

RESPONDENT'S AUTHORIZED AGENT



Nevada State Board of Equalization
Agent Authorization Form

If you have questions about this form or the appeal process, please call: (775) 684-2160.
Email completed form to: stateboard@tax.state.nv.us.
Mail to: State Board of Equalization, 3850 Arrowhead Dr., Carson City, NV, 89706

Please Print or Type:

Part A. PROPERTY OWNER AND CONTACT INFORMATION OF PERSON GRANTING AUTHORITY TO AGENT

NAME OF PROPERTY OWNER AS IT APPEARS ON THE TAX ROLL: Eagle Shadow Mountain Solar					
NAME OF PERSON GRANTING AUTHORITY TO AGENT (IF DIFFERENT THAN PROPERTY OWNER LISTED IN PART A): Eric Huswick				TITLE Authorized Signatory	
MAILING ADDRESS OF PETITIONER (STREET ADDRESS OR P.O. BOX) 8800 N Gainey Center Drive Ste 100				EMAIL ADDRESS: ehuswick@arevonenergy.com	
CITY Scottsdale	STATE AZ	ZIP CODE 85258	DAYTIME PHONE 480-681-4031	ALTERNATE PHONE	FAX NUMBER

Part B. PROPERTY OWNER INFORMATION

Check organization type which best describes the Property Owner if not a natural person: ☒ Natural persons may skip Part B.

- ☐ Sole Proprietorship ☐ Trust ☐ Corporation
☒ Limited Liability Company (LLC) ☐ General or Limited Partnership ☐ Government or Governmental Agency
☐ Other, please describe: _____

The organization described above was formed under the laws of the State of _____.

The organization described above is a non-profit organization. ☐ Yes ☐ No

Part C. RELATIONSHIP OF PERSON GRANTING AUTHORITY TO AGENT TO PROPERTY OWNER

Check box which best describes the relationship of Petitioner to Property Owner: ☒ Additional information may be necessary.

- ☐ Self ☐ Trustee of Trust ☒ Employee of Property Owner
☐ Co-owner, partner, managing member ☐ Officer of Company
☐ Employee or Officer of Management Company
☐ Employee, Officer, or Owner of Lessee of leasehold, possessory interest, or beneficial interest in real property
☐ Other, please describe: _____

Part D. PROPERTY SUBJECT TO THIS AGENT AUTHORIZATION:

Enter Applicable Number from assessment notice or tax bill:

ASSESSOR'S PARCEL NUMBER (APN)	ACCOUNT NUMBER 229299	PROPERTY IDENTIFICATION NUMBER (PIN)-MINES
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☐ Multiple parcel list attached. (Use letter-size paper)

Part E. YEAR AND ROLL TYPE OF ASSESSMENT BEING APPEALED: ☒

- ☐ 2026-2027 Secured Roll ☒ 2025-2026 Unsecured Roll ☐ 2025-2026 Supplemental Roll
☐ 2026-2027 Centrally-assessed Roll ☐ 2025-2026 Net Proceeds Roll

Other years being appealed: _____

Be prepared to cite the legal authority, if any, that permits the State Board to consider appeals of taxable value from prior years.

For clerk use only

Part F. AUTHORIZATION OF AGENT

I hereby authorize the agent whose name and contact information appears below to file a petition to the Nevada State Board of Equalization and to contest the value and/or exemption established for the properties named in Part D of this Agent Authorization.

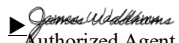
I further authorize the agent listed below to receive all notices and decision letters related thereto; and represent the Petitioner in all related hearings and matters including stipulations and withdrawals before the Nevada State Board of Equalization. This authorization is limited to the appeal of property valuation for the tax roll and fiscal year named in Part E of this document.

List additional authorized agents on a separate sheet as needed, including printed name, contact information, signature, title and date.

Authorized Agent Contact Information:

NAME OF AUTHORIZED AGENT: James Wadhams			TITLE: Attorney		
AUTHORIZED AGENT COMPANY, IF APPLICABLE: Wadhams Advisors			EMAIL ADDRESS: jlw@wadhamsnv.com		
MAILING ADDRESS OF AUTHORIZED AGENT (STREET ADDRESS OR P.O. BOX) 300 S Curry St., 5&6					
CITY Carson City	STATE NV	ZIP CODE 89703	DAYTIME PHONE 702-683-3020	ALTERNATE PHONE	FAX NUMBER

I hereby accept appointment as the authorized agent of the Property Owner in proceedings before the State Board.


Authorized Agent Signature

Attorney
Title _____

8/20/2026
Date _____

Authorized Agent Contact Information:

NAME OF AUTHORIZED AGENT:			TITLE:		
AUTHORIZED AGENT COMPANY, IF APPLICABLE:			EMAIL ADDRESS:		
MAILING ADDRESS OF AUTHORIZED AGENT (STREET ADDRESS OR P.O. BOX)					
CITY	STATE	ZIP CODE	DAYTIME PHONE	ALTERNATE PHONE	FAX NUMBER

I hereby accept appointment as the authorized agent of the Property Owner in proceedings before the State Board.


Authorized Agent Signature

Title _____

Date _____

VERIFICATION

I verify (or declare) under penalty of perjury under the laws of the State of Nevada that the foregoing and all information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief; and that I am either (1) the person who owns or controls taxable property, or possesses in its entirety taxable property, or the lessee or user of a leasehold interest, possessory interest, beneficial interest or beneficial use, pursuant to NRS 361.334; or (2) I am a person employed by the Property Owner or an affiliate of the Property Owner and I am acting within the scope of my employment. I further certify I have authorized each agent named herein to represent the Property Owner as stated and I have the authority to appoint each agent named herein.


Eric Huswick (Aug 20, 2026 10:13:14 PDT)
Property Owner / Petitioner Signature

Authorized Signatory
Title _____

8/20/2026
Date _____

ASSESSOR BRIEF

BEFORE THE NEVADA STATE BOARD OF EQUALIZATION

IN THE MATTER OF:

CLARK COUNTY ASSESSOR, Petitioner

EAGLE SHADOW MOUNTAIN SOLAR, 325MK
8ME, LLC c/o AREVON ENERGY, Respondent

)
)
) Case No. 26-113
) Account No: 229299
) Assessment Year: 2025-2026
)
)

ASSESSOR'S BREIF IN ACCORDANCE WITH NAC 361.703

NAC 361.703(2) allows a party on its own initiative to submit a brief, memorandum, or other written explanation. If a party submits a brief, memorandum, or other written explanation it must be filed with State Board of Equalization ("State Board") and served on the other parties at least 20 days before the date established for the hearing. The hearing on this case has been scheduled for October 14, 2026.

A. INTRODUCTION

The matter before the Board concerns the personal property assessment of Eagle Shadow Mountain Solar, a utility-scale photovoltaic power plant situated on Moapa Band of Paiutes Tribal Land within the Moapa Indian Reservation. The facility spans roughly 2,100 acres and is constructed using simple "drill-and-drive" A-frame trusses secured with U-bolts to support the solar panels. It operates under a long-term power purchase agreement with NV Energy, which acquires 100% of the plant's electrical output. The Long-Term Renewable Power Purchase Agreement between Nevada Power Company and 325MK 8ME LLC gives NV Energy first right to be able to purchase the property. *See* Section 6 of the Lease Agreement.

The solar farm is wholly owned by Arevon Energy, a non-tribal entity, and became commercially operational in May 2023. The Clark County Assessor recommends maintaining a taxable value of \$282,630,733 for fiscal year 2025–2026.

1. Procedural History

This property was the subject of a direct appeal last year for the 2022/2023; 2023/2024; and 2024/2025 tax year. The issues before the State Board last year were whether the property

1 should be taxed as real or personal property and whether the property was federally preempted
2 from taxation due to its location on tribal land. Last year, the State Board upheld the Assessor's
3 determination that the property was personal property and was not subject to federal
4 preemption. The Respondent, Eagle Shadow filed a petition for judicial review in the First
5 Judicial District, which was granted on August 24, 2026, thereby finding that the property was
6 exempt from Nevada property tax under express federal preemption because it is a permanent
7 improvement on land owned by the United States and held in trust for the Moapa Band of
8 Paiutes and therefore exempt under 25 U.S.C. § 5108 and Ninth Circuit case law in *Chehalis*.
9 In the alternative, the district court held the property was exempt under implied preemption
10 applying the *Bracker* analysis, finding that federal and tribal interests outweighed the County's
11 generalized revenue interests and that the assessment was not narrowly tailored to services
12 provided in connection with on-reservation activities. The Assessor has filed a Notice of
13 Appeal of the district court's decision to the Nevada Supreme Court. The Assessor has also
14 filed a separate motion requesting that the State Board stay the proceedings pending the
15 resolution of the prior year's case, as the issues are substantially similar.

16 **B. ISSUE BEFORE STATE BOARD**

17 (1) Did the County Board err in finding that the property was exempt from taxation
18 because the improvements are permanent improvements to the real property? Yes, the County
19 Board erred in finding the property to be tax exempt as the property is personal property and
20 the property is not automatically exempt because it's on tribal land. The County Board fails to
21 properly consider the particular relationship of the Taxpayer and the Tribal interest, especially
22 the facts that the Tribe has no ownership interest in the property at any time during the lease
23 term and the power generated from the facility is sold to NV Energy.

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1 **C. POINTS AND AUTHORITIES**

2 **1. Clark County's Valuation and Determination That Solar Facilities in Clark**
3 **County Are Personal Property**

4 Based on NRS, NAC, and the Personal Property Manual, this Property, like Town Site
5 and other solar facilities in Clark County, NEVADA, are determined to be personal property.
6 The Property was valued using the Utility Scale Photovoltaic Solar Table contained in the
7 Personal Property Manual in Appendix F. All photovoltaic solar facilities within Clark County
8 are assessed as personal property, and no exemption exists for improvements owned by
9 non-tribal entities located on tribal land.

10 In Nevada, county assessors are responsible for assessing all property located in their
11 respective county unless the property is centrally assessed by the State of Nevada. NRS
12 361.260. Centrally assessed property is property that crosses multiple counties. Id. NRS
13 361.035 defines real property as all houses, buildings, fences, ditches, structures, erections,
14 railroads, toll roads and bridges, or other improvements built or erected upon any land. But
15 subsection 3 of NRS 361.035 provides an exception to the general rule of real property. If
16 there is an agreement entered into for the dismantling, moving or carrying away or wrecking
17 of the property described as real property in subsection 1 of NRS 361.035, then property **must**
18 be classified as personal property. Emphasis added. Here, the parties entered a lease, which
19 requires the decommissioning of the tenant improvements (the property that is subject to this
20 petition), if the Tribe does not elect to purchase the tenant improvements. Upon termination
21 of the lease Section 12 of the lease requires, at the Tribe's election, that Eagle Shadow remove
22 all of Tenant's Property, including Tenant Infrastructure Improvements. Section 12 also
23 requires a decommissioning plan which will restore the property to substantially the same
24 condition as the beginning of the lease. *See* definition of "decommissioning" in Section 12.02
25 of the lease. Since the lease has a requirement to remove the Tenant Improvements under
26 Nevada law the Tenant Improvements are personal property in accordance with NRS
27 361.035(3).

