

MAR 10 2026

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

mgallo

Maria Gallo

From: Jan Porter [REDACTED]
Sent: Monday, March 9, 2026 6:18 PM
To: Maria Gallo
Subject: Public Comment - Civil Law Suit - AG Opinion on NRS 116.3102(1)(d) and NRS 116.31088's

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Recently, as it relates to District Court Case A 26 937025 C, commonly known as a case by 4 individuals against the SNWA regarding compliance with AB 356, the plaintiff's attorney has marketed to a number of Associations to join the lawsuit. The plaintiff's attorney has asserted that the Board can "join and then ratify" the action to join the civil lawsuit. That attorney has been asked specifically: How does that action interact with NRS 116.3102(1)(d) and NRS 116.31088's notice, voting, and ratification requirements for commencing civil actions?

An Association Board asked, given the approaching deadlines, if there is an attorney general's opinion or if there is a timely need for such a clarifying opinion, or if the language of the statute is specifically clear enough to guide Board members on the matter?

Below are some questions that have yet to be answered by the plaintiff's counsel / marketing person as Association Boards seek to act on an informed basis before considering to join the civil case:

A. Threshold / "Big Picture" Questions

1. What specific legal relief is the lawsuit seeking (injunction, declaratory judgment, damages, refunds, changes to definitions of "non functional turf," etc.), and how would each form of relief practically affect an Association's obligations under AB 356 and related SNWA/LVVWD rules?
2. If the lawsuit fully succeeds, does that eliminate, delay, or only narrow our legal obligation to remove non functional turf on Slope A by December 31, 2026?
3. If the lawsuit partially succeeds (for example, changes to enforcement methods or definitions but not repeal), what is the most realistic "middle ground" outcome for our community?
4. If the lawsuit fails entirely and AB 356 and the implementing rules are upheld, what additional legal or financial exposure might the Association face for having delayed or suspended its current compliance timetable?
5. How would joining the lawsuit advance or conflict with the Board's fiduciary duty under NRS 116.3103 and NAC 116.405 to comply with state law and act in the best interests of the association as a whole?

B. Questions About the TRO and Procedural Status

1. Does the existing Temporary Restraining Order in A 26 937025 C apply only to the named plaintiffs' properties, or could it be extended to The Association if we join as a plaintiff or proposed class member?
2. Does the TRO prohibit an Association from voluntarily continuing to comply with AB 356 and the existing non functional turf removal plan for Slope A, or only restrict SNWA's enforcement actions as to particular plaintiffs?
3. Is the "cease and desist" communication received by an Association substantively the same as the TRO issued by the District Court, or is it a separate enforcement or advisory communication from SNWA

/ LVVWD? What is the legal effect of each on our operations?

4. Has the TRO been narrowed or modified since first issued, and what is its current duration, scope, and likelihood of being converted into a preliminary injunction?
5. Is the Las Vegas Valley Water District (our water purveyor) currently bound in any way by the TRO, or are only specific SNWA enforcement actions limited?
6. Has SNWA's motion to dismiss or to narrow the case been heard, and what has the court indicated (if anything) about the strength of plaintiffs' legal theories?

C. Questions About Parties, Class, and Standing

1. Who are the current named plaintiffs in A 26 937025 C (individuals, HOAs, other entities), and what types of properties and fact patterns do they represent?
2. Are there currently any HOAs that have joined the lawsuit, which have already converted most non functional turf and are only disputing limited, steep slope areas such as Slope A and B?
3. Are there any associations that have complied with AB 356 in large part and then joined the lawsuit after partial conversion, and how has the court treated their claims and standing?
4. Is there currently any certified "class" in this case, or is this at present an individual plaintiff/group case with a proposed but not yet certified class?
5. What is counsel's theory regarding an Association's standing and injury, with extensive prior conversions and acceptance of rebates, including any argument that acceptance of rebates does not waive constitutional or statutory challenges?
6. How will an Association's prior waiver request, denial (based on >25% slopes), and decision to proceed with SNWA rebates affect our ability to claim harm or seek refunds within this or related litigation?

