

CLARK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

Petitioner: Steven B. Wolfson, District Attorney

Recommendation:

Authorize the District Attorney's Office to assert counterclaims against the Plaintiff in the case Gypsum Resources, LLC v. Clark County, et al, Case No. A-23-871997-B. (For possible action)

FISCAL IMPACT:

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|----------------------|-----|-------------------|-----|
| Fund #: | N/A | Fund Name: | N/A |
| Fund Center: | N/A | Funded PGM/Grant: | N/A |
| Amount: | N/A | | |
| Description: | N/A | | |
| Additional Comments: | N/A | | |

BACKGROUND:

In 2010, Clark County and Gypsum Resources, LLC entered into a Stipulation and Settlement Agreement Pursuant to Court Ordered Settlement Conference ("Settlement Agreement"). The Settlement Agreement provides that any major project application submitted by Gypsum seeking increased density or intensity must propose a primary access to and from the east and that in no event would Gypsum be permitted to seek or obtain primary access from State Route 159 as part of a major project application. The Settlement Agreement expressly provides that Clark County retains discretion regarding any application submitted by Gypsum as a result of the Settlement Agreement.

In 2011, Clark County approved Gypsum's application for a concept plan for a major project. In its concept plan, Gypsum showed it would take primary access from State Route 160. As a condition of approval, Gypsum agreed to obtain a right-of-way grant from the Bureau of Land Management ("BLM") for primary access prior to approval of a specific plan. In 2019, Gypsum applied to waive the requirement that it obtain a right-of-way grant from the BLM prior to specific plan approval. Clark County denied Gypsum's waiver application.

Subsequently, Gypsum sued Clark County and the Clark County Board of Commissioners in federal district court alleging various federal and state claims emanating from Clark County's denial of Gypsum's waiver application concerning the BLM right-of-way grant. In May of this year, the federal court dismissed all of Gypsum's federal claims against Clark County. The federal court, however, declined to exercise jurisdiction over Gypsum's state law claims and dismissed the state law claims without prejudice. In June of this year, Gypsum filed a lawsuit in state district court reasserting its state law claims against Clark County.

Counsel for Clark County believes certain counterclaims are appropriate including without limitation counterclaims against Gypsum for breach of contract and breach of the implied covenant of good faith and fair dealing. Therefore, the District Attorney's Office seeks approval to assert counterclaims for breach of contract and breach of the implied covenant of good faith and fair dealing as well as authority to assert any additional counterclaims the District Attorney's Office deems appropriate under the facts and circumstances of the case.

The District Attorney's Office recommends that the Board of County Commissioners authorize such action.

Cleared for Agenda

09/19/2023

File ID#

23-1289