1 But, even if NRS 361.035(3) does not require the property to be categorized as personal
2 property, Appendix E of the Department of Taxation's Personal Property Manual provides
3 guidance to county assessors on determining whether fixtures are real or personal property
4 applies. Appendix E provides three tests: (1) physical annexation; (2) constructive annexation;
5 and (3) intent. Under the first test, if the property can be removed without substantially
6 damaging the item or the land then it's mostly like personal property. Under the second test,
7 if the purpose of the item is to augment the use of the improvement no matter how it is attached,
8 such as an elevator, the item would be real property. Under the third test, the assessor can
9 consider the intention of the owner, such as written agreements between the real property
10 owner and the owner of the property being taxed.

11 Lastly, similar to the guidance in Appendix E, the United States Tax Court in *Whiteco*
12 *Industries v. Commission on Internal Revenue*, 65 T.C. 664 (1975), established six criteria for
13 distinguishing personal property from permanent structures for tax purposes. The criteria are:
14 (1) capability and history of being moved; (2) whether the property was designed or
15 constructed to remain permanently in place; (3) circumstances indicating the expected or
16 intended duration of affixation; (4) substantiality and time required for removal; (5) damage
17 sustained upon removal; and (6) manner of affixation to the land. The Assessor analyzed each
18 criterion under the *Whiteco* case and found that the property was personal property.

19 The Taxpayer disputes the County's classification of the solar facility as personal
20 property. The Taxpayer argues that the solar structures are permanently affixed to the land
21 using driven piles, concrete foundations, and engineered systems designed for long-term use
22 under a 50-year lease. Under NRS 361.035, they contend that these improvements qualify as
23 real property. The Taxpayer further asserts that the proper classification on tribal land must be
24 evaluated under federal law, not state-level personal property tests. The Taxpayer insists that
25 the County must use federal regulations specifically, 26 CFR section 1.856-10 & 26 CFR
26 section 1.1031(a)-3 to determine if real or personal property. See CBOE Minutes (Feb. 25,
27 2026) at 22 (Index No. 8).

1 The Department of Taxation leaves the determination of whether property is real or
2 personal property to county assessors. Clark County assesses all utility-scale solar farms as
3 personal property, applying Appendix F which is specific for Utility Scale Photovoltaic Solar
4 Farms and the six *Whiteco* factors. Here, application of each factor supports classification of
5 the subject property as tangible personal property.

6 The Assessor disagrees that the definitions in 26 CFR section 1.856-10 and 26 CFR
7 section 1.1031(a)-3 should control the classification of property for Nevada property-tax
8 purposes. These regulations are used solely for determinations regarding property as it applies
9 to federal income tax. 26 CFR 1.856-10 addresses whether a corporation qualifies as a Real
10 Estate Investment Trust under the Internal Revenue Code, and 26 CFR 1.1031(a)-3 deals with
11 the definition of real property for 1031 tax exchanges. There is no support that these federal
12 regulations are required to be used when county assessors determine whether property in
13 Nevada is real or personal property. Even if the federal regulations were considered, they
14 largely mirror the *Whiteco* factors and the tests in Appendix F of the Personal Property Manual.
15 Moreover, Example 8 in 26 CFR 1.856-10 (see below) reflects that the Internal Revenue
16 Service does not consider all solar equipment as real property.

17 “Example 8. Solar energy site.

18 (i) REIT H owns a solar energy site, among the components of which are land,
19 photovoltaic modules (PV Modules), mounts and an exit wire. REIT H enters
20 into a long-term lease with a tenant for the solar energy site. REIT H neither
21 operates the solar energy site nor provides services to its tenant. The mounts
22 support the PV Modules. The racks are affixed to the land through foundations
23 made from poured concrete. The mounts will remain in place when the tenant
24 vacates the solar energy site. The PV Modules convert solar photons into electric
25 energy (electricity). The exit wire is buried underground, is connected to
26 equipment that is in turn connected to the PV Modules, and transmits the
27 electricity produced by the PV Modules to an electrical power grid, through
28 which the electricity is distributed for sale to third parties.

(ii) REIT H's PV Modules, mounts, and exit wire are each separately identifiable items. Separation from a mount does not affect the ability of a PV Module to convert photons to electricity. Separation from the equipment to which it is attached does not affect the ability of the exit wire to transmit electricity to the electrical power grid. The types of PV Modules and exit wire that REIT H owns are each customarily sold or acquired as single units. Removal of the PV Modules from the mounts that support them does not damage the function of the mounts as support structures and removal is not costly. The PV Modules serve the active function of converting photons to electricity. Disconnecting the exit wire from the equipment to which it is attached does not damage the function of that equipment, and the disconnection is not costly. The PV Modules, mounts, and exit wire are each distinct assets within the meaning of paragraph (e) of this section. (iii) The land is real property as defined in paragraph (c) of this section. (iv) The mounts are designed and constructed to remain in place indefinitely, and they have a passive function of supporting the PV Modules. The mounts are not listed in paragraph (d)(2)(iii)(B) of this section, and, therefore, the mounts are assets that must be analyzed to determine whether they are inherently permanent structures using the factors provided in paragraph (d)(2)(iv) of this section. The mounts— (A) Are permanently affixed to the land through the concrete foundations or molded concrete anchors (which are part of the mounts); (B) Are not designed to be removed and are designed to remain in place indefinitely; (C) Would be damaged if removed; (D) Will remain affixed to the land after the tenant vacates the premises and will remain affixed to the land indefinitely; and (E) Would require significant time and expense to move. (v) The factors described in this paragraph (g) Example 8 (iv)(A) through (E) all support the conclusion that the mounts are inherently permanent structures within the meaning of paragraph (d)(2) of this section and, therefore, are real property. (vi) The PV Modules convert solar photons into electricity that is

transmitted through an electrical power grid for sale to third parties. The conversion is an active function. Thus, the PV Modules are items of machinery or equipment and therefore are not inherently permanent structures within the meaning of paragraph (d)(2) of this section and, so, are not real property. The PV Modules do not serve the mounts in their passive function of providing support; instead, the PV Modules produce electricity for sale to third parties, which is income other than consideration for the use or occupancy of space. ***Thus, the PV Modules are not structural components of REIT H's mounts within the meaning of paragraph (d)(3) of this section and, therefore, are not real property.*** (vii) The exit wire is buried under the ground and transmits the electricity produced by the PV Modules to the electrical power grid. The exit wire was installed during construction of the solar energy site and is designed to remain permanently in place. The exit wire is permanently affixed and is a transmission line, which is listed as an inherently permanent structure in paragraph (d)(2)(iii)(B) of this section. Therefore, the exit wire is real property.” Emphasis added.

The County Board did little or no analysis regarding the characteristics of the property to determine whether the property is real or personal property and as a result jumped to an erroneous legal conclusion. The Assessor correctly categorized this property as taxable personal property under Nevada law. The County’s Board’s decision should be reversed as the improvements in this case are personal property and should be taxed accordingly.

2. Property Located on Tribal Land But Owned by a Non-Tribal Entity is Taxable in This Case.

The taxation of property located on tribal land is complex, flexible, and sensitive to the particular facts and legislation involved, and requires a particularized examination of the relevant state, federal, and tribal interests, including tribal sovereignty and independence. *Cotton Petroleum Corporation v New Mexico*, 430 US 163 (1989).

1 The Taxpayer argues that the property is exempt because it is located on Indian Trust
2 Land and that federal law preempts state and local taxation. They cite long-standing federal
3 principles, including the supremacy of federal treaties and U.S. Supreme Court cases, but rely
4 primarily on the Ninth Circuit's 2013 *Chehalis* decision. In their view, *Chehalis* holds that
5 taxes imposed on permanent improvements located on Indian trust lands are preempted even
6 when those permanent improvements are owned by non-tribal entities. Because Nevada is
7 within the Ninth Circuit, they assert that this precedent is controlling. Following *Chehalis*, the
8 Taxpayer notes that the State of Nevada issued guidance advising assessors that permanent
9 improvements on Indian trust land are exempt. They also reference a 2021 letter from the
10 Governor's Office of Energy stating that the improvements on this site may be considered
11 exempt from state property, sales, and use taxes. The Taxpayer maintains that these
12 communications reflect explicit state policy. The Taxpayer also argues that under the *Bracker*
13 balancing analysis that implied preemption applies because tribal interest outweigh the
14 government interest in taxation.

15 The Taxpayer acknowledges that the Tribe does not currently own the improvements
16 but notes that the Tribe has an option to purchase them if NV Energy does not purchase them
17 at the end of the lease term. The Taxpayer also emphasize that the State Department of
18 Taxation has issued clear guidance stating that permanent improvements on trust land are not
19 taxable even when owned by non-tribal entities. The County Board failed to consider the
20 relevant facts necessary to properly consider express federal preemption.

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22 **A. Ninth Circuit Decision is *Chehalis* is Distinguishable and Not Applicable to the
Facts of this Case.**

23 *Chehalis* is distinguishable from the property in Nevada because, in that case, the tribe
24 held a 51% ownership interest in the improvements that Thurston County was attempting to
25 tax. The tribe owned the building through an LLC, the Ninth Circuit relied heavily on
26 *Mescalero Apache Tribe v. Jones*, 41 U.S. 145 (1973) noting that the form in which the tribe
27 chooses to conduct its business on tribal property does not strip away the land's tax-exempt
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1 status. **Here, the Moapa Band of Paiutes holds no ownership interest in the**
2 **improvements, which are solely owned by Eagle Shadow Mountain Solar / Arevon**
3 **Energy.**

4 The County Board erred in oversimplifying the issue in the case regarding federal
5 taxation of property owned by non-tribal entities but located on tribal lands. Whether state and
6 local taxation is preempted with respect to property located on tribal lands is governed by the
7 Indian Reorganization Act. The Act provides that title to any lands or rights acquired under
8 the Act of July 28, 1955, shall be taken in the name of the United States in trust for the Indian
9 tribe or individual Indian for whom the land is acquired, and that such **lands or rights** shall
10 be exempt from State and local taxation. Emphasis added. In order to determine whether the
11 property is not subject to taxation you have to determine the tribe's lands or rights. According
12 to the Bureau of Indian Affairs those rights include "any interests, benefits, and rights inherent
13 in the ownership of the real property." 25 CFR 150.2. Here, the Tribe does not have any
14 ownership interest in the solar facility until it purchases (if it chooses to do so) the solar facility
15 from the Taxpayer. It also will not have the right to purchase the solar facility for at least for
16 twenty-five (25) years as NV Energy has the right to purchase the solar facility at the end of
17 its twenty-five (25) year agreement with the Taxpayer.

