P.3d ____ .....	30
<i>In re Gen. Determination of Rights to Use All of Water, Both Surface &amp; Underground, Within Drainage Area of Utah Lake &amp; Jordan River in Utah, Salt Lake, Davis, Summit, Wasatch, Sanpete, &amp; Juab</i> , 2004 UT 67, 98 P.3d 1 .....	22, 24

<i>In re Gen. Determination of Rights to Use of All Water, Both Surface &amp; Underground, Within Drainage Area of Utah Lake &amp; Jordan River in Utah, Salt Lake, Davis, Summit, Wasatch, Sanpete &amp; Juab Ctys. in Utah,</i> <a href="#">1999 UT 39, 982 P.2d 65</a> .....	19
<i>In re Gen. Determination of Rights to Use of Water of Price and Green Rivers,</i> <a href="#">2008 UT 25, 182 P.3d 362</a> .....	19
<i>In re RBFS,</i> <a href="#">2012 UT App 132, 278 P.3d 143</a> .....	38
<i>Insight Assets, Inc. v. Farias,</i> <a href="#">2013 UT 47</a> .....	36, 37
<i>JENCO LC v. Perkins Coie LLP,</i> <a href="#">2016 UT App 140</a> .....	30
<i>Kranendonk v. Gregory &amp; Swapp, PLLC,</i> <a href="#">2014 UT App 36, 320 P.3d 689</a> .....	30
<i>Marsh v. Mathias,</i> <a href="#">56 P. 1074 (Utah 1899)</a> .....	40
<i>Meadow Valley Contractors, Inc. v. State Dep’t of Transp.,</i> <a href="#">2011 UT 35, 266 P.3d 671</a> .....	28
<i>Minnie Maud Res. &amp; Irr. Co. v. Grames,</i> <a href="#">81 P. 893 (Utah 1905)</a> .....	6, 8, 9, 29, 30, 39
<i>Nilson-Newey &amp; Co. v. Utah Resources Intern.,</i> <a href="#">905 P.2d 312 (Utah Ct. App. 1995)</a> .....	35
<i>Ockey v. Lehmer,</i> <a href="#">2008 UT 37, 189 P.3d 51</a> .....	25, 26, 27
<i>Rukavina v. Triatlantic Ventures, Inc.,</i> <a href="#">931 P.2d 122 (Utah 1997)</a> .....	24
<i>Rupp v. Moffo,</i> <a href="#">2015 UT 71, 358 P.3d 1060</a> .....	20
<i>Sharp v. Riekhof,</i> <a href="#">747 P.2d 1044 (Utah 1987)</a> .....	25
<i>Smith v. DenRoss Contracting, U.S., Inc.,</i> <a href="#">737 S.E.2d 392 (N.C. App. 2012)</a> .....	38
<i>Smith v. District Court,</i> <a href="#">256 P. 539 (Utah 1927)</a> .....	33
<i>State v. Brown,</i> <a href="#">2014 UT 48, 342 P.3d 239</a> .....	20, 21
<i>Tanner v. Provo Reservoir Co.,</i> <a href="#">289 P. 151 (Utah 1930)</a> .....	38
<i>Utah Chapter of Sierra Club v. Utah Air Quality Bd.,</i> <a href="#">2006 UT 74, 148 P.3d 960</a> .....	23
<i>Washington Cty. Water Cons. Dist. v. Morgan,</i> <a href="#">2003 UT 58, 82 P.3d 1125</a> .....	20



<i>Youngblood v. Auto-Owners Ins. Co.</i> , 2007 UT 28, 158 P.3d 1088 .....	38
--	----

## **Statutes**

Utah Code Ann. § 73-4-1 .....	18
Utah Code Ann. § 73-4-11(2) (2016) .....	9, 18, 21, 34
Utah Code Ann. § 73-4-11 (1953) .....	9
Utah Code Ann. § 73-4-12 (2016) .....	19
Utah Code Ann. § 73-4-24 .....	2, 3, 9, 10-11, 19-20, 22
Utah Code Ann. § 73-1-1 to 73-30-202 .....	11
Utah Code Ann. § 78A-3-102(3)(j) (2016) .....	1

## **Rules**

Utah R. App. P. 24(f)(1) .....	1
Utah R. App. P. 27(b) .....	1
Utah R. Civ. P. 54(b) (2016) .....	1
Utah R. Civ. Proc. 26, 33, and 56 .....	17

## **STATEMENT OF JURISDICTION**

This is an appeal from a summary judgment ruling, [Ruling on the Parties' Cross-Motions for Summary Judgment, R2 001661–78 (the “**Ruling**”)] that was certified by the district court as final and appealable under [Utah R. Civ. P. 54\(b\) \(2016\)](#). [Final Order and Judgment, R2 001897-88 (Apr. 14, 2016).]<sup>1</sup> This appeal was initially poured over to the Utah Court of Appeals, but was later recalled. The Utah Supreme Court has jurisdiction over this matter pursuant to [Utah Code Ann. § 78A-3-102\(3\)\(j\) \(2016\)](#).

## **ISSUES PRESENTED FOR REVIEW**

- 1. Whether the district court correctly entered summary judgment confirming the Proposed Determination's listing of Minnie Maud as the owner of the water rights at issue, where Minnie Maud was legally formed in 1902, where the predecessors of each party to the Section 24 Hearing expressly conveyed by deed their water rights to Minnie Maud, and where EnerVest failed to present any evidence that any original shareholders disputed Minnie Maud's existence.**

A district court's grant of summary judgment is reviewed for correctness. *See Harvey v. Cedar Hills City*, 2010 UT 12, ¶ 10, 127 P.3d 256 (citation omitted). This issue was raised below. [R2 001000-12, 001419-44, 001539-70.]

- 2. Whether the Court should affirm the district court's ruling on the alternative grounds of laches or estoppel.**

Laches and estoppel were raised below. [R2 001009-11, 001441-43, 001565-68.] This Court may affirm a grant of summary judgment upon any ground apparent in the record. *See Bailey v. Bayles*, 2002 UT 58, ¶ 10, 52 P.3d 1158.

---

<sup>1</sup> EnerVest's record on appeal is split across two CDs, each separately paginated. Disc 1 contains pages 000001 through 004532. Disc 2 contains pages 000001 through 002244. When citing to the Record, Carlson will refer to Disc 1 as “R1” and Disc 2 as “R2.”

3. Whether the Court should affirm the district court's ruling on the alternative grounds that: (a) EnerVest lacks appellate standing where no Objector has appealed rejection of the Objections; or (b) EnerVest has conceded on appeal that Minnie Maud was a *de jure* corporation and the undisputed facts establish that the original shareholders ratified any alleged *ultra vires* acceptance of title to the water rights.

These issues were not decided by the trial court. EnerVest's standing before the district court is not disputed, and the issue of its appellate standing arose only on the Objectors' failing to appeal. Similarly, although EnerVest argued against Minnie Maud's *de jure* status in the district court, EnerVest concedes that status on appeal. [R2 000891-92.] This Court may affirm a grant of summary judgment upon any ground apparent in the record, *Bailey*, 2002 UT 58, ¶ 10, and standing may be raised at any time, *Brown v. Div. of Water Rights*, 2010 UT 14, ¶¶ 12–13, 228 P.3d 747.

### **STATEMENT OF THE CASE**

In the 1960s, the State Engineer's office analyzed the water rights on Minnie Maud Creek<sup>2</sup> and issued the Proposed Determination recommending to the district court that the Minnie Maud be decreed as owner of water right numbers 90-24, -184 through -191 (inclusive), -196, -197, and -299 (the “**Water Rights**”)<sup>3</sup>. A few local individuals filed Objections to this conclusion, claiming that Minnie Maud's shareholders—not their irrigation company—should be decreed as individual owners of the Water Rights. EnerVest (who is now the sole remaining champion of the Objections on appeal), asserts

---

<sup>2</sup> Minnie Maud Creek is a tributary of the Green River located in Nine Mile Canyon in Carbon and Duchesne Counties about twenty miles northeast of Price, Utah.

<sup>3</sup> EnerVest claims ownership over water right numbers 90-24 and 90-196 only, [see *Petition for Section 24 Hr'g*, R1 004086, 004195, 004102], with the other Water Rights split among other users of water from Minnie Maud Creek.

that a recorded deed conveying the Water Rights to Minnie Maud was void based on an unsatisfied condition precedent in the Articles and Agreement of Incorporation of the Minnie Maud Reservoir and Irrigation Company (the “**Articles**”). In contrast, Carlson, who succeeded to roughly 60% of Minnie Maud’s shares [R1 004146], argued in favor of the Proposed Determination. The district court concluded on summary judgment that the Proposed Determination correctly determined that Minnie Maud held title to the Water Rights.

Although the following recitation of the facts underlying the Proposed Determination and the Ruling is somewhat complex, it provides necessary context for the fairly straightforward legal analysis that follows.

### **Incorporation of Minnie Maud in 1902**

In April 1902, the Water Rights were owned by individuals owning land along Minnie Maud Creek.<sup>4</sup> These water users, like so many around the State, were “desirous of associating themselves together for the purpose of constructing, purchasing and owning water reservoirs, ditches, and canals.” [Articles, R2 000802–07.] Accordingly, the water users (the incorporators or original shareholders are collectively referred to as “**Incorporators**”) organized Minnie Maud. [*Id.*]

The Articles summarized the intent of the Incorporators, saying “it is intended that [Minnie Maud] shall succeed to the property rights of [the Incorporators] in the waters and ditches and canals of Minnie Maud Creek.” [R2 000803.] The Articles also

---

<sup>4</sup> A timeline was presented to the district court at the summary judgment hearing and is part of the supplemental record on appeal. For the Court’s convenience, a copy is attached as [Addendum A](#).

provided that Minnie Maud “does hereby purchase, take, receive, and hold all of the water rights now held and claimed by the several incorporators . . . together with all canals, dams, locks, gates and weirs used therewith . . . now owned and claimed by the individual incorporators hereto.” [R2 000805.] In exchange for these contributions, the Articles provided that 2,377 shares were issued to the Incorporators. As listed in the Articles, the Incorporators and their respective interests were as follows:

<b>Incorporator</b>	<b>Number of Shares</b>
David Russell	227
Bracken Lee-per E.C. Lee	1202
Johnston & Son	256
A.O. Smith	143
T.F. Housekeeper	260
J.A. Hamilton	68
E. Anderson	39
Alonzo Kelger	182
<b>Total</b>	<b>2377</b>

[R2 000802.] The Articles also include the following provision: “[t]his corporation shall not be effective for any of the purposes mentioned herein until at least 3,000 shares of the unpaid portion of the capital stock shall have been subscribed.” [R2 000806.] Notwithstanding that provision, the Incorporators filed for and received a certificate of incorporation for Minnie Maud (the “**Certificate**”). [R2 001449, attached hereto as [Addendum B](#).] The Articles and the Certificate were filed with the Carbon County Clerk and the Utah Secretary of State. [*Id.*]

As noted by the district court, “‘Right after the company was organized, all the water users on Minnie Maud Creek went to work with hand tools, teams and scrapers to build the reservoir up Minnie Maud Canyon . . . .’” [Ruling, at R2 001664 (quoting the

Anderson Aff., R2 00843-44, attached hereto as [Addendum C](#)).] Then, about six weeks after Minnie Maud was incorporated, each of the Incorporators (and other affiliated parties) executed a formal deed (the “**Deed**”) that conveyed “unto [Minnie Maud] and its assigns forever,” “all their and each of their rights and claims of every kind and nature whatsoever in and to the waters of Minnie Maud Creek . . . .” [R2 001447, attached hereto as [Addendum D](#).]