D. Questions About Legal Theory and Merits

1. What specific constitutional provisions (state and/or federal) are being used to challenge AB 356, the Nonfunctional Turf Removal Advisory Committee process, and the implementing SNWA rules (e.g., due process, equal protection, takings, separation of powers, non delegation)?
2. How does counsel intend to challenge the definition and designation process of "non functional turf," especially where turf removal could lead to tree mortality or slope instability, and how does that apply to Slope A's >25% slope?
3. What is the precise legal theory that would overcome SNWA's long standing prohibition on turf on slopes over 25%, particularly when two prior association retained attorneys saw no viable basis for a waiver?
4. How does the case address the fact that the Legislature expressly directed SNWA to define "functional" and "non functional" turf and to develop a phased removal plan for non functional grass by the statutory deadline?
5. How strong is the challenge to SNWA/LVVWD's enforcement mechanisms (e.g., fines, water shut offs, rebate conditions) in light of their statutory authority to restrict use of Colorado River water for non functional turf after the deadline?
6. What precedent, if any, exists in Nevada or other western states for successfully challenging water conservation driven turf restrictions or irrigation bans on constitutional grounds?
7. How does counsel assess the risk that the court may narrow any relief to only the specific plaintiffs or fact patterns (e.g., certain parks or tree heavy areas) and decline to grant broad valley wide or HOA wide relief?

E. Questions About Procedural Mechanics of Joining

1. On what statutory authority does the plaintiff's counsel rely for the assertion that the Board can "join

and then ratify” the lawsuit, and how does that interact with NRS 116.3102(1)(d) and NRS 116.31088’s notice, voting, and ratification requirements for commencing civil actions?

2. What exact steps must the Association take (board resolutions, owner notices, votes, retainer execution, complaint amendment) to validly join before March 17 and avoid later procedural challenges to our participation?

3. If the Board joins before obtaining a majority owner vote and the membership subsequently refuses to ratify within 90 days under NRS 116.31088(1)(e), what happens to an Association’s role as plaintiff and any cost/fee obligations incurred during that period?

4. What is the deadline, in the court’s scheduling orders, for adding new HOA plaintiffs, and how likely is the court to deny a late motion to add an Association after March 17?

5. If an Association later decides to withdraw from the case, what is the procedure and what, if any, financial or sanctions exposure would remain for the time we were a party?

F. Questions About Fiduciary Duty, Compliance, and Risk

1. How should a Board reconcile its statutory duty under NRS 116.3103 and NAC 116.405 to comply with current law and act in good faith with the decision to join litigation that seeks to invalidate or suspend that law?

2. Could joining the lawsuit be characterized by a regulator, court, or owner as an attempt to evade or delay compliance with AB 356, and if so, how might that affect potential findings of misfeasance, malfeasance, or nonfeasance under NRS 116.790 and NAC 116.405?

3. Conversely, could failing to consider or join the lawsuit expose the Board to claims that it did not act on an informed basis or failed to consider potential less harmful alternatives for mature trees and slopes, particularly if other similarly situated HOAs obtain relief?

4. What written record (minutes, legal opinions, cost estimates, risk analyses) should the Board maintain to demonstrate that its decision—whether to join or not join—was made on an informed basis and in good faith consistent with the business judgment rule?

5. How would regulators (Ombudsman, CIC Commission) likely view a decision to join this litigation, and are there any prior CIC enforcement cases involving boards that declined to follow or openly resisted statutory mandates?

G. Questions About Costs, Fees, and Financial Exposure

1. What is the complete fee structure of the proposed retainer: contingency percentage, hourly backup, cost reimbursement, expert fees, and any administrative assessments or common fund charges?

2. What hard costs (experts, consultants, discovery, travel, court reporters, transcripts, exhibits) will be billed to the Association if an Association becomes a named plaintiff, and what are best case and worst case estimates of these amounts over the expected life of the case?

3. In the event the case is unsuccessful on the merits or dismissed, will an Association be responsible for any portion of SNWA’s or LVVWD’s attorneys’ fees and costs under Nevada’s fee shifting rules or any specific statutes implicated by AB 356 litigation?

4. Does the retainer agreement allocate the risk of opposing counsel’s fees and any sanctions to the plaintiffs or to plaintiff counsel’s firm, and under what circumstances would each party bear those amounts?

5. Are there scenarios in which an Association could be exposed to sanctions (for example, if claims are deemed frivolous, duplicative, or pursued after clear adverse rulings), and how likely is that in counsel’s assessment?

6. If there is a settlement fund or judgment, how will recoveries be allocated among plaintiffs, counsel, any co counsel, and a possible broader class, and what realistic net benefit (per prior turf conversion dollar or per square foot) could the Association receive?