18 The solar facility in this case is distinguishable due to the lack of the Tribe's ownership
19 interest in the solar facility. In *Chehalis* (Great Wolf Lodge) and *Mescalero* (operated an off-
20 reservation ski resort), the tribe was found to have ownership interest in the property or
21 business that was being taxed. While the Court found it was irrelevant or unimportant how the
22 tribe held ownership in these businesses, the courts still require the tribe to have rights to the
23 property in order for the property to be non-taxable. Recently the Arizona Supreme Court in
24 *South Point Energy v. Arizona Department of Revenue*, 253 Ariz. 30 (2022) analyzed the same
25 federal law cases relied upon by the County Board and the Taxpayer and found the Ninth
26 Circuit did not interpret Section 5 of the Indian Reorganization Act as a categorical bar to
27 taxation especially when the tax does not infringe on the Tribe's ownership interest. Here,
28 there is no infringement on the Tribe's rights as the Taxpayer, not the Tribe, is responsible for

1 the payment of the taxes. The Taxpayer and County Board ignored the analysis required of the
2 Tribe's interest and requests the State Board to find a categorical exemption that any
3 improvements on tribal land are not taxable regardless of ownership.

4 While the solar facility may be located on tribal land, all the benefits from the operation
5 of the solar facility are held by the Taxpayer. The Taxpayer and NV Energy have a Renewable
6 Power Purchase Agreement that requires the Taxpayer to provide all its solar generated power
7 to NV Energy for twenty-five (25) years so at a minimum the Tribe does not have any "rights"
8 to the solar facility for at least twenty-five (25) years. The Taxpayer's position is not reflective
9 of the complex and various case law across the country with respect to taxation of property
10 owned by non-tribal entities on tribal lands. If the Taxpayer's position was true, the United
11 States Supreme Court would have accepted the appeal in *South Point Energy*, but the United
12 States Supreme Court declined to make such a one size fits all rule. Clark County reliance on
13 *South Point Energy* is not misplaced as the facts in that case are most similar to the case before
14 the State Board because the Tribe does not have any ownership interest in the Taxpayer's
15 business or the solar facility that was constructed on its land, therefore, federal law does not
16 preempt Clark County's assessment and taxation of the solar facility.

17 The Assessor is not ignoring the guidance issued by the Department of Taxation in
18 2014, as the Assessor has assessed the solar facility as personal property based on Nevada law
19 (NRS 361.035) and the *Whiteco* analysis, therefore, the Assessor is in compliance with the
20 Department of Taxation's guidance. Furthermore, recent decisions across the country
21 addressing non-tribal entities' property on tribal lands suggest the Department's guidance is
22 outdated, or that clarification is needed for situations where the tribe does not have any of the
23 bundles of rights to the improvements on tribal land.

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1 **B. Federal Leasing Regulations Does Not Preempt State Property Taxation and**
2 **Clark County has a Substantial Government Interest under the *Bracker***
3 **Balancing Test.**

4 CBOE incorrectly relied on 25 CFR 162.017(a) to find that Clark County is preempted
5 from taxing the solar facility. 25 CFR 162.017 applies with respect to the taxation of
6 permanent improvements on Indian land that is leased pursuant to 25 CFR Part 162.
7 Subsection (a) states, “[s]ubject only to applicable Federal law, permanent improvements on
8 the leased land, without regard to ownership of those improvements, are not subject to any
9 fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a
10 State. Improvements may be subject to taxation by the Indian tribe with jurisdiction.”

11 In reviewing 25 CFR 162.017(a), the Ninth Circuit in *Desert Water Agency v. United*
12 *States Department of Interior*, 849 F.3d 1250 (9th Cir. 2017) adopted the Department of
13 Interior position that 25 CFR 162.017(a) has no effect on preemption and has no legal effect
14 at all as it does not purport to preempt any specific state taxes. The only thing 25 CFR
15 162.017(a) does, according to the Department of Interior, is to state publicly the agency’s
16 interpretation of existing law (namely *Bracker*). *Id.* at 1255. If *Chehalis* provides a bright line
17 rule for preemption of non-Indian property on tribal land, why did the Ninth Circuit and the
18 Department of Interior assert in 2017 that the *Bracker* balancing test is required to determine
19 whether state taxation of non-Indians engaging in activity or owning property on the
20 reservation is preempted.

21 Furthermore, in *South Point Energy* the Arizona Court of Appeals in considering 25
22 CFR 162.017(a) rejected reliance on 25 C.F.R. § 162.017(a) as authority for implied
23 preemption, concluding that “Congress has not authorized the Bureau of Indian Affairs to
24 preempt the State's authority to tax structures owned by non-Indians.” *Pickrel Lake*, 953
25 N.W.2d at 92–93, ¶¶ 25–29; *see also South Point II*, 253 Ariz. at 39, ¶ 35, 508 P.3d at 255
26 (holding that “the regulation itself [25 C.F.R. § 162.017(a)] cannot preempt the County's tax”
27 and “we have no need to defer to the Department of Interior's interpretation” (citations
28 omitted)). The *Pickrel Lake* court further concluded that any preemptive language in the
federal regulations should have no impact on its analysis and found “little evidence of

1 congressional intent to supersede the State's authority.” 953 N.W.2d at 93, ¶ 30 (citing *Wyeth*
2 *v. Levine*, 555 U.S. 555, 576, 129 S.Ct. 1187, 173 L.Ed.2d 51 (2009)); *see also South Point II*,
3 253 Ariz. at 39, ¶ 35, 508 P.3d at 255 (“The Department of Interior has taken the position in
4 other cases that ‘§ 162.017 has no legal effect at all,’ and ... is ‘agnostic’ on whether any
5 specific state tax is preempted.” (citing *Desert Water Agency v. U.S. Dep’t of the Interior*, 849
6 F.3d 1250, 1254–55 (9th Cir. 2017) (adopting the view that the phrase “[s]ubject only to
7 applicable Federal law” in the regulation means subject to a *Bracker* analysis))). *South Point*
8 *Energy Center LLC v. Arizona Department of Revenue*, 275 Ariz. 216 (Court of Appeals,
9 2024)

10 While 25 CFR 162.017 establishes Bureau of Indian Affairs’ regulatory position that a
11 state or county may not impose a property tax on permanent improvements on leased tribal
12 land regardless of ownership. Whether a particular state property tax is actually barred requires
13 examining the underlying federal statute, the nature of the land and lease, the nature of the
14 property being taxed, and applicable legal precedent. The County Board failed to do any type
15 of examination of the facts.

16 The County Board failed to consider any of the *Bracker* factors, such as: (1) the extent
17 of the federal and tribal regulations governing the taxed activity; (2) whether the economic
18 burden of the tax falls on the tribe or non-Indian entity and (3) the extent of the state interest
19 in justifying the imposition of the taxes. Also, the County Board erred when it ignored Ninth
20 Circuit caselaw in *Desert Water Agency*, which found that there are no federal or tribal
21 regulations with respect to ad valorem property taxes. While NRS 372.800 allows the tribe to
22 collect sales and use tax, Clark County is not aware of any tribal law applicable to ad valorem
23 taxes requiring the Tribe to tax the property of the Taxpayer. The federal interest in supporting
24 tribal economic self-sufficiency diminishes when commercial activity is structured to exploit
25 tax exemptions. *Barona Band of Mission Indians v. Yee*, 528 F.3d 1184 (2008). There is no
26 economic burden on the Tribe as the property taxes are the responsibility of the Taxpayer. The
27 land is not taxed, only the personal property that is owned by the Taxpayer. Lastly, Clark
28 County provides various government services to the Tribe and its members. The children of

1 tribal members attend Clark County School District, which is funded by the ad valorem taxes
2 that Clark County collects. Clark County provides emergency and fire services to the
3 reservation and to the solar facility and its employees. See Record of Decision, page 12.

4 Here, there is no overarching federal interest, the taxation of the Taxpayer does not
5 impede the Tribe's ability to lease the property to the Taxpayer or collect its PILOT payments.
6 The Taxpayer, not the Tribe, is responsible for the payment of the personal property taxes
7 assessed on the property owned and operated by the Taxpayer. Lastly, the ad valorem taxes
8 provide fundamental government services to the residents of the reservation, such as
9 education, indigent services, medical services, general improvements in the areas surrounding
10 the reservation. The ad valorem taxes are also used by the State of Nevada to provide State
11 services. Clark County has a statutory duty to assess and tax the Taxpayer and that duty is not
12 preempted by federal law under the *Bracker* test. Additionally, the County maintains that the
13 state has a strong and legitimate interest in imposing taxes that support local services, which
14 benefit both tribal members and non-tribal residents in the surrounding communities. Thus,
15 the County maintains that taxation is lawful and appropriate.

16 **D. CONCLUSION**

17 Clark County requests that the State Board overturn the CBOE's decision that federal
18 law preempts Clark County from taxing the subject solar facility based solely on its location
19 on tribal lands. The Assessor maintains that the subject property was properly classified as
20 personal property and correctly valued using the Utility Photovoltaic Solar table contained in
21 the State's Personal Property Manual, consistent with the treatment of all other photovoltaic
22 solar facilities in Clark County. Neither express or implied federal preemption, nor Nevada
23 law permits the subject property, whether considered real or personal, to escape taxation.

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1 Accordingly, Clark County requests the State Board reverse the County Board's
2 decision, uphold the Assessor's determination that the solar facility is personal property and
3 not tax exempt, and affirm the Assessor's valuation of \$282,630,733 for the 2025/2026 fiscal
4 year.

5 DATED this 23rd day of September, 2026.

6 STEVEN B. WOLFSON
7 DISTRICT ATTORNEY

8 By: /s/ Lisa Logsdon
9 LISA LOGSDON, County Counsel
10 State Bar No. 11409
11 TAYLOR DUFFY, Deputy District Attorney
12 State Bar No. 16693
13 500 S. Grand Central Pkwy. 5th Flr.
14 P. O. Box 552215
15 Las Vegas, Nevada 89155-2215
16 Attorney for Petitioner
17 Clark County Assessor

18 **CERTIFICATE OF ELECTRONIC SERVICE**

19 I hereby certify that on the 23rd day of September, 2026, I emailed a copy of the above
20 and foregoing **Assessor's Brief in Accordance with NAC 361.703.** addressed as follows:

21 State Board of Equalization
22 c/o Kari Skalsky
23 Denise Mosely
24 kskalsky@tax.state.nv.us
25 stateboard@tax.state.nv.us
26 moselyd@tax.state.nv.us

27 James Wadhams
28 jlw@wadhamsnv.com
Attorney for Taxpayer Eagle Shadow Mountain

Eagle Shadow Mountain Solar, Taxpayer
Eric Huswick
EHuswick@arevonenergy.com
James Bergstrom
Jberstrom@arevonenergy.com

/s/Patricia C. Villa
An Employee of the Clark County District
Attorney's Office – Civil Division

PETITIONER'S MOTION FOR STAY

IN THE MATTER OF:

EAGLE SHADOW MOUNTAIN SOLAR,
325MK 8ME, LLC c/o AREVON ENERGY,
Respondent

Case No. 26-113
Account No: 229299
Assessment Year: 2025-2026

COMES NOW, Petitioners Clark County, Nevada and Clark County Assessor (hereinafter “County” or “Assessor”), and hereby move the Nevada State Board of Equalization (“SBOE” or “State Board”) to stay further proceedings in SBOE Case No. 26-113, the Assessor’s appeal for the 2025–2026 Unsecured Roll concerning the personal property associated with the Eagle Shadow Mountain Solar project. Petitioners seek a stay pending final appellate disposition of the First Judicial District Court’s August 24, 2026 Order Granting Petition for Judicial Review, which reversed the State Board’s November 26, 2025 Notice of Decision in related SBOE Case No. 25-155. A stay will conserve resources and avoid inconsistent rulings on overlapping dispositive issues while appellate proceedings are pursued. This request is made pursuant to the State Board’s authority to receive and decide motions under NAC 361.705, and, if necessary, to continue and defer hearings for good cause under NAC 361.706.