Over a series of decades, the Incorporators or their successors-in-interest took many actions that treated Minnie Maud as a valid corporation that owned the Water Rights. Soon after formation, the Incorporators appointed a board of directors, which held meetings, appointed a water master, and levied assessments. [Minutes, R2 000909-913, 001454-58 (indicating the board appointed J.C. Johnston, one of the Incorporators, and EnerVest’s likely predecessor in interest, as water master for \$100 per year), attached hereto as [Addendum E](#).]<sup>5</sup> The Incorporators constructed, maintained, and used water delivery structures, including a reservoir in which they stored the water from Minnie Maud Creek, which remained in service until it washed out around 1911 or 1913. [[Addendum D](#), R2 000843-44, 000988, 001664.] From 1903 to 1905, Minnie Maud, seeking to protect the interests of its shareholders in the Water Rights, initiated a lawsuit against a nearby water user (Martha Grames) “to determine and quiet its right to the

---

<sup>5</sup> The record contains conflicting testimony about whether a water master was ever appointed. [*Compare Anderson Aff.*, [Addendum D](#), at R2 000843-44 (claiming no knowledge of a water master) *with Minutes*, [Addendum E](#), at R2 000909 (appointing a water master).] But even assuming no water master, the undisputed facts establish that the Incorporators treated Minnie Maud as a valid entity that owned the Water Rights.

waters of Minnie Maud creek, . . .and to enjoin [Martha Grames] from interfering with, or from diverting or using, or asserting any rights to the use of [water from Minnie Maud Creek].” *Minnie Maud Res. & Irr. Co. v. Grames*, 81 P. 893, 893 (Utah 1905); [R2 001043-47.]<sup>6</sup> And between 1902 and 1955, the Incorporators and their successor shareholders held and took record of corporate meetings. [Addendum E, R2 000909-913, 001454-58, 001664.]

### **The *Davis v. Christensen* Lawsuit in 1957**

In 1957—more than five decades after Minnie Maud was incorporated and after all the Incorporators had passed away or otherwise conveyed their land and shares of stock—a dispute arose between Ernest E. Davis, then-president of Minnie Maud, and some of Minnie Maud’s then-shareholders. Mr. Davis filed a private lawsuit, *Davis v. Christensen*, asserting that the other water users were using more than their proportionate share of the Water Rights. [See R1 004118-23.] The Complaint listed the share ownership at that time, which is consistent with the Incorporators’ original shares:

<b>New Shareholder</b>	<b>Predecessor(s)</b>	<b>Number of Shares</b>
Ernest E. Davis, Jr.	Russell (227) & Lee (1202)	1429
Thomas Christensen	Johnston (256) & Smith (143) ÷ 2	199½
Bud Christensen	Johnston (256) & Smith (143) ÷ 2	199½
T.F. Housekeeper	T.F. Housekeeper	260
Louis Motte	Hamilton	68
Bernard Iriat	Anderson	39
Amber Keel	Kelger	182
<b>Total</b>		<b>2377</b>

---

<sup>6</sup> The *Grames* court confirmed Ms. Grames’ ownership of the right to use water from Minnie Maud Creek, but it also confirmed that Minnie Maud owned the remainder of the rights. [See R2 1304-05]; see also *Minnie Maud Res.*, 81 P. at 894. No party or witness questioned Minnie Maud’s existence. See *id.*

[See R1 004118.] The *Davis* defendants answered the complaint and argued that “by reason of the fact that 3,000 shares of stock have never been subscribed [by Minnie Maud], neither these defendants nor their predecessors have ever recognized the validity of [Minnie Maud] or its right to exercise any corporate powers.” [See R2 000355-62, 000364-70, 001317-22.] These filings are the first instance in the record of anyone claiming that the organization and operation of Minnie Maud was somehow invalid.

The 1957 *Davis* case did not proceed to trial because, as noted in the next section, a parallel litigation—the General Adjudication—arose at about the same time and was ultimately better equipped to address ownership and proper use of the Water Rights.<sup>7</sup>

### **Commencement of the General Adjudication**

The General Adjudication traces its origin to July 31, 1950, when a group of water users (unrelated to the facts of this case), filed a petition with the State Engineer to resolve water rights associated with an unrelated body of water. [R1 000013.] The State Engineer decided that to properly administer those water rights, it needed to consider all water rights in the full Green River and Uintah basin—which included Minnie Maud Creek. [See R1 000013-15.] The district court agreed, and on March 20, 1956, authorized the General Adjudication. [R1 000022-24.]<sup>8</sup>

---

<sup>7</sup> The *Davis* case is not before this Court. It is referenced here simply to give context because EnerVest relies on this case to support its arguments on appeal. (See Aplt. Br. at 11-12 & nn.7-9, 38 & n.21.)

<sup>8</sup> General adjudications of water rights are extensive, scientifically intensive, and often last for decades. The history of this particular General Adjudication is complex, including various relocations, renamings, divisions, and renumberings. This history was



The State Engineer sent notices and summonses to all water users in the area and began compiling data and surveys of the land and water, as well as correspondence from the water users. [See R2 001016-17.] Many water users, including Mr. Davis, Minnie Maud, and the Christensens (predecessors to EnerVest), were identified and became parties to the General Adjudication. [Cf. R2 001018-31.] The Water Rights were also identified as some of the many water rights that would be adjudicated. [Cf. *id.*]

On August 1, 1962, apparently pursuant to the General Adjudication, Thomas A. Christensen—an EnerVest predecessor—wrote a letter to the State Engineer acknowledging that Minnie Maud had elected officers and issued stock. [R1 004130, attached hereto as [Addendum F](#).] He identified himself as an officer, and went on to identify himself and his brother (Bud Christensen) as Minnie Maud shareholders. [*Id.*]<sup>9</sup> He also identified Mr. Davis as the President of Minnie Maud. [*Id.*] His list of shareholders was consistent with that recited in Mr. Davis’s 1957 Complaint. [See *id.*]

### **The Proposed Determination and Objections**

In March, 1964, after years of work in the General Adjudication, the State Engineer issued his Proposed Determination of how the district court should rule regarding the ownership and extent of the various water rights. [R2 001018-31.] The Proposed Determination identified Minnie Maud as the owner of the Water Rights. [*Id.*]

---

expertly summarized by the State Engineer in the district court below. [See *MIS of State Engineer’s Mot. to Determine Scope of Sec. 24 Hr’g*, R2 000287-288 n.1.]

<sup>9</sup> The letter stated that “Following is a list of Officers of Minnie Maud Irrigation Co. . . . T.A. Christensen (Director),” and that “Following is a list of Stockholders and the amount owned by each . . . . T.A. Christensen 199 1/2 (shares). . . Bud Christensen 199 1/2 (shares). . . .” [*Id.* (alterations to ditto marks).]

It further expressly rejected any claims by the landowners that they owned the Water Rights in their individual capacity. [*See* R2 001032.]

Pursuant to Utah law—which requires all water claimants to file within 90 days any objections to a proposed determination<sup>10</sup>—the Objectors filed four separate Objections urging that they, as opposed to Minnie Maud, owned some of the Water Rights. [R2 001052-66.] The Objectors included only some of the defendants in the 1957 *Davis* case. Specifically, the Hammerschmids (who succeeded to T.F. Housekeeper’s position), filed an Objection in connection with the Sprouses, an intermediate predecessor. Similarly, Louis Motte, Bernard Iriat, and Amber Keel each filed Objections.

The Christensens’ interests—the interests under which EnerVest now asserts ownership of some of the Water Rights—were not included in any of the Objections. [*See* Section 24 Order, R2 000262-65, attached hereto as [Addendum G](#).] Indeed, EnerVest stipulated and the district court concluded that “EnerVest and Michael Carlson’s predecessors in interest did not file Objections objecting to the Proposed Determination,” but they would nevertheless be permitted to participate in the Section 24 Hearing “because they are claimants to the use of water and have a direct interest in the issues raised in the . . . Objections.” [*Id.* at 00263]; *see also* [Utah Code Ann. § 73-4-24](#).

---

<sup>10</sup> The current statute is [Utah Code Ann. § 73-4-11\(2\) \(2016\)](#), which requires all claimants to file an objection within 90 days of the Proposed Determination. The version in effect at the time the Objectors filed their Objections was essentially the same, including the 90-day requirement. *See* [Utah Code Ann. § 73-4-11 \(1953\)](#).

## Post-Objection Period

After more than sixty years, the General Adjudication is still ongoing.<sup>11</sup> In the meantime, Minnie Maud was eventually involuntarily dissolved by the State in November 1974, but it was never “wound up” as a business. [See R2 001068.] In 2000, Carlson purchased the ranch land previously owned by Mr. Davis along with all associated water rights, which specifically included 1,429 shares in Minnie Maud. [See R2 000956-60.] Similarly, in 2006, EnerVest’s immediate predecessor, the Bill Barrett Corporation (“**Barrett**”), purchased the lands and water interests previously held by the Christensens. The relevant land and water interests of the Objectors likewise changed hands during this period.

## The Section 24 Petition and Scope

In 2012, Barrett sought for an expedited consideration of the Water Rights by filing a petition for review under [Utah Code Ann. § 73-4-24](#). [R1 004085-107.] That section allows district courts to address smaller portions of the General Adjudications and resolve any outstanding objections in an expedited procedure. See [Utah Code Ann. § 73-4-24](#). These mini-cases—or section 24 hearings—help resolve discrete objections and provide clarity to water users, even though the General Adjudication is ongoing and no final, overarching court decree has been entered. Under Section 24, a “*claimant* to the

---

<sup>11</sup> This is a common pattern in general adjudications, because they cover such a large area, involve so many participants, include many water rights, and state and judicial resources are limited. Indeed, at some point in this General Adjudication, the original record was lost, and in 1979, had to be reconstituted from the records of the Attorney General and State Engineer. [See R1 004098.]

use of water”<sup>12</sup> in a General Adjudication “may petition the court to expedite the hearing of a valid, *timely objection* to a report and proposed determination.” *Id.* § 73-4-24(1) (emphasis added).

Based on its status as a water claimant, on February 28, 2012, Barrett filed the Section 24 Petition, asking the district court to expeditiously hear and resolve the Objections. [R1 004086, 004091, 004103.] Barrett argued that Minnie Maud was not the correct owner of the Water Rights because it had failed to meet the 3,000-share provision in the Articles, and therefore the irrigation company never existed and was not authorized to receive ownership of the Water Rights. [R1 004102.] Barrett also asked the district court for declaratory judgment and quiet title in favor of Barrett on the some of the Water Rights, even though those water rights were not covered by the original Objections. (Soon thereafter, EnerVest acquired Barrett for \$375.1 million and took over the litigation.) [See R2 000453, 460-61.]

The State Engineer, however, opposed the scope of EnerVest’s Section 24 Petition. As noted by the State Engineer in the district court below, “Section 24 is a unique and rarely invoked component of the adjudication statute,” and due to the lack of

---

<sup>12</sup> A water “claimant” is not expressly defined by Utah’s water statute. *See generally*, [Utah Code Ann. §§ 73-1-1 to 73-30-202](#). It is, however, impliedly broader than an “objector,” because every water user who is part of a general adjudication is a “claimant,” whereas only those claimants that timely file an objection to a proposed determination are “objectors.” *Compare id.* § 73-4-1(1)(a) (allowing a group of water users to request an investigation “of the rights of all claimants to the water of” a given water source) *and id.* § 73-4-3(2) to (4) (directing the State Engineer to search for and serve summons upon “all possible claimants” of water when initiating a general adjudication), *with id.* § 73-4-11(2) (allowing any “claimant who desires to object to the state engineer’s proposed determination shall, within 90 days . . ., file a written objection”).

much guidance in the case law, the State Engineer filed a motion asking the district court to determine the scope of the Section 24 hearing to assist the parties in framing the issues. [MIS of State Engineer's Mot. to Determine Scope of Sec. 24 Hr'g, R2 000290.] The State Engineer argued that the district court should limit the Section 24 hearing to resolving the Objections that were timely filed in 1964, and not allow EnerVest to expand the process into updating ownership to the present (via quiet title and declaratory judgment). Updating the Water Rights beyond the time the 1964 Objections were filed is outside the bounds of the General Adjudication statutes. [Reply, R2 000427.]