7. How should an Association budget for potential litigation costs over the next 2–4 years, and what impact would this have on assessments, reserves, and other planned projects such as ongoing landscape and reserve study work?

H. Questions About Impact on Existing SNWA Rebates and Agreements

1. Does joining the lawsuit jeopardize any rebates already received or approved for Slope B and other areas, or expose an Association to any demand for rebate repayment if the litigation challenges the validity of the rebate/“conservation easement” structure?
2. Could an Association realistically obtain a refund of prior conversions (as suggested) and, if so, under what legal theory and through what remedy (e.g., damages, restitution, contract reformation)?
3. How would SNWA or LVVWD likely respond to an HOA that both accepted rebates and then sues to invalidate or significantly alter the underlying statutory and regulatory framework—could that affect future eligibility for water efficiency programs?
4. Does an Association’s acceptance of rebates and execution of any “no turf” use restrictions or easements limit its ability to argue that AB 356 or SNWA’s implementing rules are unconstitutional as applied to an Association?

I. Questions About Engineering, Trees, and Slope Safety

1. Has any independent arborist, landscape architect, or geotechnical engineer evaluated the following conditions
2. Are there viable alternative ground covers (e.g., low water plants, deep rooted shrubs) that would both comply with AB 356’s “non functional turf” definition and protect the integrity of the slope and mature trees, and have such alternatives been formally costed?
3. Does the lawsuit include or rely on expert testimony regarding tree loss, and micro climate impacts, and are those experts prepared to address the specific factual conditions upon the property
4. If the Board chooses not to join the lawsuit but proceeds with a carefully designed conversion that prioritizes the prioritized critical conditions of concern: How does that affect the risk of future owner claims regarding property damage or loss of amenities?

J. Questions About Owner Process, Disclosure, and Governance

1. What information must be provided to owners at least 10 days before any vote to commence or ratify civil litigation under NRS 116.31088 (including cost estimates, potential benefits, and adverse consequences), and how will that disclosure be drafted to be accurate and neutral?
2. How will the Board explain to owners that AB 356 remains in force, that the TRO is limited in scope, and that compliance deadlines currently still apply despite the pending litigation?
3. What specific owner vote threshold is required (majority of allocated votes, quorum conditions) to ratify joining the lawsuit, and how will proxies or electronic voting be handled?
4. How will the Board address owners who oppose spending association funds on litigation or who fear retaliation from SNWA/LVVWD (e.g., through stricter enforcement or public criticism) if an Association becomes a plaintiff?
5. If an Association joins the lawsuit, what ongoing disclosure obligations will exist regarding material developments in the case (e.g., amendments, rulings, settlement offers) at future Board and membership meetings?
6. How will the possibility or reality of ongoing litigation be disclosed in resale disclosure packets for prospective buyers, and what impact might that have on property values and marketability?

K. Questions Comparing Alternatives to Joining the Lawsuit

1. What non litigation options exist for addressing the critical issues of concern (e.g., design

modifications, alternative plantings, targeted discussions with SNWA staff, legislative advocacy) that carry less legal and financial risk than joining the current suit?

2. Is there a realistic prospect of regulatory guidance or legislative amendment before December 31, 2026 that could clarify treatment of steep slopes and tree dependent turf without litigation, and what role could The Association play in that process?

3. How does the cost and risk profile of joining the lawsuit compare with simply proceeding under the already approved design plan and meeting the AB 356 deadline using the current construction schedule?

4. If other HOAs obtain favorable negotiated solutions with SNWA/LVVWD without joining litigation, would an Association still be able to pursue similar accommodations later if we choose not to join now?

Focus Table for Board Deliberation

Topic area	Most urgent questions to resolve before a vote
Legal scope / effect	Does joining realistically change the Association 's obligations before 12/31/26, or mostly affect long-term refunds/definitions?
TRO coverage	Can The Association actually obtain TRO protection, and does it bar us from voluntarily complying with AB 356 timelines?
Authority & process	What NRS 116.31088 steps (notice, owner vote, ratification) are mandatory, and what happens if owners do not ratify?
Cost & downside risk	What is the Association 's maximum realistic exposure to the organization's own costs plus potential opposing fees/sanctions if the case fails?
Rebates & easements	Could joining put existing or future rebates or easement agreements at risk, including any obligation to repay funds?
Fiduciary duty/optics	How will regulators and owners view joining versus not joining, and how does the Board/Association document an informed, good-faith decision?

--

Jan Porter