The State Board's motions and scheduling authority, including NAC 361.705 and NAC 361.706, provides the basis for the relief requested. NAC 361.705 authorizes the State Board to receive and act on motions. NAC 361.706 authorizes the State Board, upon a showing of good cause, to grant a continuance "to defer a hearing to another day or time." Consistent with these provisions, the State Board may manage its docket, regulate proceedings before it, and issue orders necessary to ensure the orderly administration of matters pending before the Board. Good cause exists here to stay proceedings in SBOE Case No. 26-113 or, alternatively, to defer any hearing and related deadlines pending final

1 appellate disposition of the First Judicial District Court’s August 24, 2026, order reversing
2 the State Board’s November 26, 2025, decision in related SBOE Case No. 25-155.
3 Proceeding while appellate review is pending risks inconsistent rulings on overlapping
4 dispositive issues and would require the parties and the Board to expend resources litigating
5 matters that may be materially affected by the appellate outcome; a stay or continuance will
6 conserve resources and promote consistent, orderly adjudication.

7 **I. Facts**

8 This matter concerns the Clark County Assessor’s appeal to the Nevada State Board
9 of Equalization from a decision of the Clark County Board of Equalization (“CBOE” or
10 “County Board”) regarding the assessment of personal property associated with the Eagle
11 Shadow Mountain Solar project for the 2025–2026 unsecured roll. The County Board
12 conducted a hearing on February 25, 2026, and on March 5, 2026, issued its written decision
13 denying the Assessor’s recommendation and determining that, because the property is on
14 Moapa Tribe land, it is not subject to taxation. The Assessor timely filed a Petition for
15 Appeal from the Decision of the County Board to the State Board, and the State Board
16 docketed the appeal as SBOE Case No. 26-113.

17 This appeal is related to a prior State Board matter involving the same personal
18 property, SBOE Case No. 25-155. The stay request arises from the State Board’s November
19 26, 2025, decision in Case No. 25-155, and the Respondent’s subsequent judicial review of
20 that decision. On August 24, 2026, the First Judicial District Court entered its Order
21 Granting Petition for Judicial Review, reversing the State Board’s November 26, 2025,
22 Decision in Case No. 25-155 concerning Eagle Shadow Mountain Solar 325MK 8ME, LLC
23 c/o Arevon Energy vs. Clark County Assessor. In its order, the district court held that the
24 Eagle Shadow Mountain Solar project is exempt from Nevada property tax under express
25 federal preemption because it is a permanent improvement on land owned by the United
26 States and held in trust for the Moapa Band of Paiutes and therefore exempt under 25 U.S.C.
27 § 5108 and *Chehalis*. In the alternative, the court held the project is exempt under implied
28 preemption applying the *Bracker* analysis, finding that federal and tribal interests

1 outweighed the County's generalized revenue interests and that the assessment was not
2 narrowly tailored to services provided in connection with on-reservation activities.

3 The Assessor has filed a Notice of Appeal of the district court's August 24, 2026,
4 order and therefore requests that the State Board stay further proceedings in this 2025–2026
5 appeal. Proceeding with this appeal while appellate review is pending risks inconsistent
6 rulings on overlapping dispositive issues and would require the parties and the State Board to
7 expend resources litigating matters that may be materially affected by the appellate outcome.
8 Accordingly, Petitioners seek a stay of proceedings in SBOE Case No. 26-113 pending final
9 appellate review of the district court's August 24, 2026, order.

10 **II. Argument**

11 The State Board should grant a stay under NAC 361.705 and NAC 361.706 because
12 this case presents the same dispositive federal preemption issues now subject to impending
13 appellate review arising from the First Judicial District Court's August 24, 2026, Order
14 reversing the SBOE's November 26, 2025, decision in related Case No. 25-155. Both
15 matters concern the 2025–2026 unsecured roll treatment of personal property associated with
16 the Eagle Shadow Mountain Solar project and turn on the application of express federal
17 preemption under 25 U.S.C. § 5108 and the Supreme Court's decision in *Chehalis*, as well as
18 alternative implied preemption principles under *Bracker*. The Assessor's stated intent to seek
19 appellate review underscores that the controlling legal questions are unsettled at the state
20 appellate level and that definitive guidance is needed to promote uniform administration of
21 the tax laws in materially indistinguishable circumstances.

22 Proceeding with Case No. 26-113 now would risk inconsistent rulings on the same
23 preemption questions that the district court has already decided in 25-155 and that the
24 Nevada Supreme Court will soon address. That risk imposes concrete harm on the parties
25 and the State Board, including duplicative briefing and evidentiary presentation, the potential
26 for conflicting outcomes on identical legal theories, and the prospect of remand or re-
27 litigation if an appellate decision later clarifies or alters the governing preemption
28 framework. A stay pending appellate resolution will conserve agency and party resources,

1 avoid piecemeal determinations, and ensure that the State Board’s eventual decision aligns
2 with binding appellate authority on the overlapping federal questions.

3 Good cause exists under NAC 361.705 and NAC 361.706 because the pending and
4 closely related appellate posture in 25-155 directly bears on the core legal issues in 26-113;
5 the overlap is substantial and outcome-determinative; the Assessor has filed a Notice of
6 Appeal; and a brief pause will materially advance efficient, consistent, and fair resolution of
7 both matters without prejudicing any party. The State Board should therefore stay Case No.
8 26-113 until issuance of appellate guidance stemming from the district court’s reversal in 25-
9 155 or until a date certain tied to the status of that appellate proceeding.

10 **III. Conclusion**

11 For the foregoing reasons, the County respectfully requests that the State Board Grant
12 this Motion and stay all proceedings in the 2025/2026 appeal for Eagle Shadow Mountain
13 Solar until the appellate process concerning the First Judicial District Court’s August 24,
14 2026, Order.

15 DATED this 23rd day of September, 2026.

16 Respectfully submitted,

17 STEVEN B. WOLFSON
18 DISTRICT ATTORNEY

19 By: /s/ Lisa Logsdon
20 LISA LOGSDON, County Counsel
21 State Bar No. 11409
22 TAYLOR DUFFY, Deputy District Attorney
23 State Bar No. 16693
24 500 S. Grand Central Pkwy. 5th Flr.
25 P. O. Box 552215
26 Las Vegas, Nevada 89155-2215
27 Attorney for Petitioner
28 Clark County, Nevada

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An Employee of the Clark County District
Attorney's Office – Civil Division

RESPONDENT'S OPPOSITION TO MOTION FOR STAY

BEFORE THE NEVADA STATE BOARD OF EQUALIZATION

IN THE MATTER OF:

CLARK COUNTY ASSESSOR, Petitioner,

EAGLE SHADOW MOUNTAIN SOLAR, 325MK 8ME, LLC, Respondent.

Case No. 26-113

Account No: 229299

Assessment Year: 2025-2026

**RESPONDENT EAGLE SHADOW MOUNTAIN SOLAR'S OPPOSITION TO
PETITIONERS' MOTION FOR STAY**

COMES NOW, Respondent Eagle Shadow Mountain Solar, 325MK 8ME, LLC (hereinafter "Taxpayer" or "Respondent"), by and through its counsel of record, James L. Wadhams of Wadhams Advisors, and hereby opposes the Motion for Stay ("Motion") filed by Petitioners Clark County, Nevada and the Clark County Assessor (collectively, "County" or "Assessor"). The Motion should be denied, and the Nevada State Board of Equalization ("SBOE" or "State Board") should proceed to hear and determine SBOE Case No. 26-113 without further delay, for the reasons set forth in the following points and authorities.

POINTS AND AUTHORITIES

The Motion should be denied because (1) NRS 361.380(1) imposes a mandatory, non-discretionary duty on the State Board to complete the business of equalization presented to it, including appeals such as this one. The statute allows no mechanism for suspending any business filed with and acknowledged by this Board past its current term; (2) an indefinite stay would deprive the Taxpayer of a definitive resolution of its 2025-2025 tax obligation and the corresponding opportunity to obtain a refund or credit, contrary to the Taxpayers' Bill of Rights codified at NRS 360.291; and (3) neither NAC 361.705 nor NAC

361.706 — the only authority the Assessor cites — authorizes the open-ended relief the Assessor requests. NAC 361.706, by the Assessor’s own description, permits the Board only “to defer a hearing to another day or time” upon a showing of good cause — a continuance to a date certain, not an indefinite suspension tied to the outcome of proceedings that, as of this filing, have not been docketed, briefed, or scheduled before the Nevada Supreme Court.

I. FACTS

On February 25, 2026, the Clark County Board of Equalization (“CBOE”) conducted a hearing on the Assessor’s recommended assessment of personal property associated with the Eagle Shadow Mountain Solar project for the 2025–2026 unsecured roll. On March 5, 2026, the CBOE issued its written decision denying the Assessor’s recommendation and determining that the property, located on land held in trust for the Moapa Band of Paiutes, is not subject to taxation. The Assessor timely appealed that determination to the State Board, which docketed the appeal as SBOE Case No. 26-113.

As stated in Petitioner’s Motion, this appeal concerns the same property and the same legal questions presented in a related matter, SBOE Case No. 25-155, in which the State Board reached the opposite conclusion on November 26, 2025, upholding taxation of the property. The Taxpayer sought judicial review of that decision, and on August 24, 2026, the First Judicial District Court entered its Order Granting Petition for Judicial Review, reversing the State Board and holding that the Eagle Shadow Mountain Solar project is exempt from Nevada property tax. (Copy attached) The district court reached that conclusion on two independent grounds: first, that the project is expressly exempt under federal preemption because it is a permanent improvement on land owned by the United States and held in trust for the Moapa Band of Paiutes, citing 25 U.S.C. § 5108 and *Chehalis*; and second, in the alternative, that the project is exempt under implied preemption applying the Bracker balancing test, because federal and tribal interests outweigh the County’s generalized revenue interest and the assessment was not narrowly tailored to services provided in connection with on-reservation activities.

The Assessor has filed a notice of appeal from the district court’s August 24, 2026 order and now asks the State Board to stay all further proceedings in this separate 2025–2026 appeal until that appellate process concludes.