The district court agreed, and ordered that the Section 24 hearing would be limited to “the issues timely raised in the 1964 Objections,” which the district court “generally restated” as “whether the [Proposed Determination] was correct to list [Minnie Maud] as the owner of [the Water Rights].” [R2 000477-79.]

### **Procedural History in the Section 24 Hearing**

The parties that participated in the Section 24 Hearing were the State Engineer, Carlson, EnerVest, and two successors to the original Objectors, the Mottes and the Hammerschmid Trust. The other successors to the Objectors and users of water from Minnie Maud Creek were given notice of the proceeding, but they elected not to actively participate. After conducting extensive discovery, Carlson, EnerVest, and the Hammerschmid Trust brought dueling summary judgment motions to resolve the sole issue before the district court—whether the Proposed Determination correctly listed Minnie Maud as owner of the Water Rights.

EnerVest moved for summary judgment, arguing first that Minnie Maud never existed because it had failed to comply with the laws of incorporation (either as a *de jure* or *de facto* corporation). [R2 000891-93.] It further argued that because Minnie Maud issued only 2,377 shares, it was never authorized to accept delivery of the Deed conveying the Water Rights. [R2 000894-96.] The Hammerschmids also moved for summary judgment, raising similar arguments. [R2 000798.] (Although the Mottes did not move for summary judgment, they raised similar arguments in their briefing responding to Carlson’s summary judgment motion.) [R2 001371.]

Carlson cross-moved for summary judgment, arguing that even though Minnie Maud only issued 2,377 shares, the original Incorporators had waived any requirement that additional shares be issued, and the Objectors, as successors to the Incorporators, were therefore barred from relying on that 3,000-share provision more than 55 years later. [R2 1004-11.]

The district court issued its Ruling resolving all the pending summary judgment motions. [R2 001661-78.] The Ruling identified the undisputed facts. [R2 001661-67.] Based on these undisputed facts, the court concluded that Minnie Maud had been brought into existence as a properly formed “*de jure*” corporation. [R2 001661-67.] The district court reasoned, however, that even though Minnie Maud existed as a corporate entity, it had not been duly authorized to receive property because the 3,000-share threshold had not yet been met. [R2 001670-71.]

The district court nevertheless concluded that the undisputed documents and conduct in the evidence demonstrated as a matter of law that the Incorporators had

waived the 3,000-share provision. [R2 001673-74.] The court based its decision primarily on the Deed [[Addendum D](#), R2 001447], noting that this was enough to establish that the Incorporators, knowing of the 3,000-share provision, nevertheless chose to ignore it and treat Minnie Maud as if it had the authority to own the Water Rights. [R2 001674 (“The Court finds that the shareholders’ act of executing and delivering a deed of the Water Rights to Minnie Maud demonstrates the shareholders’ clear intention of waiving performance of a condition precedent and treating the agreement as in effect.”).]

EnerVest’s appeal seeks only the reversal of the portion of the Ruling granting Carlson’s summary judgment motion. (Aplt. Br. at 15 & 43 (“Summary judgment based on the Deed alone was error and should be reversed.”).) EnerVest has NOT asked this Court to reverse the district court’s denial of its motion. (*See generally id.*)

### **SUMMARY OF ARGUMENTS**

EnerVest seeks to overturn the Ruling on the grounds that the district court did not properly view the facts in the light most favorable to EnerVest, and that the result of the decision is now at odds with the Proposed Determination. These arguments fail, however, because the district court correctly took the undisputed facts and all the inferences reasonably flowing therefrom on the evidentiary record in the light most favorable to EnerVest, and nevertheless concluded as a matter of law that the Proposed Determination correctly identified Minnie Maud as the owner of the Water Rights. Moreover, EnerVest’s assertion that the Ruling creates inconsistency within the Proposed Determination is an unpreserved red herring and an improper expansion of the Section 24 Hearing. This Court should affirm.

**Argument I:** EnerVest lacks standing to pursue this appeal because none of the Objectors appealed, and EnerVest cannot simply adopt the rights of an objector on appeal. Objections to a Proposed Determination are carefully circumscribed by statute, and EnerVest and its predecessors admittedly did not file a timely objection. EnerVest's statutory right to initiate a Section 24 Hearing as a claimant does not also grant it the rights and powers conferred to Objectors. And where no Objector has appealed the Ruling, EnerVest is by this appeal attempting, despite the objection deadline having expired more than fifty years ago, to file its own objection to the Proposed Determination. Furthermore, even if EnerVest has standing to bring this appeal, it has conceded that Minnie Maud existed as a corporation. Therefore, Minnie Maud's claimed nonexistence—the only basis on which EnerVest argues the invalidity of the deed—cannot be sustained. The deed to Minnie Maud was not void. Minnie Maud's acceptance of title was, at most, an *ultra vires* act that was ratified by the Incorporators.

**Argument II:** Even setting aside EnerVest's lack of standing and its concessions, the district court correctly found the Incorporators waived the 3,000-share provision of the Articles. The undisputed facts, even when viewed in the light most favorable to EnerVest, support no other reasonable conclusion. After filing the Articles and obtaining a certificate of incorporation, the Incorporators constructed a reservoir as contemplated by the Articles, they signed a Deed expressly conveying the Water Rights to Minnie Maud, they prosecuted a lawsuit and appeal in the name of Minnie Maud as owner of the Water Rights, and they participated in corporate governance and formalities. Indeed, neither EnerVest nor any other party has pointed to any admissible evidence that the



Incorporators ever challenged Minnie Maud's existence or ownership of the Water Rights. To the contrary, EnerVest's own predecessor affirmatively represented to the State that Minnie Maud existed and had officers and shareholders. As such, the district court correctly ascertained the undisputed facts in the record and any reasonable inferences therefrom, and did not err in refusing the speculations or unsupportable inferences proposed by EnerVest.

**Argument III:** EnerVest's argument that the summary judgment ruling is inconsistent with the Proposed Determination should be rejected because EnerVest failed to preserve this argument below. And even if it had preserved the issue, EnerVest's argument misappraises the result of Minnie Maud's ownership. Although many water right owners also own the land on which the water is authorized for use, there are plenty of examples in which ownership of the water right is separate and distinct from ownership of the land.

**Argument IV:** The district court's grant of summary judgment can also be affirmed on two additional bases that the district court did not reach. Because EnerVest's predecessors did not dispute Minnie Maud's existence or ownership of the Water Rights from 1902 to 1957, and Carlson and his predecessors relied on Minnie Maud's existence and their associated stock ownership to buy and sell their property, the doctrines of laches and estoppel bar EnerVest from now claiming that Minnie Maud never existed.

### **ARGUMENT**

The Proposed Determination correctly identified Minnie Maud as the owner of the Water Rights because the undisputed evidence presented to the district court uniformly

and unequivocally demonstrates that the original Incorporators: (1) treated Minnie Maud as a valid and existing corporation; (2) employed that corporate form in protecting their collective water interests from third-party threats; and (3) actually executed a Deed conveying the Water Rights to Minnie Maud. Indeed, neither EnerVest nor the other parties in the district court presented any evidence that the original Incorporators—as opposed to their successors more than 50 years later—ever challenged Minnie Maud’s existence based on its issuance of only 2,377 shares.<sup>13</sup>

Accordingly, the Court should affirm the Ruling because, as further discussed below: (I) EnerVest either lacks standing to appeal or has conceded the dispositive issue on appeal; (II) the Ruling correctly determined that the Incorporators waived any requirement that additional shares be issued such that Minnie Maud received title to the Water Rights; (III) EnerVest’s assertion that the district court’s ruling is inconsistent with the Proposed Determination is an improper attempt to expand the scope of the Section 24 Hearing and was never raised below; and (IV) the equitable doctrines of laches and estoppel bar any challenge to Minnie Maud’s existence.

---

<sup>13</sup> Because discovery is complete on the issue of ownership [*see* R2 000465], and because EnerVest and the other parties were obliged to provide any such evidence both in discovery and to establish any factual dispute on summary judgment, *see* [Utah R. Civ. Proc. 26, 33, and 56](#), the Court may properly conclude that there is no admissible evidence that the original Incorporators ever disputed Minnie Maud’s existence.

## **I. ENERVEST LACKS STANDING TO APPEAL AND HAS CONCEDED THE FUNDAMENTAL ISSUE OF MINNIE MAUD’S EXISTENCE**

EnerVest raises multiple arguments on appeal, but this Court need not reach those arguments because, as further discussed below, EnerVest lacks standing to pursue this appeal and has conceded the dispositive issue of Minnie Maud’s corporate existence.

### **A. EnerVest Lacks Standing to Appeal Where No Objector Has Appealed**

Although there was no question that EnerVest had standing to initiate the Section 24 Hearing with the purpose of resolving the Objections in the district court, EnerVest’s standing was limited to its rights as a water “claimant.” If the Objectors had withdrawn their Objections in the district court, EnerVest would be wholly powerless to argue the Objections’ efficacy. Likewise, because no Objector is appealing the district court’s rejection of their Objections, EnerVest no longer has any Objection to support.

The State legislature created the water rights adjudication statutes nearly a century ago. In 1919, the legislature passed the first modern version of the framework governing water rights. *See* Laws 1919, pp. 177-203, §§ 1-80. That framework remains mostly unchanged: generally speaking, after the court initiates a general adjudication of water rights, the State Engineer is tasked with surveying the area, locating all possible water claimants, and submitting a proposed determination of water rights to the court. *Compare id. with* [Utah Code Ann. § 73-4-1](#) to -24. Water claimants then have ninety days to file an objection. [Utah Code Ann. § 73-4-11\(2\)](#). The general adjudication,

however, is not concluded until all objections are resolved.<sup>14</sup> This means that general adjudications, which can have hundreds of objections, often take decades before a final decree can be issued. *See, e.g., In re Gen. Determination of Rights to Use of Water of Price and Green Rivers*, 2008 UT 25, 182 P.3d 362 (ongoing since 1956); *In re Gen. Determination of Rights to Use of All Water, Both Surface & Underground, Within Drainage Area of Utah Lake & Jordan River in Utah, Salt Lake, Davis, Summit, Wasatch, Sanpete & Juab Ctys. in Utah*, 1999 UT 39, 982 P.2d 65 (ongoing since 1944).

Recognizing that general adjudications sometimes span decades, any water “claimant” in a general adjudication has the right to petition the court to take smaller portions of general adjudications and resolve any outstanding objections in an expedited procedure. *See Utah Code Ann. § 73-4-24*. These section 24 hearings help resolve discrete objections and provide clarity to water users, even though the General Adjudication is ongoing and no final, overarching court decree has been entered. Under section 24, a “claimant to the use of water” need not have been an objector to initiate an expedited hearing; it only need show it “has a direct interest” in the resolution of the objection. *Id.* § 73-4-24(1).

---

<sup>14</sup> This rule is clear and has been since the beginning: “[i]f no contest on the part of any claimant shall have been filed, the court *shall* render judgment in accordance with such proposed determination . . . .” Laws 1919, c. 67, §§ 32-33 (emphasis added) (*codified in* R.S. 1933, § 100-4-11 & -12.) That requirement remains unchanged to this day. *Utah Code Ann. § 73-4-12 (2016)*. Thus, as soon as there is no timely objection before the court, “the court shall render judgment” in favor of the proposed determination. *Id.*

The statute does not expressly define a claimant’s standing during a Section 24 Hearing in the district court, and it does not expressly indicate whether a non-objecting claimant can seek an appeal. But an examination of the adjudication statute as a whole together with general legal principles circumscribes standing at both stages.<sup>15</sup> Moreover, EnerVest’s standing on appeal is not dependent on “injury, nexus, or redressability, but party status. Thus, to be legally eligible—or in this sense to have *standing*—to participate in certain proceedings, a person or entity must also qualify as a proper party.” [State v. Brown](#), 2014 UT 48, ¶ 15 n.2, 342 P.3d 239, 242 n.2 (emphasis in original).