II. ARGUMENT

A. NRS 361.380(1) Requires the State Board to Complete the Business of Equalization for This Assessment Year; It Does Not Authorize an Indefinite Suspension.

NRS 361.380(1) provides that the State Board “shall hold such number of meetings as may be necessary to care for the business of equalization presented to it,” and that “[c]ases may be heard at additional meetings which may be held at any time and place in the state before November 1.” NRS 361.380(1) (emphasis added). The statute’s use of “shall,” combined with its express restriction to before November 1, makes clear that the Legislature mandated the Board’s business of equalization for a given assessment year — including appeals from county boards such as this one — to be completed within that annual cycle, not carried forward indefinitely.

The Assessor asks the Board to ignore that mandate by staying this appeal “pending final appellate disposition” of a Nevada Supreme Court proceeding that, as of the filing of the Motion, consists of nothing more than a notice of appeal. The Assessor does not — and cannot — identify a date by which that appellate process will conclude; full briefing and disposition before the Nevada Supreme Court routinely takes well over a year, often longer. A stay tied to that process is, in substance, a suspension of this appeal past November 1, 2026, and quite possibly past November 1, 2027, in derogation of the statute’s command that the Board’s business of equalization move forward on an annual cycle.

NAC 361.706, the regulation the Assessor invokes, does not nor could it amend the language of NRS 361.380. By its terms — and by the Assessor’s own characterization — it authorizes the Board, on a showing of good cause, “to defer a hearing to another day or time” before the mandated conclusion of the term of the Board. Additionally, “day or time” is a date certain, not an open-ended hold keyed to the outcome of litigation the Board neither controls nor can predict. Nothing in NAC 361.705 or NAC 361.706 authorizes the Board to hold an assessment-year appeal in abeyance indefinitely, and reading either regulation to permit that result would place them in direct conflict with NRS 361.380(1).

B. An Indefinite Stay Would Deny the Taxpayer a Definitive Resolution of Its Tax Obligation and the Opportunity for a Refund or Credit, Contrary to the Taxpayers' Bill of Rights.

Nevada's Taxpayers' Bill of Rights, codified at NRS 360.291, guarantees every taxpayer, among other things, the right to be treated "with courtesy, fairness, uniformity, consistency and common sense" by the officers and employees charged with administering the tax laws, the right to recover an overpayment of taxes promptly upon the final determination of the amount properly due, and the right to have ambiguous or unsettled provisions of the tax law construed in favor of the taxpayer. NRS 360.291. Each of these rights presupposes that a final determination will actually issue. The final administrative determination is issued by the State Board and, by statute, it must conclude its business before November 1. An indefinite stay forecloses a final determination.

The Clark County Board of Equalization has already determined, after a hearing on the merits, that the personal property at issue is not subject to taxation. Because the Assessor has filed an appeal to the State Board of that decision, the final determination is presently pending action of the State Board. SB 32 considered in the 2011 Legislative Session dealt directly with extending the time by which the State Board has to conclude its business. The Department of Taxation, through Director Dino DiCianno and Chief Terry Rubald testified the Department was asking for additional time for the State Board of Equalization to consider its business and referred specially to appeals from County Boards of Equalization. To Chief Rubald's credit, she indicated this was necessary to provide the due process to the taxpayers. The Legislature unanimously agreed to extend the SBOE's deadline to "before November 1". Absent a final Board decision, the Taxpayer is left without the mechanism NRS 360.291 guarantees to obtain a refund or credit that would follow from a determination consistent with the CBOE's ruling below and the district court's ruling in the companion case. Staying this appeal indefinitely — for a year, two years, or longer, depending on the pace of Nevada Supreme Court proceedings the Assessor has only just initiated — leaves the Taxpayer's obligation open-ended and unresolved, precisely the outcome the Taxpayers' Bill of Rights was enacted to prevent.

Taxpayer has been found by the Clark County Board of Equalization to have overpaid taxes and is entitled to a prompt recovery of those taxes. Because of the Assessor's appeal the taxpayer is delayed in obtaining that recovery. To the extent that the final determination now is the business of the State Board of Equalization any delay beyond November 1 would undermine the duty of the Board to conclude its business, it would violate the prompt payment requirement.

C. The Balance of Equities Favors Proceeding With This Appeal, Not Staying It.

Even if the Board possessed unfettered discretion to grant the stay requested here, that discretion should not be exercised in the Assessor's favor. The only tribunal to have reached the merits of the preemption issue common to both cases — the First Judicial District Court — ruled against the County (copy attached), holding on two independent, alternative grounds that the Eagle Shadow Mountain Solar project is exempt from Nevada property tax. The Clark County Board of Equalization, applying the same facts to this account, reached the same conclusion. Each year's assessment of value and taxation is subject to challenge and resolution within the time frame mandated in NRS 361.380.

A stay in these circumstances serves only the Assessor's interest in delaying a result adverse to the County while it seeks a different outcome elsewhere. It does nothing to conserve the Board's resources that a straightforward application of the district court's reasoning to this account would not equally achieve, and it imposes a real and ongoing cost on the Taxpayer, who is left without the definitive resolution to which it is entitled. If the Nevada Supreme Court ultimately reverses the district court's order, the Assessor remains free at that time to seek reconsideration or other appropriate relief from the State Board's decision in this matter; no purpose is served by withholding a decision now.

III. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the State Board deny Petitioners' Motion for Stay and proceed to schedule and determine SBOE Case No. 26-113 in the ordinary course, consistent with the Board's mandatory duty under NRS 361.380(1) to complete the business of equalization for the 2025–2026 assessment year.

DATED this 28th day of September, 2026.

Respectfully submitted,

WADHAMS ADVISORS

By: 

JAMES L. WADHAMS

Attorney for Respondent/Taxpayer

Eagle Shadow Mountain Solar, 325MK 8ME, LLC

c/o Arevon Energy

Attachment 1:

Eagle Shadow Mountain v. State of Nevada, Case No 25 OC oo225 1B (1st Dist. Ct., Aug 21, 2026)

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of September 2026, I emailed a copy of the above and foregoing Respondent's Opposition to Petitioners' Motion for Stay, addressed as follows:

State Board of Equalization

c/o Kari Skalsky

Denise Mosely

kskalsky@tax.state.nv.us

stateboard@tax.state.nv.us

moselyd@tax.state.nv.us

Lisa Logsdon, County Counsel

Taylor Duffy, Deputy District Attorney

Clark County District Attorney's Office – Civil Division

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P.O. Box 552215

Las Vegas, Nevada 89155-2215

Attorneys for Petitioners Clark County and Clark County

Lisa.Logsdon@clarkcountyanv.gov

Eagle Shadow Mountain Solar, Taxpayer

Eric Huswick – EHuswick@arevonenergy.com

James Bergstrom – JBergstrom@arevonenergy.com



An Employee of Wadhams Advisors

ATTACHMENT 1

REC'D & FILED
2026 AUG 21 PM 4:27
WILLIAM SCOTT HARRIS
CLERK
BY _____

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR COUNTY OF CARSON CITY**

EAGLE SHADOW MOUNTAIN SOLAR,
325MK 8ME, LLC, a Delaware limited
liability company; and AREVON ENERGY,
INC., a Delaware corporation,

Petitioners,

vs.

STATE OF NEVADA, ex. rel. STATE
BOARD OF EQUALIZATION; CLARK
COUNTY, NEVADA, a political subdivision
of the State of Nevada; and the CLARK
COUNTY ASSESSOR, an officer of Clark
County in the State of Nevada,

Respondents.

CASE NO.: 25 OC 00225 1B

DEPT NO.: 2

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

Before the Court is the Petition for Judicial Review ("Petition") filed pursuant to NRS 233B.130 on December 29, 2025, by Petitioner Eagle Shadow Mountain Solar, 325MK 8ME, LLC ("Petitioner 325MK 8ME"), and Petitioner Arevon Energy, Inc. ("Petitioner Arevon" and together with Petitioner 325MK 8ME, the "Petitioners"). Having carefully and thoroughly reviewed and considered all pleadings, moving papers and the administrative record, the Court finds good cause to grant the Petition and reverse the Notice of Decision dated November 26, 2025, issued by the Nevada State Board of Equalization ("Respondent SBE") in In the Matter of Eagle Shadow

Mountain Solar, 325MK 8ME, LLC c/o Arevon Energy vs. Clark County Assessor, Case No.25-155 (the “Notice of Decision”).

I. INTRODUCTION

Petitioners own and operate a utility-scale solar generation facility located in Clark County, Nevada, on 2,300 acres of the Moapa River Indian Reservation (the “ESM Project”), land owned by the United States and held in trust for the Moapa Band of Paiutes (the “Tribe”). In April 2025, Respondent Clark County Assessor and Respondent Clark County issued a tax bill to Petitioners assessing Nevada personal property tax on the ESM Project for tax years 2022/2023, 2023/2024, and 2024/2025 (the “Assessment”). Petitioners timely appealed the Assessment. Respondent SBE subsequently upheld the Assessment. Petitioners filed the Petition on the grounds that the ESM Project is exempt from Nevada property tax under the doctrine of federal preemption or, alternatively, under Nevada law governing the taxation of real property.

Having reviewed the administrative record and the parties’ briefs, the Court grants the Petition and reverses the Notice of Decision for the reasons set forth below.

II. PROCEDURAL BACKGROUND

Respondent Clark County and Respondent Clark County Assessor issued the Assessment to Petitioners in April 2025. Petitioners appealed the Assessment directly to Respondent SBE in May 2025.¹ On September 29, 2025, Respondent SBE held a hearing on the appeal. At the end of the hearing, Respondent SBE voted 2-1 to uphold the Assessment “based on the fact that [Respondent Clark County Assessor and Respondent Clark County] treat all solar as personal property in the State of Nevada -- or in the county, Clark County.” (ROA02033:12–23). Respondent SBE issued its written Notice of Decision on November 26, 2025 stating only that “[t]he State Board moved in favor of the Assessor because the Assessor treats all solar equipment and related property as personal property in Clark County, Nevada.” (*Id.* at 02036). Petitioners timely filed the Petition on December 29, 2025, and all parties subsequently filed briefs.

¹ Property tax appeals usually go to a County Board of Equalization. Here, however, because the Assessment was issued in April 2025, the statutory appeal bypassed the County Board of Equalization and was made directly to the Nevada State Board of Equalization. See NRS 361.360(3).

1 The parties requested oral argument on this matter. The court determined oral argument
2 would not assist the court in deciding the matter.

3 III. ISSUES

4 The Petition presents the following issues:

5 1. Whether the ESM Project is exempt from Nevada property tax under the doctrine of
6 express federal preemption.

7 2. Whether, if the ESM Project is not exempt under express federal preemption, it is
8 nonetheless exempt from Nevada property tax under the doctrine of implied federal preemption.

9 3. Whether, if federal preemption does not resolve the matter, the ESM Project is
10 exempt from Nevada property tax under Nevada law.

11 4. Whether the Notice of Decision is reversible because Respondent SBE's 2-1 vote to
12 uphold the Assessment failed to satisfy the requirement of NRS 361.375(9).