Section 24 hearings are not a second bite at the apple. They are merely an expedited hearing of all objections that were timely filed. Thus, although claimants have a right to spur action on the timely objections, [Utah Code Ann. § 73-4-24\(1\)](#), they themselves lack standing to bring new objections or to inject new issues, *see id.* [§ 73-4-11\(2\)](#). Their standing is limited to the initiation of the hearing in the district court, and only piggybacks on the objectors that timely filed their objections to the proposed determination within “90 days.” *Id.* [§ 73-4-11\(2\)](#).

Claimants are not the same as objectors under the statute. Objectors are water claimants who have met the statutory requirement to file their objections to proposed

---

<sup>15</sup> This Court has used a similar approach when evaluating a related statute, the Water Conservancy Act, 17a-2-1401 to -1454 (repealed May 6, 2002). *See* [Washington Cty. Water Cons. Dist. v. Morgan](#), 2003 UT 58, ¶¶ 7-10, 82 P.3d 1125, 1128. In *Washington County*, this Court noted that although conservancy districts were directed to serve the public’s interest in the administration of water, the structure of the statute in question did not give rise to an implied statutory standing to seek forfeiture of private water rights. *Id.*; *see also* [Rupp v. Moffo](#), 2015 UT 71, ¶ 9, 358 P.3d 1060, 1062 (concluding a creditor had “statutory standing” under United States Bankruptcy Code, in part, because of the structure and language in the code).

determination within “90 days.” [Utah Code Ann. § 73-4-11\(2\)](#). The ninety-day threshold is applied rigorously under the statute, and has been since its inception. For example, in [United States Fuel Co. v. Huntington-Cleveland Irrigation Co.](#), the San Rafael general adjudication was started in 1950. [2003 UT 49, ¶ 3, 79 P.3d 945](#). The State Engineer took thirty years to survey the water rights in the area, and issued the proposed determination on December 1, 1982. *Id.* Claimant United States Fuel (“USF”) filed its objection “ninety-one days later.” *Id.* ¶ 4. The Court recognized that “USF filed an objection one day late,” but it went on to hold that “[i]ts tardiness had consequences. Unless and until USF sought and obtained leave of court in the general adjudication to excuse its tardy objection, [the other water user] was entitled to judgment perfecting the state engineer’s proposed award . . . .” *Id.* ¶ 17. The Court noted “if the claimant makes no objection, he, by his silence, confesses the statements contained in the engineer’s proposed determination of his water rights, and thus a judgment may legally be entered in accordance with the proposed determination of the engineer.” *Id.* ¶ 19 (quotation marks and alterations omitted); *see also* [Green River Canal Co. v. Thayn](#), [2003 UT 50, ¶ 32, 84 P.3d 1134, 1145](#) (noting the water claimant in that case has “long acquiesced” to the proposed determination because it had failed to file a timely objection).

It is undisputed that neither EnerVest nor its “predecessors in interest . . . file[d] Objections objecting to the Proposed Determination.” [[Addendum G](#), R2 000263.] As such, EnerVest’s ability to participate in the Section 24 Hearing was dependent on the

fate of the Objections that were timely filed by the Objectors.<sup>16</sup> EnerVest’s silence in 1964 is deemed as having “confess[ed] the statements contained in the engineer’s proposed determination.” *United States Fuel*, 2003 UT 49, ¶ 19.

None of the Objectors have pursued their Objections on appeal. As such, EnerVest has no ability to ride the Objectors’ coattails to an appeal that no Objector filed. Said differently, EnerVest cannot be the sole appellant challenging a decision confirming the Proposed Determination because EnerVest never filed an objection and is presumed to have agreed with the Proposed Determination. “A claimant who fails to file a timely objection to the proposed determination demonstrates acquiescence to the state engineer’s delineation of water rights.”<sup>17</sup> *In re Gen. Determination of Rights to Use All of Water, Both Surface & Underground, Within Drainage Area of Utah Lake & Jordan River in Utah, Salt Lake, Davis, Summit, Wasatch, Sanpete, & Juab Ctys.*, 2004 UT 67, ¶ 22, 98 P.3d 1, 6. Thus, EnerVest’s appeal fails because it lacks statutory standing.

---

<sup>16</sup> The statutory framework for adjudicating water rights allows any “claimant to the use of water” to ask the district court to “expedite the hearing of a valid, timely objection.” *Utah Code Ann. § 73-4-24(1)*. That section, however, confers the standing to expedite timely filed objections only; it does not confer standing to then prosecute the objections throughout the rest of the potential judicial process, such as appeals. The standing to do so is dependent on the original objector’s, or its successor in interest’s continued prosecution of that objection. In that sense, a non-objecting claimant in a Section 24 Hearing (e.g., EnerVest) acts more like an amicus than a party.

<sup>17</sup> Of course, a water claimant that did not object to a proposed determination may appeal a district court decree different from the proposed determination. In that instance, a non-objector water claimant’s appeal is consistent with its position throughout the adjudication process, and the claimant would merely be championing the determination of its rights as presented in the proposed determination.

## **B. EnerVest Has Not Challenged the Legal Existence of Minnie Maud**

In its Appellate Brief, EnerVest concedes that the Incorporators “complied with the law” in filing the Articles, that the Articles ““contain the statement of facts required by law, and that said corporation is hereby constituted a body corporate.”” (Aplt. Brief at 17–18 (quoting R2 1449).) But EnerVest also uses language that might be read as an assertion that Minnie Maud had a “conditional existence,” and that the Incorporators “failed [their] attempt to incorporate Minnie Maud.” (Aplt. Br. at 2, 13; *see also id.* at 14; *id.* at 22 (“Minnie Maud’s very existence and power to function . . . were expressly conditioned on the Share Requirement.”).)

Nevertheless, at no point in its appeal did EnerVest specifically challenge the district court’s conclusion that Minnie Maud was validly formed as a *de jure* corporation. (*See generally, id.*) Rather, EnerVest admits that “[t]he *form* of the corporation was complete, but its substantive operation, its prospective function, its power, and the obligations of the contracting parties, were not.” (*Id.* at 25 (emphasis in original).) Thus, EnerVest has conceded Minnie Maud’s creation as a *de jure* corporation because “[i]ssues not briefed by an appellant are deemed waived and abandoned.” *Rukavina v. Triatlantic Ventures, Inc.*, 931 P.2d 122, 125 (Utah 1997) (quoting *Am. Towers Ass’n Inc. v. CCI Mechanical Inc.*, 930 P.2d 1182, 1185 n. 5 (Utah 1996)); *see also Allen v. Friel*, 2008 UT 56, ¶ 7, 194 P.3d 903 (“If an appellant fails to allege specific errors of the lower court, the appellate court will not seek out errors in the lower court’s decision.”).

Accordingly, in contrast to EnerVest’s arguments before the district court that Minnie Maud was neither a *de jure* nor *de facto* corporation, EnerVest now seeks to draw



a fine distinction between Minnie Maud’s legal existence and Minnie Maud’s ability to act under the terms of its Articles. But to the extent that such a distinction could even be made, Minnie Maud’s mere corporate existence is dispositive in favor of the Ruling.

Foundational to EnerVest’s case is the principle that “entities that do not exist . . . cannot own anything.” (Aplt. Brief at 22 (citing *Sharp v. Riekhof*, 747 P.2d 1044, 1046 (Utah 1987).) But EnerVest cites no support for the proposition that a deed to a *de jure* corporation is void. Rather, Minnie Maud’s acceptance and recording of the Deed was, at most, an *ultra vires* act that was voidable under Utah law. See *Ockey v. Lehmer*, 2008 UT 37, ¶ 18, 189 P.3d 51 (holding *ultra vires* deed from trustees voidable rather than void). Indeed, the *Ockey* Court held that a deed from trustees of a terminated trust, where the trustees “lacked . . . authority[,]” was merely voidable, not void. *Id.* ¶¶ 17–24. Further, this Court has unequivocally held that a deed is “void *ab initio*” only if it violates public policy. *Id.*; see also *Bank of America v. Adamson*, 2017 UT 2, ¶ 21; \_\_\_ P.3d \_\_\_ (“This court has recognized only one kind of deed as void *ab initio*; i.e., a deed that violates public policy.” (italics in original)). And a voidable Deed is “valid against the world, including the grantor, because only the injured party has standing to ask the court to set it aside.” *Ockey*, 2008 UT 37, ¶ 18.

Applying these principles to the Minnie Maud Deed, EnerVest has not argued, nor could it, that the Deed is void because it somehow violated public policy. Rather, the Incorporators—the only parties that had standing to enforce any requirement that Minnie Maud needed to issue additional shares—were the only parties potentially injured by Minnie Maud issuing only 2,377 shares. And just like the trust beneficiary in *Ockey*, who

“signed a document directing the trustees to” execute the deed and who accepted the benefits from the conveyance, *id.* ¶ 27, the Incorporators actually signed the Deed and accepted the benefits of Minnie Maud ownership. Accordingly, the Incorporators ratified Minnie Maud’s acceptance of the Deed even though accepting title might have otherwise been considered an *ultra vires* act. Alternatively, as discussed in greater detail in Part IV below, the grantors and their successors are at the very least estopped from seeking to set aside the Deed. *Id.* ¶ 22 (“By the great weight of authority it is well recognized that there is a distinction between an illegal or void contract and one merely *ultra vires*, which could become enforceable by ratification or estoppel.” (internal quotation marks and alterations omitted))

EnerVest nevertheless asserts that the Incorporators were merely “start[ing] to comply with the Articles and the Share Requirement” when they executed the Deed. (Aplt. Br. at 14.) This assertion is speculative at best. If EnerVest were correct that the Deed was void, and if the Incorporators are imputed to know and understand what EnerVest alleges to be the law, then the Incorporators’ actions—filing for and obtaining a certificate of incorporation that was also in the public record [Addendum C, R2 001449], knowingly executing a purportedly void Deed to Minnie Maud “and its assigns forever” [Addendum D, R2 001447], recording it in the public record [*id.*], participating in court proceedings extending to the Utah Supreme Court on the basis of the Deed, and leaving those records unmodified and unchallenged for over half a century—would be the height of duplicity. This is not the case. The only reasonable and plausible inference to be

gained from the Deed is that the Incorporators intended for Minnie Maud to exist and to take ownership of the Water Rights, even though only 2,377 shares were issued.

Therefore, given EnerVest's concession on appeal that Minnie Maud was a *de jure* corporation, the Court has more than adequate grounds on the record to affirm the district court's grant of summary judgment on the basis that the Deed was, at most, voidable as an *ultra vires* act, but the Incorporators by their actions and silence ratified Minnie Maud's acceptance of the Deed.

## **II. THE DISTRICT COURT CORRECTLY FOUND WAIVER ON THE UNDISPUTED FACTS**

Even if the Court were to conclude that EnerVest has standing to pursue this appeal and has not conceded the dispositive issue on appeal, affirmance of the Ruling is nevertheless warranted because the district court correctly found the Incorporators had waived the 3,000-share provision of the Articles.

It is well settled that the Articles of Incorporation of a corporation form the basis of a contract, among others, between the corporation and its stockholders.” *Fower v. Provo Bench Canal & Irr. Co.*, 99 Utah 267, 101 P.2d 375, 376 (1940) And, “[p]arties to a written contract have the right to modify, waive, or make new contractual terms . . . even despite the presence of express contractual language to the contrary.” *Glenn v. Reese*, 2009 UT 80, ¶ 23, 225 P.3d 185, 191 (quotations and citation omitted). “Waiver of a contractual right occurs when a party to a contract intentionally acts in a manner inconsistent with its contractual rights, and, as a result, prejudice accrues to the opposing party or parties to the contract.” *Meadow Valley Contractors, Inc. v. State Dep’t of*

*Transp.*, 2011 UT 35, ¶ 45, 266 P.3d 671, 682–83 (quotations omitted).