13 IV. FINDINGS OF FACT

14 The Court hereby finds as follows:

15 The ESM Project (ROA00201-00203) is a 300 MW-ac solar photovoltaic renewable power
16 generating facility constructed, owned and operated by Petitioners. (ROA00024-00025). The ESM
17 Project is within Clark County, Nevada, and is specifically located on 2,300 acres of the Tribe's
18 land. (*Id.*). The United States holds title to the Tribe's land in trust for the benefit of the Tribe, a
19 federally recognized Indian Tribe. (*Id.* at 01053).

20 Petitioners lease the 2,300 acres from the Tribe pursuant to a 50-year ground lease (the
21 "Lease"). (*Id.* at 01006-01177). (*Id.* at 01024). Under the Lease, the Tribe dedicated 2,300 acres of
22 land for the exclusive operation of the ESM Project. (*Id.* at 01022). The leased land cannot be used
23 for anything else without the Tribe's approval. (*Id.*). The Lease classifies the ESM Project as a
24 permanent improvement. (*Id.* at 01031) (stating that the solar components "shall be treated as
25 permanent improvements[.]"). The Tribe has the express option upon conclusion or termination of
26 the Lease to keep the ESM Project intact and become the owner-operator. (*Id.* at 01046).

27 Decommissioning and removal of the project is not required under the Lease unless the
28 Tribe directs. (*Id.*). To that end, a "Conceptual Decommissioning Plan" was submitted by the Tribe

1 to the Environmental Protection Agency and Bureau of Indian Affairs ("BIA") as part of the
2 project's Environmental Impact Study. (*Id.* at 00442–00454). The Conceptual Decommissioning
3 Plan explains the ESM Project may continue to operate beyond the termination of the Lease (and
4 other agreements). (*Id.* at 00446) (noting the ESM Project may be "used to generate solar energy
5 even beyond the term of the initial lease and energy purchase agreements, remaining in solar energy
6 production for the foreseeable future."). Decommissioning the project would be a robust, expensive
7 undertaking subject to intense regulatory scrutiny and likely take more than a year. (*Id.* at 00038).
8 The ESM Project's ability to generate solar energy for the foreseeable future is also reflected in the
9 design of the project to include more solar panels than necessary with oversized DC capacities to
10 ensure optimal energy generation output realization beyond the Lease's term. (*Id.* at 00527;
11 02007:14–02008:16).

12 The Lease was approved by the United States Secretary of the Interior through the BIA
13 pursuant to federal regulations that control leases of tribal lands. (*Id.* at 00954–01000). The Lease
14 incorporates by reference federal leasing regulations such as 25 CFR 162.017. (*Id.* at 01051).

15 The ESM Project is subject to a separate agreement between Petitioners and the Tribe
16 whereby Petitioners are obligated to pay PILOT Payments to the Tribe (the "Tribal Agreement")
17 (*Id.* at 01333–01346; 01335). PILOT Payments cannot "exceed \$100 per acre of the aggregate
18 Premises actually leased by [Petitioners] during the year immediately preceding the Pilot Date"
19 with 3% annual increases (*Id.*). The Tribal Agreement caps PILOT Payments at "eighty percent
20 (80%) of the real property taxes that would be imposed by federal, state or local authorities if the
21 [ESM Project] were located on land outside the Reservation in the State of Nevada lying within
22 Clark County Tax District No. 100 (Unincorporated County)." (*Id.*).

23 The ESM Project is further subject to a 25-year power purchase agreement between
24 Petitioners and NV Energy under which Petitioners sell all power output from the ESM Project
25 exclusively to NV Energy, and NV Energy holds an option to purchase the ESM Project at the end
26 of the term. (*Id.* at 01179–01331; 01198–01199; 01210–01211).

27 Petitioners broke ground on the ESM Project in August 2020. (*Id.* at 00024–00025). The
28 project became commercially operable in May 2023. (*Id.*). Petitioners constructed the ESM Project

1 in roughly two-and-a-half years at an estimated cost of \$460,300,001. (*Id.* at 00032). The ESM
2 Project's Structural Design Plans detail how the project is physically connected to the land. (*Id.* at
3 00052–00199). The ESM Project consists of two primary components physically affixed to the
4 land: module-tracker structures (*Id.* at 00205–00210), and a substation (*Id.* at 00439–00440). (*Id.*
5 at 00027–00030). Each primary component is constructed and physically affixed to the land
6 through permanent construction methods. (*Id.*). Module-tracker structures are permanently affixed
7 by “earth trusses” (*Id.* at 00206–00208) or “driven piles” (*Id.* at 00209–00210) and the substation
8 is physically affixed through various classic “permanent” cement foundations like drilled caissons.
9 (*Id.* at 00028–00030). The primary components are “built to last... conceivably... forever” using
10 the exact same galvanized steel equipment used to construct the Hoover Dam. (*Id.* at 01983:6–
11 01984:5).

12 The ESM Project's primary components are physically affixed to the land in a permanent
13 manner. (*Id.* at 00027–00030; 01967–01970; 01983–01984; 02003–02004; 02008–02010; 02027–
14 02028). The ESM Project has never been moved nor is it capable of being moved and still operate.
15 (*Id.* at 00034–00036; 01972; 02003; 02005–02006; 02028–02029). The ESM Project was
16 intentionally designed to address unique geological considerations of the Tribe's land. (*Id.* at
17 00030–00031; 01968; 02004–02005; 02027). Removal of the ESM Project would be a substantial,
18 complex, time-consuming and expensive undertaking subject to intense bonding requirements and
19 strict regulatory scrutiny. (*Id.* at 00033–00034; 01971–01972; 02002–02003; 02028). Removal of
20 the ESM Project from the land would require complete decommissioning which would irreversibly
21 destroy the project and substantially damage the Tribe's land. (*Id.* at 00033–00034; 01971–01972;
22 02002–02003; 02028–02029).

23 V. LEGAL PRINCIPLES

24 A court may set aside a final agency decision where the petitioner's “substantial rights”
25 have been prejudiced because the final decision violates constitutional or statutory provisions,
26 exceeds the agency's statutory authority, is affected by error of law, is clearly erroneous in view of
27 the reliable, probative, and substantial evidence on the whole record, or is arbitrary or capricious
28 or otherwise characterized by an abuse of discretion. *See* NRS 233B.135(3)(a–f). A reviewing court

1 “may not substitute its judgment” for that of the agency on questions of fact. *Southwest Gas v.*
2 *Woods*, 108 Nev. 11, 15, 823 P.2d 288, 290 (1992). Instead, the court determines “whether
3 substantial evidence exists in the record to support the agency’s ruling.” *State Indus. Ins. Sys. V.*
4 *Christensen*, 106 Nev. 85, 88, 787 P.2d 408, 409–10 (1990).). “Substantial evidence” exists only
5 where “a reasonable person could find the evidence adequate to support the agency’s conclusion.”
6 *L. Offs. of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008); *see also*
7 NRS 233B.135(4). Conversely, questions of law are reviewed de novo. *See Howard v. City of Las*
8 *Vegas*, 121 Nev. 691, 693, 120 P.3d 410, 411 (2005). With questions of law, “independent appellate
9 review, rather than a more deferential standard of review” is required. *Tighe v. Las Vegas Metro.*
10 *Police Dep’t*, 110 Nev. 632, 635, 877 P.2d 1032, 1034 (1994).²

11 A. Federal Preemption

12 The Supremacy Clause of the United States Constitution provides that federal law is “the
13 supreme Law of the Land,” binding on state courts notwithstanding any contrary state law. U.S.
14 Const. art. VI, cl. 2. From the Supremacy Clause flows the well-settled doctrine of preemption that
15 federal law supersedes conflicting state law. *See Nanopierce Techs., Inc. v. Depository Tr. &*
16 *Clearing Corp.*, 123 Nev. 362, 370, 168 P.3d 73, 79 (2007) (“Thus, when a conflict exists between
17 federal and state law, valid federal law overrides, i.e., preempts, an otherwise valid state law.”).
18 Express and implied are the “two broad branches” of preemption. *Rolf Jensen & Assocs. V. Dist.*
19 *Ct.*, 128 Nev. 441, 445, 282 P.3d 743, 746 (2012).

20 1. Express Preemption.

21 The United States Secretary of the Interior may “acquire... any interest in lands... for the
22 purpose of providing land for Indians” and title to such land “shall be taken in the name of the
23 United States in trust for the Indian tribe... for which the land is acquired, and such lands or rights

24 ² In its responsive brief, Respondent SBE cites to NRS 361.430 for the proposition that Petitioners’ burden
25 of proof is to “show by clear and satisfactory evidence that any valuation established by the . . . county
26 assessor or equalized by . . . the State Board of Equalization is unjust and inequitable.” *See Respondent State*
27 *Board of Equalization’s Reply Memorandum of Points and Authorities in Opposition to Petition for Judicial*
28 *Review* at 4, 5. Respondent SBE does not identify how, if at all, an “unjust and inequitable” standard differs
from, or overrides in any fashion, the judicial review standards set forth in NRS 233B.135(3)(a)-(f).
Regardless, as discussed below the Court finds that Petitioners have satisfied their burden of proof and met
the evidentiary standards under both NRS 233B.135(3)(a)-(f) and NRS 361.430.

1 shall be exempt from State and local taxation.” 25 U.S.C. 5108. “[W]here the United States owns
2 land covered by [25 U.S.C. 5108] and holds it in trust for the use of a tribe,” 25 U.S.C. 5108
3 “exempts permanent improvements on that land from state and local taxation[.]” *Confederated*
4 *Tribes of Chehalis Reservation v. Thurston Cnty. Board of Equalization*, 724 F.3d 1153, 1157 (9th
5 Cir. 2013). Exemption from state and local taxation applies “without regard to the ownership of the
6 improvements.” *Chehalis*, 724 F.3d at 1159. Ownership of the permanent improvement is
7 “irrelevant” when determining tax immunity. *Id.* at 1157. “Subject only to applicable Federal law,
8 permanent improvements on the leased land, without regard to ownership of those improvements,
9 are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political
10 subdivision of a State.” 25 CFR 162.017(a).

11 Under federal law, the following six-factors determine whether an item is a permanent
12 improvement: (1) “Is the property capable of being moved, and has it in fact been moved?”; (2) “Is
13 the property designed or constructed to remain permanently in place?”; (3) “Are there
14 circumstances which tend to show the expected or intended length of affixation, i.e., are there
15 circumstances which show that the property may or will have to be moved?”; (4) “How substantial
16 a job is removal of the property and how time-consuming is it? Is it ‘readily removable’?”; (5)
17 “How much damage will the property sustain upon its removal?”; and (6) “What is the manner of
18 affixation of the property to the land?” *Whiteco Indus., Inc. v. Comm’r of Internal Revenue*, 65 T.C.
19 664, 672–73 (1975).

20 2. Implied Preemption.