EnerVest focuses its argument on the summary judgment standard, noting that because the deed conveying the Water Rights to Minnie Maud in 1902 “did not expressly waive anything, the district court had to infer waiver.” (Aplt. Br. at 26.) EnerVest also argues that the district court “overlook[e]d other plausible, conflicting inferences.” (*Id.* at 27.) But EnerVest cannot point to any admissible evidence that the original Incorporators challenged Minnie Maud’s ownership on any basis, including the 3,000-share provision of the Articles. Instead, the Deed shows that the Incorporators had an intent to convey the Water Rights to Minnie Maud, and the Incorporators’ undisputed actions that followed were inconsistent with the 3,000-share provision. Allowing an Incorporator’s successor to now enforce the 3,000-share provision would prejudice parties like Carlson and his predecessors who have relied on the existence of Minnie Maud for over a century.

The Articles state that “it is intended that [Minnie Maud] shall succeed to the property rights of [the Incorporators] in the waters and ditches and canals of Minnie Maud Creek.” [R2 000803.] The Articles also state that Minnie Maud “does hereby purchase, take, receive, and hold all of the water rights now held and claimed by the several incorporators . . . together with all canals, dams, locks, gates and weirs used therewith . . . now owned and claimed by the individual incorporators hereto.” [R2 000805.] These same Incorporators immediately commenced working together to improve and expand the water delivery mechanisms owned by Minnie Maud. [Addendum D, R2 000843-44, 000988, 001664.] And they ultimately built a reservoir, which they operated and maintained until it was washed out in 1911 or 1913.

[Addendum D, R2 000843-44.] During construction of the new reservoir, the Incorporators executed the Deed, which conveyed “all their and each of their rights and claims of every kind . . . in and to the waters of Minnie Maud Creek . . . unto the [Minnie Maud] and its assigns forever.” [Addendum D, R2 001447.] From 1903 to 1905, the Incorporators participated in a lawsuit and appeal to this Court to protect their interests in Minnie Maud Creek, with Minnie Maud as the named plaintiff. *Minnie Maud Res. & Irr. Co. v. Grames*, 81 P. 893, 893 (Utah 1905) [R2 001043-47]. Between 1902 and 1955, the Incorporators and their successor shareholders held and took record of corporate meetings. [Addendum E, R2 000909-913, 001454-58, 001664.] And indeed, one of EnerVest’s own predecessors-in-interest wrote a letter on Aug. 1, 1962 to the State Engineer as part of the General Adjudication and affirmatively represented that he was one of Minnie Maud’s directors, and that he and his brother owned shares in the company. [Addendum F, R1 4130.]

EnerVest lines up those facts and characterizes them as giving rise to an equally plausible inference that “[t]hese are the acts of *incorporating*, not the acts of waiving the terms and conditions of the express agreement to incorporate.” (Aplt. Br. at 27 (emphasis added); see also *id.* at 14 (“Far from waiving the Share Requirement, the only express inference the Deed supports is the intention to *start* to comply with the Articles and the Share Requirement.” (emphasis in original)). EnerVest’s inference, however, is not plausible based on the undisputed facts. “[W]hile an appellant who is challenging a summary judgment entered against it is entitled to all favorable inferences, it is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture.”

*JENCO LC v. Perkins Coie LLP*, 2016 UT App 140, ¶ 15 (quotation marks and alterations omitted). “[U]nsubstantiated conclusions and opinions are inadmissible.” *Cabaness v. Thomas*, 2010 UT 23, ¶ 33, 232 P.3d 486, 498. A plaintiff cannot avoid summary judgment based on doubtful, vague, speculative or inconclusive evidence. *Heslop v. Bear River Mut. Ins. Co.*, 2017 UT 5, ¶ 21, \_\_\_ P.3d \_\_\_; *see also Kranendonk v. Gregory & Swapp, PLLC*, 2014 UT App 36, ¶ 15, 320 P.3d 689 (“A reasonable inference exists when there is at least a foundation in the evidence upon which the ultimate conclusion is based, while in the case of speculation, there is no underlying evidence to support the conclusion.” (quotations omitted)).

Said differently, EnerVest would have this Court agree that it is reasonable and plausible that a group of Incorporators (1) wrote extensive Articles summarizing their intent that Minnie Maud hold the Water Rights, (2) built the reservoir contemplated by the Articles and maintained it for multiple years, (3) executed a formal deed conveying the Water Rights to Minnie Maud “forever,” (4) appointed directors, had shareholder meetings, hired a water master, pursued lawsuits, and generally acted like a going concern for decades, (5) prosecuted a case to the Utah Supreme Court to quiet title to the Water Rights in Minnie Maud, and (6) affirmatively represented to a state agency that Minnie Maud still had directors and shareholders over 50 years later—but that all of these facts could be explained as an intention to *start* the incorporation process, and that the Incorporators did *not* intend for Minnie Maud to *actually* exist and hold the Water Rights until 3,000 shares had been issued. EnerVest’s argument exceeds the bounds of plausibility. Its position would require the Court to ignore at least fifty years (from 1902

to 1957), if not more, that indisputably establish Minnie Maud existed, owned the Water Rights, and was never challenged by the original Incorporators.

The undisputed facts, even when viewed in the light most favorable to EnerVest, support no other reasonable conclusion. EnerVest attempts to inject its own interpretation on the facts, but the evidence is all documentary based on decades-old deeds, affidavits, court documents, corporate minutes, etc. There are no live witnesses. All is long gone to dust. As such, the district court correctly limited its ruling to the undisputed facts in the record and any reasonable inferences therefrom. The competing speculations or unsupportable inferences proposed by EnerVest do not pass muster, and the only reasonable inference to be drawn from these facts is, as concluded by the district court, that the Incorporators intentionally waived the 3,000-share provision.

### **III. ENERVEST’S ARGUED INCONSISTENCY WITH THE PROPOSED DETERMINATION WAS NOT RAISED BELOW AND IS AN INAPPROPRIATE EXPANSION OF THE SECTION 24 HEARING**

EnerVest devotes ten pages in its Appellate Brief to explore its argument that “the district court’s legal conclusion of waiver is inconsistent with the General Determination and the PD.” (Aplt. Br. at 31, 31-42.) This argument, however, was never raised below and is an improper attempt to expand the Section 24 hearing. Regardless, even if this argument were before the Court, it fails to recognize the reality that virtually all water companies own water rights for use on land not owned by the water company.

#### **A. Failure to Preserve this Argument Below**

“To properly preserve an issue for appellate review, the issue must be raised in the district court,” including that it was “*specifically* raised, in a timely manner” and

“supported by evidence and relevant legal authority.” *Donjuan v. McDermott*, 2011 UT 72, ¶ 20, 266 P.3d 839 (emphasis added).

Under the heading “Issue, Standard and Preservation,” EnerVest claims it preserved its arguments in its memorandum in opposition to Carlson’s motion for summary judgment [R2 001398-1400], its reply memorandum in support of its own motion for summary judgment [R2 001620-22], and arguments raised during oral argument [R2 002181, 002202-03]. (*See* Aplt. Br. at 2.) But nowhere in these citations does EnerVest alert the district court that a ruling in favor of Carlson would be inconsistent with the Proposed Determination. Indeed, that argument was never presented to the district court below and should be rejected as unpreserved.

#### **B. Inappropriate Attempt to Expand the Scope of the Section 24 Hearing**

EnerVest’s failure to argue inconsistency with the Proposed Determination below is not surprising because the district court carefully circumscribed the scope of the Section 24 Hearing to focus exclusively on the issue of whether the Proposed Determination “was correct to list [Minnie Maud] as the owner of [the Water Rights].” [R2 000477-79.] In determining what appropriately belongs inside the General Adjudication suit and what should be brought in a separate action, the Utah Supreme Court has clearly stated “the only issues to be tried in a general adjudication are the rights to the use of the water involved . . . . No provision appears to have been made for cross-actions for any further or different relief than the determination of the rights.” *Smith v. District Court*, 256 P. 539 (Utah 1927) (emphasis added). And a Section 24 Hearing, which is just a mini-case within the General Adjudication, cannot be expanded beyond



these limits. See *United States Fuel Co. v. Huntington Irr. Co.*, 79 P.3d 945 (Utah 2003) (discussing the relationship between Objections, Section 24 Hearings, and suits outside the General Adjudication to resolve private claims).

EnerVest argues that Minnie Maud's ownership of the Water Rights is inconsistent with the Proposed Determination because water allocation along Minnie Maud Creek should be dependent on irrigated acreage, which EnerVest claims is inconsistent with proportionate share ownership. (Aplt. Br. at 35-39.) This argument misses the mark.

First, it was never specifically raised in the Objections, and as such is beyond the scope of the Section 24 Hearing.

Second, it is an attack on other aspects of the Proposed Determination that were not before the district court. It is true that the Proposed Determination provides for Minnie Maud ownership of the Water Rights but does not provide that all the Water Rights can be used on all of the shareholders' lands (i.e., the company's service area). Most water companies would prefer a service area approach to water allocation, but neither Minnie Maud nor any other party objected to this aspect of the Proposed Determination. EnerVest nevertheless invites this Court to analyze this aspect of the Proposed Determination, prepared based on mapping completed long after-the-fact in about 1964, to glean evidence of whether the Incorporators intended to waive the 3,000-share provision in the early 1900s. Not only is an analysis of the authorized points of diversion and places of use in the Proposed Determination wholly irrelevant to the issue of the validity of the Deed, it represents an end-run to raise new objections to the

Proposed Determination. Such arguments are untimely and not allowed. *See* [Utah Code Ann. § 73-4-11\(2\)](#) (setting a 90-day time limit for raising objections).

And third, EnerVest’s argument fails to acknowledge that water rights can be owned by one entity, but authorized for use only on another owner’s land. For example, a water right used under a lease is often owned by one person but used on land owned by a separate person. Furthermore, mutual irrigation companies are typically the record owners of water rights, even though the companies themselves typically hold none of the lands on which the water is authorized for use. This is exactly the case here. Minnie Maud, as owner of the Water Rights, need not have ever owned the land on which the Water Rights were used. The Proposed Determination’s identification of aspects other than ownership of particular Water Rights is not before the Court, and, regardless, the determination of Minnie Maud as the owner of the Water Rights is dependent on the chain of title, not the results of a 1960s survey.

#### **IV. ALTERNATIVE GROUNDS EXIST TO AFFIRM THE DISTRICT COURT’S RULING.**

The district court decided the case based upon its conclusion that the Incorporators waived compliance with the 3,000-share provision of the Articles, and did not reach Carlson’s alternative arguments regarding of laches and estoppel. (MIS Carlson’s Mot. S.J., R2 001009-11.) But this Court can affirm the district court’s decision on “any legal ground or theory apparent on the record.” [Bailey, 2002 UT 58, ¶ 10.](#)

**A. The Doctrine of Laches Bars EnerVest from Challenging Minnie Maud’s Authority to Receive and Own the Water Rights**

The right to enforce a contractual condition can expire under the doctrine of laches. See, e.g., *Nilson-Newey & Co. v. Utah Resources Intern.*, 905 P.2d 312, 314 (Utah Ct. App. 1995) (holding that contractual right to obtain distribution or accounting was unavailable based on a twenty-year delay). Generally, the doctrine of laches serves the “maxim that equity aids the vigilant and not those who slumber on their rights.” *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne*, 2012 UT 66, ¶ 29, 289 P.3d 502 (internal quotation marks omitted). In Utah a party must prove two elements to establish laches: “(1) the “lack of diligence” on the part of claimant and (2) an injury to respondent “owing to such lack of diligence.” *Id.* ¶ 29 (internal quotation marks omitted).

As a matter of law, the doctrine of laches bars EnerVest from now challenging Minnie Maud’s authority to own the Water Rights. The following facts, each of which were not disputed, establish the applicability of laches: (1) in April 1902, the incorporators were each mentioned by name in the Articles of Incorporation, which noted how many shares each person was issued, [R2 000802]; (2) the incorporators constructed, maintained, and used water delivery structures, including a reservoir in which they stored the water from Minnie Maud Creek for the benefit of the Incorporators, [Addendum D, R2 000843-44, 000988, 001664]; (3) in May 1902, the incorporators each signed and executed the deed conveying “all their and each of their rights and claims of every kind . . . in and to the waters of Minnie Maud Creek . . . unto the Minnie Maud Reservoir and

Irrigation Company and its assigns forever,” [Addendum D, R2 001447]; (4) from 1903 through 1905, they participated in a lawsuit under the name of Minnie Maud [R2 001043, 001663-64]; (5) between 1902 and 1955, the incorporators and their successor shareholders held and took records of corporate meetings [R2 001664]; and (6) there is no evidence that anyone asserted Minnie Maud’s purported nonexistence between 1902 and 1957—a period of 55 years. [See generally R1 and R2; see also T. F. Housekeeper’s Ans. to Compl., at R2 001317 (May 23, 1957) (asserting Minnie Maud’s nonexistence for the first time).]

EnerVest cannot now pursue decades-old claims. If EnerVest or its predecessors wished to assert ownership of the Water Rights based on Minnie Maud’s issuing only 2,377 shares, they were obliged to do so far sooner than 1957. The predecessors’ failure to raise this issue for more than 55 years is more than sufficient to satisfy the lack of diligence element. And there is no evidence in the record, either directly or through inference, that could establish EnerVest or its predecessors didn’t sleep on their rights for more than half a century. If courts did not apply laches to such a great length of time, “there would be no limitation whatever, and property would be thrown into confusion.” *Bowman v. Wathen*, 42 U.S. 189, 194 (1843) (noting laches was founded on the principle that equitable claims “must be acted upon, at the utmost, within twenty years.” (quotations omitted)). EnerVest’s “predecessors have slumbered on their rights,” *Insight Assets, Inc. v. Farias*, 2013 UT 47, ¶ 22, and equity bars their decades-old challenge, see *id.* (concluding laches barred a party from asserting a three-year-old claim).

Moreover, this lack of diligence indisputably results in an injury to Minnie Maud's shareholders. The original incorporators agreed to receive water deliveries in proportion to their stock ownership. [*See* Articles, R2 000805-06.] They conveyed all of their canals, locks, dams, gates, and weirs to Minnie Maud, to be shared in proportion to their share ownership. [*Id.*] They agreed to work as a collective to build and maintain more water delivery structures. [*Id.*] Since that time, Minnie Maud's shares were treated as having value in proportion to their ownership of the Water Rights, and both Carlson and his predecessors bought and sold those shares based on that value. EnerVest's attempt to rescind this century-old agreement will result in injury to Minnie Maud's shareholders by stripping them of their rightful position as owners of the Water Rights, and would injure their ability to receive and use the water authorized by those rights.

As a matter of law under the undisputed facts, even drawn in the light most favorable to EnerVest, by failing to timely enforce or even raise the 3,000-share provision of the Articles for more than 55 years (from 1902 to 1957), EnerVest and its predecessors are barred from pursuing that claim now. Thus, the Court has more than adequate grounds to affirm the district court's grant of summary judgment on the alternative basis of laches.

**B. Estoppel Precludes EnerVest from Challenging Minnie Maud's Authority to Receive and Own the Water Rights**

A related principle—if not identical when applied in this context—is that of estoppel. Estoppel has broad application and many definitions. For example, “equitable estoppel” is defined as (1) a “failure to act by one party inconsistent with a claim later

asserted.” (2) “reasonable action or inaction by the other party” based on the first party’s failure to act, and (3) injury to the second party . . . from allowing the first party to contradict or repudiate such . . . failure to act.” *Youngblood v. Auto-Owners Ins. Co.*, 2007 UT 28, ¶14, 158 P.3d 1088 (internal quotation marks omitted). Another definition is “quasi-estoppel,” which “precludes a party from asserting, to another’s disadvantage, a right inconsistent with a position [it has] previously taken.” *In re RBFS*, 2012 UT App 132, ¶ 31, 278 P.3d 143 (quotations omitted); cf. *Harding v. Indus. Comm’n of Utah*, 83 Utah 376, 28 P.2d 182, 184-85 (1934) (noting the principle of “quasi estoppel,” and concluding a litigant was estopped from making certain arguments). The quasi-estoppel doctrine “applies when it would be unconscionable to allow a person to maintain a position inconsistent with one to which he acquiesced.” *In re RBFS*, 2012 UT App 132, ¶ 31. Quasi-estoppel does not require proof of reliance by the party asserting it. See *Smith v. DenRoss Contracting, U.S., Inc.*, 737 S.E.2d 392, 399 (N.C. App. 2012).

But no matter the definition of estoppel, the core “doctrine of estoppel applies where a person undertakes to deny as true that which she has by her solemn acts and daily conduct over a long period of years avowed as true.” *Tanner v. Provo Reservoir Co.*, 289 P. 151, 154 (Utah 1930) (quotations omitted). Thus, courts have held that “parties may, by their agreements or conduct, estop themselves from denying the existence of the corporation.” *Am. Vending Servs., Inc. v. Morse*, 881 P.2d 917, 920 (Utah Ct. App. 1994).

Based on the undisputed facts, EnerVest should be estopped from now objecting to Minnie Maud’s ownership of the Water Rights. Over a century ago, in 1902, the

Incorporators executed a deed conveying the Water Rights to Minnie Maud. [Addendum D, R2 001447.] Soon thereafter, they appointed a board, which held meetings, appointed a water master, and levied assessments. [Addendum E, R2 000909-913, R2 001454-58 (indicating the Board of Directors appointed likely EnerVest predecessor J.C. Johnston as water master for \$100 per year).] In 1903, the Incorporators participated in and acquiesced to the *Grames* lawsuit in which Minnie Maud defended its claim of ownership over the Water Rights [R2 001304-15], and they continued to acquiesce to Minnie Maud's role until the Utah Supreme Court issued its 1905 *Grames* decision affirming the district court, *Minnie Maud Res. & Irr. Co. v. Grames*, 81 P. 893, 893 (Utah 1905) [R2 001043-47]. Indeed, D.C. Johnston (misstated as Johnson in the opinion), another likely EnerVest predecessor, testified on behalf of Minnie Maud in *Grames*. *Id.* at 894.

EnerVest and the Objectors did not present a single document or other piece of admissible evidence to the district court indicating that an original Incorporator ever disputed Minnie Maud's existence or ownership of the Water Rights, and no successor to the Incorporators raised the issue until 1957. (R2 001317.) Finally, EnerVest's own predecessor, Thomas A. Christensen, treated Minnie Maud as a valid entity when he wrote a letter dated Aug. 1, 1962, in which he affirmatively represented to the State Engineer that Minnie Maud had officers and had issued stock. [Addendum F, R1 4130.] He identified himself as one of those officers, and went on to identify himself and his brother (Bud Christensen) as shareholders. [*Id.*]

Those undisputed facts demonstrate that EnerVest's predecessors treated Minnie Maud as being a valid and existing entity. Therefore, as a matter of law, EnerVest cannot

now claim Minnie Maud's nonexistence where its predecessors did not do so for at least fifty-five years from 1902 to 1957. When shareholders "have dealt with the corporation since its organization, and have recognized its powers and acquiesced in the exercise thereof for a large number of years, they are estopped from questioning in such a proceeding as this the rightful existence of the corporation." *Marsh v. Mathias*, 56 P. 1074, 1075 (Utah 1899). EnerVest's predecessor "recognized the organization as a corporation in business dealings," and anyone claiming a successive interest "should not be allowed to quibble." *See Am. Vending Servs.*, 881 P.2d at 923.


Thus, the Court has more than adequate grounds to affirm the district court's grant of summary judgment on the alternative basis of estoppel.

### **CONCLUSION**

For all of the foregoing reasons, Carlson respectfully requests that this Court affirm the district court's grant of his motion for summary judgment.

DATED this 18th day of January, 2016.

PARR BROWN GEE & LOVELESS, P.C.

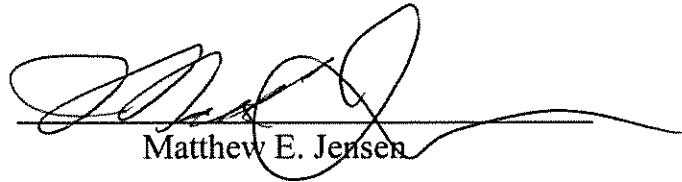
By:   
Justin P. Matkin  
Matthew E. Jensen



### **CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because this brief contains 10,864 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

This brief complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013, in Times New Roman, font size 13.



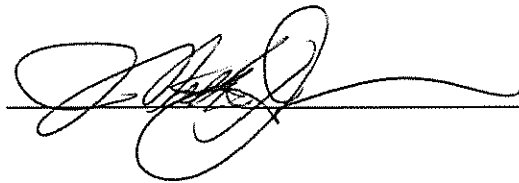
Matthew E. Jensen

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of March, 2017, I caused two true and correct copies of the foregoing **BRIEF OF APPELLEE MICHAEL CARLSON** to be served via U.S. Mail, first-class postage prepaid, on the following:

John H. Mabey, Jr. (4725)  
David C. Wright (5566)  
Jonathan R. Schutz (13352)  
**MABEY WRIGHT & JAMES**  
175 South Main, #1330  
Salt Lake City, Utah 84111  
Telephone: (801) 359-3663  
[jmabey@mwjlaw.com](mailto:jmabey@mwjlaw.com)  
[dwright@mwjlaw.com](mailto:dwright@mwjlaw.com)  
[jschutz@mwjlaw.com](mailto:jschutz@mwjlaw.com)  
*Attorneys for Appellant EnerVest, LTD*

Benjamin J. Jensen (14216)  
Sarah M. Shechter (15357)  
**ASSISTANT ATTORNEYS GENERAL**  
Sean D. Reyes (7969)  
**UTAH ATTORNEY GENERAL**  
1594 W. North Temple, #300  
Salt Lake City, Utah 84116  
Telephone: (801) 538-7227  
[bjensen@utah.gov](mailto:bjensen@utah.gov)  
*Attorneys for Appellee Utah State Engineer*

A handwritten signature in black ink, appearing to be "B. Jensen", written over a horizontal line.

### **Addendum Contents**

- A. Minnie Maud Timeline (Part of Supplemental Record)
- B. Certificate of Incorporation (R2 001449)
- C. Anderson Affidavit (R2 000843-44)
- D. Water Right Deed (R2 001447)
- E. Minnie Maud Meeting Minutes (R2 000909-13, 001454-58)
- F. 1962 Letter from T.A. Christensen to State Engineer re Minnie Maud (R1 004130)
- G. Stipulated Order Granting the Section 24 Petition (R2 000262-65)

# Addendum A

## Minnie Maud Time Line

March 27, 1902	Minnie Maud Articles of Incorporation Filed (Tab 1)	Minnie Maud Operation (Tab 7)
April 11, 1902	Minnie Maud Certificate of Incorporation Issued by Utah Secretary of State (Tab 2)	
May 12, 1902	Incorporators Convey Water Rights to Minnie Maud by Deed (Tab 3)	
October 22, 1903	7 <sup>th</sup> District Court Issues Decree on Minnie Maud Creek ("MM Decree") (Tab 4)	
1905	Minnie Maud Reservoir and Delivery System is Completed (Anderson Aff. - Tab 5)	
July 28, 1905	Utah Supreme Court Affirms MM Decree (Tab 6)	
1911-1913	Minnie Maud Dam Washes Out (Tab 5)	Minnie Maud Operation (Tab 7)
May 4, 1957	Lawsuit Filed Regarding Minnie Maud Water Rights (Tab 8)	
March 1964	Proposed Determination Issued (Tab 8)	
October 1964	Objections Filed (Tab 9)	
November 9, 1974	Certificate of Dissolution Issued for Minnie Maud (Tab 10)	
February 28, 2012	EnerVest Files Petition for Expedited Review of Objections	

# Addendum B

## State of Utah,

Office of Secretary of State.