21 The *Bracker*-test applies when “a State asserts authority over the conduct of non-Indians
22 engaging in activity on the reservation.” *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136,
23 144 (1980). In a *Bracker*-test, courts make a “particularized inquiry into the nature of the state,
24 federal, and tribal interests at stake” which is “designed to determine whether, in the specific
25 context, the exercise of state authority would violate federal law.” *Bracker*, 448 U.S. at 145. Where
26 state authority “interferes or is incompatible with” federal and tribal interests, the state authority
27 will be preempted “unless the State interests at stake are sufficient to justify the assertion of State
28 authority.” *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983).

1 Federal interests “are greatest when the government’s regulation of a given sphere is
2 ‘comprehensive and pervasive’[.]” *Barona Band of Mission Indians v. Yee*, 528 F.3d 1184, 1192
3 (9th Cir. 2008). An additional federal interest is “achieving uniformity in the regulation and taxation
4 of tribal leasing.” *Agua Caliente Band of Cahuilla Indians v. Riverside Cnty.*, 181 F. Supp. 3d 725,
5 742 (C.D. Cal. 2016).

6 Tribal economic development, tribal self-determination and tribal self-government are the
7 three most crucial tribal interests. *See Bracker*, 488 U.S. at 149. Whether the imposition of state
8 and local taxes frustrates the promotion of these interests are factors to be weighed by a court
9 applying *Bracker*. *See Cnty. of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*,
10 502 U.S. 251, 275 (1992). Self-determination and economic development are “touchstones” of
11 Congress’ overriding goal of tribal self-government. *New Mexico*, 462 U.S. at 334–34. Tribes are
12 granted authority to use their lands and resources “to undertake and regulate economic activity
13 within the reservation...and to defray the cost of governmental services by levying taxes.” *New*
14 *Mexico*, 462 U.S. at 335–36. “[W]hen a tribe undertakes an enterprise under the authority of federal
15 law, an assertion of State authority must be viewed against any interference with the successful
16 accomplishment of the federal purpose.” *New Mexico*, 462 U.S. at 336. As explained by 25 C.F.R.
17 162.017’s preamble, the purpose of leasing tribal land is “to allow Indian landowners to use their
18 land profitably for economic development, ultimately contributing to tribal well-being and self-
19 government[.]” 77 Fed. Reg. 72440-01 (Dec. 5, 20120), 2012 WL 6019492. State and local taxes
20 obstruct federal policies supporting tribal economic development, self-determination, and strong
21 tribal governments. 77 Fed. Reg. 72440-01 (Dec. 5, 20120), 2012 WL 6019492.

22 State authority is preempted “unless the State interests at stake are sufficient to justify the
23 assertion of State authority.” *New Mexico*, 462 U.S. at 334. In cases where significant federal and
24 tribal interests exist, a state may impose taxes “only if its taxes are ‘narrowly tailored’ to funding
25 the services it provides in connection with the activities taking place on tribal land[.]” *Gila River*
26 *Indian Cnty. v. Waddell*, 967 F.2d 1404, 1412 (9th Cir. 1992); *see also Hoopa Valley Tribe v.*
27 *Nevins*, 881 F.2d 657, 661 (9th Cir. 1989) (“To be valid, the California tax must bear some
28 relationship to the activity being taxed.”); *Crow Tribe of Indians v. State of Mont.*, 819 F.2d 895,

1 901 (9th Cir. 1987) aff'd sub nom. Montana v. Crow Tribe of Indians, 484 U.S. 997, 108 S. Ct. 685,
2 98 L. Ed. 2d 638 (1988) ("Even if Montana's interests are sufficiently legitimate, there is substantial
3 evidence that the coal taxes are not narrowly tailored to support them"). Raising revenue alone is
4 not justification for imposing a local tax. *See Bracker*, 448 U.S. at 151 ("where respondents are
5 unable to justify the taxes except in terms of a generalized interest in raising revenue, we believe
6 that the proposed exercise of state authority is impermissible").

7 C. Nevada Law

8 1. Personal and Real Property.

9 NRS Chapter 361 provides the State authority to tax all property in Nevada and county
10 assessors with authority to assess property located in their respective counties. *See* NRS 361.045;
11 *see also* NRS 361.260. Nevada law categorizes property as either "real property" or "personal
12 property." *See* NRS 361.035; *see also* NRS 361.030. Nevada law also defines the term "fixture" to
13 include "an item, other than a trade fixture, that was originally personal property which has been
14 installed or attached to land or an improvement in a permanent manner[.]" NAC 361.1127. A
15 "fixture" is considered an improvement that is treated as "real property." *See* NAC 361.1133; *see*
16 *also* NAC 361.11715(1)(b)&(c).

17 In Nevada, the facts and circumstances of every case are examined to determine whether
18 something is a non-taxable fixture of real property through three lenses: annexation, adaptation,
19 and intent. *See Fondren, et al, v. K/L Complex Ltd., et al*, 800 P.2d 719, 722 (1990). When "it can
20 be demonstrated that a reasonable person would consider the property to be physically annexed to
21 the land, adapted to a use specific to the real property, or intended to be permanently affixed to the
22 real property, such item will be considered a fixture." Nevada Attorney General Opinion 2012-10
23 (10-31-2012). "The annexation test is met where the chattel is actually or constructively joined to
24 the real property. . . The adaptation test is met when the object in question is adapted to the use to
25 which the real property is devoted. . . the most important factor in making the determination of
26 whether an item is a fixture . . . is the intention of the parties at the time the items were installed."
27 *See Fondren*, 800 P.2d at 722; *see also* NAC 361.1127.

1 Annexation specifically inquires whether the item is “annexed to the property” in such a
2 way that it is so “physically attached” to the land that it has “become a part” of the real property.
3 *Fondren*, 800 P.2d at 722. Adaptation examines whether the item is “specifically designed” for the
4 land and “exclusively used” to augment the devoted purpose of the real property. *Fondren*, 800
5 P.2d at 722. The intent inquiry is the most important and considerations thereunder include
6 “whether the item is intended to be a permanent part of the land or improvement, taking into account
7 physical or constructive annexation, and other objective manifestations of permanence.”
8 (ROA00791–00792). One “objective manifestation of permanence” is whether removal of the item
9 “would destroy the item or cause significant damage to the real property to which it is installed or
10 attached.” NAC 361.1127(2). The “terms of a written agreement between parties indicates the
11 intention” of the parties as well, particularly as to removal or transferred ownership of the item.
12 NAC 361.1127(2).

13 IV. ANALYSIS

14 A. Express Preemption

15 It is undisputed that the ESM Project is uniquely located on land taken in the name of the
16 United States and held in trust for the Tribe and that such land is exempt from State and local
17 taxation pursuant to 25 U.S.C. 5108. It is similarly undisputed that Respondent Clark County
18 Assessor and Respondent Clark County assessed Nevada property tax on the ESM Project pursuant
19 to Respondent Clark County Assessor’s authority to assess property under NRS Chapter 361.
20 Accordingly, an express preemption analysis is required by the Supremacy Clause of the
21 Constitution of the United States because 25 U.S.C. 5108 and NRS Chapter 361 directly conflict.
22 *Compare* 25 U.S.C. 5108 *with* NRS 361.045 *and* NRS 361.260.

23 The paramount issue underlying the question of express preemption in this case is whether
24 the ESM Project is a permanent improvement pursuant to federal law—more specifically, the six-
25 factor test announced in *Whiteco*. The substantial evidence in this case makes clear the ESM Project
26 is a permanent improvement under *Whiteco*: (1) the project has never been moved nor is it capable
27 of being moved in a way that renders it operational; (2) it was intentionally engineered and
28 constructed to remain permanently in place because its design addresses unique geological

1 considerations of the Tribe's land, the terms of the Lease and the Power Purchase Agreement are
2 prolonged and lengthy and multiple parties may own and operate it at a later date, and the project
3 will generate renewable energy well beyond the expiration of either agreement; (3) the
4 circumstances surrounding the project—construction methods, language of the Lease, Power
5 Purchase Agreement and Tribal Agreement, and the fact that the project cannot be moved or
6 removed without substantial effort, cost and time—collectively suggest Petitioners and the Tribe
7 intended it to be permanent; (4) removal of the project from the Tribe's land is a substantial,
8 complex, and expensive undertaking that would take more than a year and be subject to intense
9 bonding requirements and strict regulatory scrutiny through a decommissioning process that would
10 completely destroy the project all of which suggests it is not "readily removable"; (5) removal of
11 the ESM Project would directly cause the irreversible destruction of the project and its primary
12 components and cause significant damage to Tribe's land; and (6) the project and its primary
13 components are affixed to the Tribe's land through permanent construction methods.

14 Because the ESM Project is a permanent improvement on land the United States holds in
15 trust for the Tribe, 25 U.S.C. § 5108 and *Chehalis* exempt it from Nevada property tax irrespective
16 of whether Petitioners or the Tribe own it.³ Respondent SBE did not apply this express preemption
17 analysis at all, despite shared acknowledgment that federal law controls the outcome. Accordingly,
18 the ESM Project is exempt from Nevada property tax under the doctrine of express preemption.

19 B. Implied Preemption

20 The Court acknowledges that an implied preemption is unnecessary as express preemption
21 has been found. However, the Court proceeds with such analysis as it results in further convincing
22 support for granting the Petition and reversing the Notice of Decision. It is undisputed that the
23 Assessment is an assertion of State authority over Petitioners' conduct on the Tribe's land.

24
25 ³ Respondent Clark County relies heavily on *South Point Energy Ctr. LLC v. Arizona Dep't of Revenue*, 253
26 Ariz. 30, 508 P.3d 246 (2022). The Court finds *South Point* inapposite for several reasons. First, it is a non-
27 binding state court case out of Arizona. Second, it is factually distinguishable from this case in that the non-
28 tribal lessee was required to remove the solar project from the tribal land upon termination of the lease and
the tribal entity had no right to acquire ownership of the project. Third, the *South Point* court determined
that project to be a permanent improvement, in direct contrast to Respondent Clark County's position in this
case. As such, *South Point* is not determinative here.

1 Accordingly, an implied preemption analysis is required because Respondent Clark County
2 Assessor and Respondent Clark County are asserting authority over the conduct of non-Indians
3 engaging in activity on tribal land. *See Bracker*, 448 U.S. at 144.

4 There is substantial evidence in the record that the federal interests at stake here are
5 “greatest” because the federal government comprehensively and pervasively regulates leases on
6 tribal land as evidenced by federal regulations like 25 CFR 162.017 which is called out and
7 specifically incorporated in the Lease. The federal government also has an additional interest in
8 achieving uniformity in the regulation and taxation of tribal leasing.

9 Similarly, there is also substantial evidence in the record that the Tribe’s interests in tribal
10 economic development, self-determination and tribal self-government—the three most significant
11 tribal interests in a *Bracker* analysis—are directly implicated here. The Lease is a personification
12 of tribal autonomy as a direct discretionary use of tribal land for economic development. Based on
13 the language of the Tribal Agreement, the total revenue generated for the Tribe through the ESM
14 Project PILOT Payments potentially reaches \$26 million. Pursuant to the Tribal Agreement, the
15 Tribe may lose the entire \$26 million PILOT Payment revenue over the next 50 years if
16 Respondents prevail. This massive reduction in tribal revenue would certainly and significantly
17 harm the Tribe, particularly in terms of tribal economic development and self-determination which
18 results in diminished tribal self-government.