To Mojave's Manual Reservoir & Irrigation Company

I, James T. Hammond, Secretary of State of the State of Utah, do hereby certify, that on the Eleventh day of April 1902 was filed in my office, a certificate of the Clerk of the County of Garbon to the effect, that the agreement and oath or affirmation, and oath of office and bonds of the officers of said association had been filed in his office on the Fifth day of April 1902; and that there has also been filed in my office with said certificate, a copy of the articles of agreement; and oath or affirmation, certified by the said Clerk; that said articles contain the statement of facts required by law, and that said corporation is hereby constituted a body corporate, with right of succession as specified in its said articles of agreement, and is hereby authorized to exercise all the functions, enjoy all the privileges of a Corporation, and to transact all business of said Corporation, as specified in its said articles of agreement.

In Testimony Whereof, I have hereunto set my hand and affixed the Great

Seal of said State at Salt Lake City, this Eleventh day of April A. D. 1902.James T. Hammond  
SECRETARY OF STATE.

## State of Utah,

Office of Secretary of State.

To F. J. Hill Drug Company

I, James T. Hammond, Secretary of State of the State of Utah, do hereby certify, that on the Eleventh day of April 1902 was filed in my office, a certificate of the Clerk of the County of Salt Lake to the effect, that the agreement and oath or affirmation, and oath of office and bonds of the officers of said association had been filed in his office on the Eighth day of April 1902; and that there has also been filed in my office with said certificate, a copy of the articles of agreement; and oath or affirmation, certified by the said Clerk; that said articles contain the statement of facts required by law, and that said corporation is hereby constituted a body corporate, with right of succession as specified in its said articles of agreement, and is hereby authorized to exercise all the functions, enjoy all the privileges of a Corporation, and to transact all business of said Corporation, as specified in its said articles of agreement.

In Testimony Whereof, I have hereunto set my hand and affixed the Great

Seal of said State at Salt Lake City, this Eleventh day of April A. D. 1902.James T. Hammond  
SECRETARY OF STATE.

# Addendum C





AFFIDAVIT

STATE OF UTAH } ss.  
COUNTY OF CARBON }

I, DAVID ANDERSON, being duly sworn upon oath, depose and say:

I am 81 years of age and was born in 1882. My father was Erastus Anderson. I live at Price at the present time.

In 1898 my father moved to Nine Mile with his family. I was 16 years of age at the time. We moved onto the first place when you come into Nine Mile which is now the Bernard Iriart place. My father and we boys worked on the farm and had some livestock that we run in the area. My father purchased the Frank Warren relinquishment on the homestead, he then homesteaded 160 acres which we lived on and he proved up on. By the end of 1902, we had broken up and were farming approximately 20 acres of land. Approximately 16 acres was below the road and approximately 4 acres above the road. The present road is in about the same location as it was in 1902.

We continued to live on the farm and I left in the fall of 1911. My father sold out the place to Crawford and Monk of Manti in 1912 and my father left the area at that time.

I was in the area in 1902 and heard the men on Minnie Maud Creek talk about the water problems and ~~the~~ farming in the Minnie Maud Irrigation Company. This company was organized in 1902 for the main purpose of building a reservoir on the creek to increase the water supply. Ed Lee was the main instigator of the organization and took an active part in it. As I recall, my father received 39 shares in the irrigation company. I am not sure what the exact basis was for the number of shares that each water user took, but as a general proposition the shares that they were to receive in the company was based upon the number of acres that they irrigated at that time in Minnie Maud Creek plus water they expected to get from the reservoir. The plan was to put in time and labor and teams and scrapers and build the reservoir themselves and in this way increase the amount of water that would be available during the farming season. I am not familiar with the amount of stock that others owned other than my father received in the irrigation company.

Right after the company was organized all the water users on Minnie Maud Creek went to work with hand tools, teams and scrapers to build the reservoir up Minnie Maud Canyon just above the present Gene Anderson place. My brother and I worked on this reservoir for a couple of years. I remember that Ed Lee had two or three teams and scrapers working on this reservoir at times. None of us worked continuously, we just put in time on the reservoir when we had time available. This reservoir site was a natural basin and did not require a great amount of fill. We made a ditch from Minnie Maud Creek higher up to lead water when it was available into the reservoir. We placed in a head gate on the side of the reservoir that was closest to Minnie Maud Creek. This was a wooden head gate with a steel plate or gate that had a large nut on the top that you turned with a wrench. My father made the head gate and shaped the steel that went into the gate. I was present when this was done. The reservoir was completed in two or three years which would be about 1905 and water was stored in it. I remember on one occasion at least that Ed Lee asked me and Fred Grames to go up to the reservoir and turn water down to him for his turn. We took with us a large wrench that would fit this nut on the top of the gate and I remember we dropped it in the water and had to dive into the water of the reservoir to get the wrench back.

There were some years that there wasn't enough high water available to store in the reservoir, other years the reservoir had water in it and some years it was full. This reservoir continued to hold water until around 1911 or 1913, I cannot remember the exact year, around this time, the dam washed out and was never repaired and the

reservoir never held any more water until it was restored by Sheridan Powell in the 1940s.

I don't know the number of acre feet that this reservoir held. It was not a large reservoir. I have frequently been out to Nine Mile, the last time was about three years ago and I have seen the reservoir that Sheridan Powell has constructed. Mr. Powell's reservoir is the same one that we started building in 1902, is in the same location and has the same capacity.

Around 1902 and 1903 I heard the water users on Minnie Maud Creek, and especially Mr. Lee, talk about building other reservoirs. They discussed building a reservoir at what was referred to as the Beaver Valley. This location would be nine or ten miles up Minnie Maud Canyon from where Minnie Maud comes into Nine Mile. The other reservoir was about six miles up this same canyon. This Beaver Valley reservoir never did materialize. There was never any work done on it.

As to the operation of the Minnie Maud Irrigation Company I know of no stockholders meetings or directors meetings that they ever held while I was still there. The irrigation company never had a water master and all the water users took their own water from their own places of diversion and this water was never regulated or controlled by the irrigation company. After I left the area in the fall of 1911 I don't know what was done in this respect,

Most of the people that were in that area around 1902 have died. There is a Mrs. Westwood that lived on the David Russell place that is now owned by Sheridan Powell. I believe she is still alive but I don't know her address.

David Anderson

Subscribed and sworn to before me this 30 day of August, 1963.

Edward F. Anderson  
Notary Public  
Residing at: \_\_\_\_\_

My Commission Expires: March 6, 1964  
Residence: Price, Utah

My Commission Expires: \_\_\_\_\_

# Addendum D

Entry No. 5398.

E C Lee and Effie Lee, husband and wife, J H Bracken, unmarried, A O Smith and Malona Smith, husband and wife, H C Johnston, unmarried, C C Johnston and Maud Johnston, husband and wife, T F Housekeeper and Mary Housekeeper, husband and wife, Alonzo Alger, unmarried, David Russell, unmarried, E Anderson and Mary Anderson, husband and wife, James Hamilton and Susan Hamilton, husband and wife, and William Hamilton and Eliza Hamilton, husband and wife, Grantors, for and in consideration of the sum of Two Thousand three hundred and Ninety Dollars to them paid, do hereby sell, assign and transfer and forever quitclaim unto the Minnie Maud Reservoir and Irrigation Company, grantee, all their and each of their rights and claims of every kind and nature whatsoever, in and to the waters of Minnie Maud Creek in Carbon County, Utah, and to the tributaries thereof from the source thereof to Harper Post Office commonly called Lees' Ranchs excepting only Cow Canyon.

To have and to hold the same unto the Minnie Maud Reservoir and Irrigation Company and its assigns forever.

In Witness whereof the grantors have hereunto set their hands this 12<sup>th</sup> day of May, 1902.

In presence of  
L O Hoffmann

D H Russell  
E. C. Lee  
Effie Lee  
J H Bracken  
Erastus Anderson  
Mary Anderson  
William Hamilton  
Mrs. Eliza Hamilton  
J A Hamilton  
Susan Hamilton  
T. F. Housekeeper  
H C Johnston  
C C Johnston  
Maud Johnston  
A. O. Smith  
Malona Smith  
Alonzo Alger

STATE OF UTAH )  
COUNTY OF CARBON SS.  
I hereby certify that the document to  
which this certificate is attached is a  
full, true and correct copy of the  
original filed and now in my custody.  
WITNESS my hand and seal this 20<sup>th</sup>  
day of May, 1902.  
CARBON COUNTY RECORDER  
Carbon County, Utah  
By Maud Johnston  
Recorder/Deputy

# Addendum E

April 3<sup>rd</sup> 1902

Board of Directors met at Price  
all being present but Johnston  
and Smith. For the purpose  
of organizing E. C. Anderson  
was made President G. C. Johnston  
Vice President E. C. Lee  
Sec James Hamilton Treas  
E. C. Lee Sec

April 16<sup>th</sup> 1902

Board of Directors met at  
Johnston's Ranch and  
adopted the by laws and  
levied a tax for the purpose  
of paying expenses a list of  
23 cents per acre was made  
and all parties notified their  
proportions Wm Hamilton \$380  
James Hamilton \$723 E. C. Anderson  
\$863 J. A. Russell \$403 A. Alger \$506  
J. H. Houshopper \$795 G. C. Johnston  
\$713 A. O. Smith \$322  
Braiden & Co \$2852

1. It was moved and carried  
that a watermaster be  
appointed at a salary of \$100.00  
per year G. C. Johnston  
was appointed subject to the  
order of the Directors  
The Sec was instructed to  
notify all by letter of their  
assessments to be paid by  
April 30<sup>th</sup> 1902 to E. C. Lee Sec.

April 16<sup>th</sup> 1902  
 present to call  
 the board of directors meet  
 meeting called to order by  
 President Anderson  
 and the business of meeting  
 stated

It being necessary to levy a  
 tax on the stock holders  
 for the purpose of paying  
 all indebtedness

for in cooperation

It being necessary to levy a tax  
 of 23 cents per acre on all lands

not amounting to

Wm Hamilton

\$ 3.80

J. A. Hamilton

7.23

E. Anderson

8.63

D. A. Russell

4.03

A. Alger

5.06

Handkeepers

7.95

G. B. Johnston

7.13

A. O. Smith

3.22

Bracken Lee

28.52

E. B. Lee

Secy



March 7<sup>th</sup> 1904  
 Annual meeting of the stock holders  
 in the Minnie Maud Reservoir  
 and Irrigation Co meet at Andersons  
 Ranch. To Elect a new board  
 of directors and attend to what  
 other business might come before  
 them. It was moved and carried  
 that G. C. Johnston & Anderson  
 E. C. Lee J. R. Hamill and  
 A. Gilg Jr act as the board  
 of directors for the present  
 year.  
 It was then moved and  
 carried that we adjourn.  
 E. C. Lee Sec

n.  
 P.M.

m

is



The Annual Stockholders Meeting of the Memphis Grange Republic of Agriculture Co was held at the Grange, Madison County, this day of March 1920.

Less than a majority of the issued and outstanding stock of the company was present. - Less than majority of stock is present

The following directors were elected for the ensuing year, by the stock represented; viz. E. B. Johnson, J. B. Houschaper, Eugene Monte, E. B. Johnson and J. J. Thompson.

Attest of Secretary

Secretary of Meeting

Meeting of Board of Directors of the Memphis Grange Republic of Agriculture Co held this day of March 1920.

The following directors were present viz. E. B. Johnson, Eugene Monte, E. B. Johnson and J. J. Thompson

Upon motion duly seconded and to vote and carried, the following officers were elected. E. B. Johnson President, Eugene Monte Secretary & Treasurer, J. B. Houschaper Vice President, Secretary

March 4, 1950 11. 3. 1951  
 Called Annual stockholders meeting  
 of the Minnie Maud Reservoir & Irrigation  
 Co. sent word to each stockholder. But no  
 one came. By secretary  
 Phil Davis

March 5, 1951.  
 Called Annual stockholders  
 meeting of the Minnie Maud Reservoir &  
 Irrigation Co.  
 sent word to each stockholder.  
 But no one came  
 By secretary  
 Phil Davis

March 8, 1954  
 Called Annual stockholders meeting  
 of the Minnie Maud Reservoir & Irrigation Co.  
 sent word to each stockholder  
 no one came but Mrs Mott & son Lawrence  
 By secretary  
 Phil Davis

April 3<sup>rd</sup> 1902

Board of Directors meet at Price  
all being present but Johnston  
and Smith. For the purpose  
of organizing E. Anderson  
was made President G. E. Johnston  
Vice President & E. C. Lee  
Sec James Hamilton Treas  
E. C. Lee Sec

April 16<sup>th</sup> 1902

Board of Directors meet at  
Johnston's Ranch and  
adapt the by laws and  
levy a tax for the purpose  
of paying expenses a levy of  
23 Cents per Acre was made  
and all parties notified their  
proportions W<sup>m</sup> Hamilton \$380  
James Hamilton \$723 E. Anderson  
\$863 J. A. Russell \$403 A. Alger \$326  
J. T. Housley \$795 G. E. Johnston  
\$713 J. O. Smith \$322  
Graden \$2852

1. It was moved and carried  
that a watermaster be  
appointed at a salary of \$100.00  
per year G. E. Johnston  
was appointed subject to the  
order of the Directors  
The Sec was instructed to  
notify all by letter of their  
assessments to be paid by  
April 30<sup>th</sup> 1902 to E. C. Lee Sec.

April 16<sup>th</sup> 1902  
 present to call  
 the board of directors meet  
 meeting called to order by  
 Presiding Anderson  
 and the business of meeting  
 stated

It being necessary to levy a  
 tax on the stock holders  
 for the purpose of paying  
 all indebtedness  
 for in cooperation

It being necessary to levy a tax  
 of 23 cents per Acre on all lands  
 it amounting to

Wm Hamilton	23.80
J. A. Hamilton	7.23
E. Anderson	8.63
D. A. Russell	4.03
A. Alper	5.06
Handkeepers	7.95
A. C. Johnston	7.13
A. O. Smith	3.22
Braden Lee	28.52

E. C. Lee  
 Secy

June 6 1905  
 Board of directors meet at Johnston  
 by call of the President  
 The minutes of previous meeting Read  
 and approved

1 The matter of distributing the  
 water taken up it was decided  
 that Bracken Lee start to using <sup>all</sup> the  
 water in Creek June 11<sup>th</sup> and draw  
 said water 2 hours to the Aer for all  
 legal now under Celebration  
 thence it to be taken up the same  
 at the same Ratio all water  
 springing up hereafter where  
 it is being used should be  
 distributed by the water master  
 according to his best judgement

2 the matter of buying R. L.  
 Smith interest in the nine mile  
 Reservoir was taken up and  
 it was decided to buy the same  
 and pay \$3000 the same to be  
 paid by assessments on paid up  
 stock. And the Sect to notify  
 all interested by letter  
 H. B. Johnston was  
 empowered to start preparing  
 affidavits Mrs. Mable E. Evans  
 and try and get a temporary  
 injunction of B. Lee Sect

July 10. Stock holders meet  
 referred to Call at James H. Hamilton's  
 Meeting, called to order by G. C. Johnson  
 and the Object of meeting stated

It being called for the purpose of  
 determining a price for all interested to  
 meet at the Nine Mile Reservoir to complete  
 said Reservoir and the date was  
 set for November 1<sup>st</sup> 1902 with  
 such tools as the board should think  
 necessary

It was moved and carried  
 that Credits now stand out should  
 be paid by an assessment made on  
 all paid up stock to wit R. L. Smith  
 \$50.00 expenses on filing suit against  
 Mrs. Grimes \$16.00 Company Records  
 and seal \$10.50 making a total of  
 \$79.50

It was then moved and  
 carried that all water below  
 160 feet should be confined to  
 the paid up stock at the ratio of  
 3 hours per acre at Brackley's place  
 July 11 1902

It was moved and carried that  
 the Water master measure all water  
 in question between the hours of 11  
 and 12 a.m.

It was also moved and carried  
 that a call be made for all  
 Stock holders meet at Lees Aug  
 9<sup>th</sup> as to considering the subscription  
 for stock to build the Reservoir in



March 20<sup>th</sup> 1905  
Meeting by Board of directors  
at Lehigh Heights

The matter of fixing up the  
Credits was taken up  
And the following amounts of  
Credits was credited

There being a 60 per cent assessment  
being hereby assessed to the following

J. A. Hamilton	60 per cent	\$ 195.00	Labors	\$ 189.00
E. Anderson	60 per cent	\$ 265.20	"	\$ 271.40
Johnston	60 per cent	\$ 85.80	"	\$ 84.00
Boushke	60 per cent	\$ 189.20	"	\$ 188.00
Bradley The	60 per cent	\$ 234.00	"	\$ 237.00
This much should be left		\$ 686.40		

The next assessment being 30 per cent of 686.40  
for the finish work. The Assessors of  
the different assessments being as  
follows

J. A. Hamilton	30 per cent	\$ 59.00	Assess	\$ 89.00
E. Anderson	30 per cent	\$ 47.10	"	\$ 71.40
Boushke	30 per cent	\$ 21.86	"	
B. C. Johnston	30 per cent	\$ 17.16	"	
Alper	30 per cent	\$ 28.20	Assess	\$ 28.20
Bradley The	30 per cent	\$ 70.80	Assess	\$ 46.20

There is still a balance not worked  
up of subscribed \$ 485.28

# Addendum F



P: adj:

Minnie Mauds.

Price Utah, Aug 1 1962

Mr. Harold Donaldson  
State Engineers Office  
Room 442 State Capitol Bldg.  
Salt Lake City Utah.

Dear Sir: Following is the list of Officers of the Minnie  
Maud Irrigation Co.

E. E. Davis            President  
Ted Huoskeeper Vice Pres.  
Glen Allred          Director  
T. A. Christensen    "  
Olive Davis        Sec.

Following is the list of Stockholders and the amount of stock  
owned by each,

Ernest E. Davis Jr. (Glen Allred)	1,429 Shares
(T. A. Christensen)	{ 199 1/2 " ( 399 Shares
(Bud Christensen)	{ 199 1/2 " "
Ted Huoskeeper	260 "
Louis Motte	68 "
Bernard Iriat	39 "
Amber Keel	182 "

Total 2,377

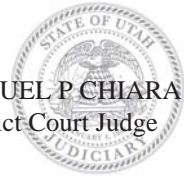
Hope this will be of use to You , I am

Your truly

*T. A. Christensen*  
T. A. Christensen



# Addendum G



John H. Mabey, Jr. - 4625  
David C. Wright - 5566  
Jonathan R. Schutz - 13352  
**MABEY WRIGHT & JAMES, PLLC**  
175 South Main, #1330  
Salt Lake City, Utah 84111  
Telephone: (801) 359-3663  
Fax: (801) 359-3673  
Email: [jmabey@mwjlaw.com](mailto:jmabey@mwjlaw.com)  
Email: [dwright@mwjlaw.com](mailto:dwright@mwjlaw.com)  
Email: [jschutz@mwjlaw.com](mailto:jschutz@mwjlaw.com)

Attorneys for Water Right Claimant  
EnerVest Corporation, Successor in interest to Bill Barrett Corporation

STATE OF UTAH  
IN THE EIGHTH DISTRICT COURT OF DUCHESNE COUNTY

IN THE MATTER OF THE GENERAL  
DETERMINATION OF ALL THE  
RIGHTS TO THE USE OF WATER BOTH  
SURFACE AND UNDERGROUND  
WITHIN THE DRAINAGE AREA OF  
THE UTAH BASIN AND THE LOWER  
GREEN RIVER BASIN IN UTAH.

**NINE MILE CREEK DIVISION**  
**AREA 90, CODE 47**

[Proposed] ORDER GRANTING  
STIPULATION TO PROCEED WITH  
UTAH CODE ANN. § 73-4-24 PETITION  
FOR AN EXPEDITED HEARING ON  
OBJECTIONS FILED BY:

Bernard Iriart, Albert Thayn, and William Dause; Amber Keel; Louis Mott; and Clive and Myrtle Mae Sprouse and Willis A. and Wilma Hammerschmid

Civil No. 560800056  
(previously Civil No. 3070)

Judge Samuel P. Chiara

Upon consideration of the stipulation between the parties and other filings, **IT IS**

**HEREBY ORDERED:**

1. EnerVest's section 24 petition is **GRANTED**.
2. EnerVest and Michael Carlson's predecessors in interest did not file Objections objecting to the Proposed Determination. However, both parties have standing to participate in this Section 24 Proceeding because they are claimants to the use of water and have a direct interest in the issues raised in the pending Objections.
3. The purpose of the Petition is to secure an expedited hearing of the Objections.
4. EnerVest has properly served and notified all potentially affected parties of the matter.
5. The Petition meets the statutory requirements of Utah Code section 73-4-24:
  - a. An expedited hearing is necessary in the interest of justice, Utah Code Ann. § 73-4-24(4)(a);
  - b. Granting the Petition will facilitate a reasonably prompt resolution of the matters raised in the Objections, Utah Code Ann. § 73-4-24(4)(b); and
  - c. Granting the Petition does not prejudice the right of another claimant, Utah Code Ann. § 73-4-24(4)(c);
6. The parties' Stipulation shall constitute an Answer to the Petition, to the extent that any Answer or similar pleading is necessary, by all of the undersigned parties;
7. No further response to the Petition is necessary by the undersigned parties, and the parties' Stipulation does not constitute an admission of any allegation contained in the Petition.
8. A Section 24 proceeding is the proper process to resolve the Objections and the parties' related disputes.

9. The Stipulation is not an endorsement of the form or substance of the Petition.
10. The parties do not by their Stipulation waive any right, claim, defense, or argument except an argument or claim that a Section 24 proceeding is not proper or necessary to resolve the Objections.
11. Any non-signatory affected party wishing to oppose this order or the appropriateness of EnerVest's petition will have until July 15, 2014, to file an opposition.
12. The parties to the Stipulation may reply to any opposition within 20 days.
13. If the Court grants the petition, within 30 days of the Court granting the petition, the State Engineer will file a motion to determine the scope of the proceedings. The Motion for Scope shall specify the issues the State Engineer believes should be heard within the Section 24 Expedited hearing on the Objections.
14. Parties have 20 days to respond to the State Engineer's motion for scope
15. The State Engineer has 20 days to reply to any responses to its motion.
16. Once the Court has determined the scope of the proceeding and issued an order stating the issues to be heard within the Expedited hearing, the Parties will meet with the Court to schedule further matters and continue with litigation under the Utah Rules of Civil Procedure.
17. As the Objections were filed prior to November 1, 2011, the Utah Rules of Civil Procedure in effect immediately prior to that date shall govern.

**BY THE COURT:**

**Samuel P. Chiara**

(Please Note: *The Judge's signature and date signed are electronic and located at the top of the first page*)