19 Because the federal and tribal interests are significant here, Respondent Clark County
20 Assessor and Respondent Clark County may impose taxes on the ESM Project only if those taxes
21 are “narrowly tailored” to funding the services they provide in connection with the activities taking
22 place on the Tribe’s land. The record lacks substantial evidence that Respondent Clark County
23 Assessor and Respondent Clark County’s interest in assessing Nevada property tax is narrowly
24 tailored to funding services they provide in connection with the ESM Project on the Tribe’s land.
25 The only justifications they provide are conclusory statements that “tax revenue supports local
26 services that help Eagle Shadow, its employees and the Tribe” and that “property tax helps Clark
27 County maintain roads and supports numerous other County services which aid the Tribe.”
28 (ROA01353). Raising revenue alone is not sufficient justification for imposing a local tax under

1 *Bracker* and there is evidence in the record that Respondent Clark County stops maintaining the
2 roads once they cross onto the Tribe's land. (ROA00902-00916). After careful review of the
3 record, neither Respondent Clark County Assessor nor Respondent Clark County identified or
4 provided any evidence regarding the "numerous other County services which aid the Tribe."

5 There is substantial evidence in the record to find that the federal and tribal interests
6 significantly outweigh Respondent Clark County Assessor and Respondent Clark County's
7 generalized interest in raising revenue, unsupported interest in maintaining roads, and unidentified
8 other services. There is a lack of substantial evidence in the record that the Assessment is narrowly
9 tailored to fund the services Respondent Clark County Assessor and Respondent Clark County
10 provide for the ESM Project on the Tribe's land. Accordingly, the ESM Project is exempt from
11 Nevada property tax under the doctrine of implied preemption pursuant to *Bracker*.

12 C. Nevada Law

13 1. Personal and Real Property.

14 Because the preemption analyses resolve this case, it is unnecessary for the Court to reach
15 Petitioners' alternative argument under Nevada law. The Court notes, however, that the same result
16 would follow under Nevada law. Nevada law requires that the facts and circumstances of every
17 case be examined through three distinct lenses (annexation, adaptation, and intent) to determine
18 whether something is a non-taxable fixture of real property. *See Fondren*, 800 P.2d at 722.

19 There is substantial evidence in the record that a reasonable person would consider the ESM
20 Project to be a non-taxable fixture of real property because it is physically annexed to the land,
21 adapted to a use specific to the real property, and intended to be permanently affixed to the real
22 property: (1) the annexation inquiry is satisfied because the project and its primary components are
23 physically attached to the land through permanent connections; (2) the adaptation inquiry is
24 satisfied because the ESM Project is "specifically designed" for and constructed to address specific
25 geological concerns unique to the Tribe's land and "exclusively used" to augment the devoted
26 purpose of the Tribe's land to develop the project and generate solar energy; and (3) the intent
27 inquiry—the most important consideration in this Nevada law analysis—is satisfied because of
28 several factors that demonstrate the project's intended permanence: (i) removal of the project would

1 result in irreversible damage to the project and its primary components and cause significant
2 damage to the Tribe's real property; (ii) the language of the Lease classifies the ESM Project as a
3 permanent improvement and requires it be treated as such; and (iii) Hearing testimony from the
4 Tribe that it treats the project as a permanent improvement and it intends to own and operate the
5 project for its benefit in the future. (ROA02006:21-02007:11; ROA01979:24-01981:3). The ESM
6 Project's classification as a non-taxable permanent improvement to real property under Nevada law
7 is confirmed by several additional pieces of evidence in the record: (1) representations from Nevada
8 officials regarding the project's exemption from Nevada property tax (ROA00456); (2) Guidance
9 Letter 14-001 issued by the Nevada Department of Taxation (*Id.* at 01002-01004); and (3) the
10 Nevada Department of Taxation's historic and repeated treatment of similar solar projects as
11 evidenced by the 43 fiscal impact notes issued by the Department in the record (*Id.* at 00571-
12 00710). Accordingly, the ESM Project is a permanent "fixture" under Nevada law and, therefore,
13 would be exempt from Nevada property tax if Nevada law applied.

14 2. Majority Vote Requirement.

15 On the majority-vote-requirement argument, the Court finds Respondents' argument is
16 persuasive.

17 **VII. CONCLUSIONS OF LAW**

18 The Court hereby concludes that:

19 **A. Express and Implied Preemption**

20 The ESM Project is a permanent improvement located on land owned by the United States
21 and held in trust for the Tribe and is therefore exempt from Nevada property tax under the doctrine
22 of express federal preemption pursuant to the Supremacy Clause, 25 U.S.C. § 5108, and *Chehalis*.

23 Even if the ESM Project was not a permanent improvement, it is exempt from Nevada
24 property tax under the doctrine of implied federal preemption, specifically the *Bracker* analysis,
25 because the federal and tribal interests at stake substantially outweigh Respondent Clark County
26 Assessor and Respondent Clark County's generalized, unsupported and unidentified interests.
27 Moreover, the assessed tax is not narrowly tailored to any service provided in connection with the
28 ESM Project on the Tribe's land.

1 The Notice of Decision violates the Supremacy Clause and 25 U.S.C. § 5108, rests on
2 multiple errors of law arising from Respondent SBE's failure to apply controlling federal authority,
3 is clearly erroneous and unsupported by substantial evidence, is arbitrary and capricious, and is
4 unjust and inequitable. It is therefore reversible under NRS 233B.135(3)(a), (d), (e), and (f) and
5 NRS 361.430.

6 **B. Nevada Law**

7 1. Personal and Real Property.

8 The ESM Project is a permanent fixture of real property and therefore non-taxable.
9 Accordingly, under Nevada law, the ESM Project is exempt from Nevada property tax as a non-
10 taxable permanent fixture of real property. Such classification is confirmed by Guidance Letter 14-
11 001 issued by the Nevada Department of Taxation. ROA01002-01004.

12 The Notice of Decision prejudices Petitioners' substantial rights in that it is based on error
13 of law due to Respondent SBE's failure to correctly apply Nevada law; is clearly erroneous in that
14 it failed to apply (or even address) Nevada law to determine whether the ESM Project is a non-
15 taxable permanent fixture of real property or taxable personal property; is arbitrary, capricious and
16 characterized by an abuse of discretion; and is unjust and inequitable because it treats the ESM
17 Project in the same manner as other solar projects located in Clark County for purposes of taxation,
18 notwithstanding substantial evidence that the facts and circumstances of the ESM Project render
19 the project non-taxable under Nevada law. It is therefore reversible pursuant to NRS
20 233B.135(3)(d),(e) and (f) and NRS 361.430.

21 2. Majority Vote Requirement.

22 SBE's vote complied with Nevada Law.

23 **VIII. ORDER**

24 Based on the foregoing, and good cause appearing:

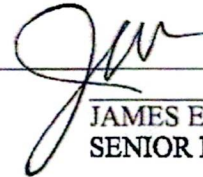
25 **IT IS HEREBY ORDERED** that the Petitioners' Petition for Judicial Review is
26 **GRANTED.**

27 **IT IS FURTHER ORDERED** that the Notice of Decision dated November 26, 2025,
28 issued by the Nevada State Board of Equalization in In the Matter of Eagle Shadow Mountain Solar,

1 325MK 8ME, LLC c/o Arevon Energy vs. Clark County Assessor, Case No.25-155, is
2 REVERSED.

3 IT IS SO ORDERED.

4 Dated this 21 day of August 2026.

5 
6 JAMES E. WILSON JR.
7 SENIOR DISTRICT JUDGE

8
9
10 CERTIFICATE OF SERVICE

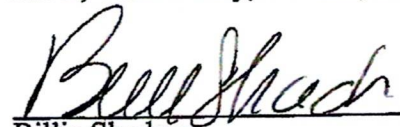
11 I certify that I am an employee of the First Judicial District Court of Nevada; that on the
12 24th day of August 2026, I served a copy of this document by placing a true copy in an envelope
13 addressed to:

14
15 Joshua J. Hicks, Esq.
16 Zachary D. Besso, Esq.
17 MCDONALD CARANO LLP
18 100 West Liberty St., Tenth Floor
19 Reno, NV 89501

20 Clark County
21 Office of the District Attorney
22 Steven B. Wolfson, Esq.
23 Lisa V. Logsdon, Esq.
24 500 South Grand Central Parkway
25 Las Vegas, NV 89155

26 Jessica Shimoda Guerra, Esq.
27 State of Nevada, State of Nevada
28 Office of the Attorney General
1 State of Nevada Way, Ste. 100
Las Vegas, NV 89119

the envelope sealed and then deposited in the Court's central mailing basket in the court clerk's
office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for mailing.

25 
26 Billie Shadron
27 Judicial Assistant

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of September 2026, I emailed a copy of the above and foregoing Respondent's Opposition to Petitioners' Motion for Stay, addressed as follows:

State Board of Equalization

c/o Kari Skalsky

Denise Mosely

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stateboard@tax.state.nv.us

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An Employee of Wadhams Advisors

RESPONDENT'S RESPONSE BRIEF



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

Via Email

October 2, 2026

Nevada State Board of Equalization
500 S. Grand Central Pkwy 2nd Floor
Las Vegas, Nevada 89155

Re: Property Tax Appeal - Eagle Shadow Mountain Solar, Case No. 26-113

Dear Board:

325MK 8ME, LLC (the "Respondent") submits this response in support of its exemption and in support of the decision of the Clark County Board of Equalization concerning the Eagle Shadow Mountain Solar Project (the "Facility"). The Facility is located entirely on land held by the United States in trust for the Moapa Band of Paiutes. Federal law therefore bars Clark County from imposing the challenged property tax.

SUMMARY OF TAXPAYER'S POSITION

First, 25 U.S.C. § 5108, controlling Supreme Court authority, Ninth Circuit precedent, and federal leasing regulations exempt permanent improvements on tribal trust land from state and local taxation. The exemption applies regardless of whether the improvements are owned by the Tribe or a non-tribal lessee. *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, 1157-59 (9th Cir. 2013); 25 C.F.R. § 162.017(a).

Second, the Facility is a permanent improvement. Its module-tracker structures are anchored deeply into bedrock by tens of thousands of earth trusses and driven piles, and its substation is secured to substantial concrete foundations. The Facility's components were designed, constructed, and operated together as a single 300 MW generating facility and cannot be removed without substantial damage.

Third, Nevada's classification of the Facility as personal or real property does not control the federal preemption analysis. *Chehalis* expressly holds that state-law classifications are irrelevant when determining whether permanent improvements on tribal trust land may be taxed.

Finally, even if the Facility were treated as personal property, the tax is independently preempted under *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). The federal and tribal interests in on-reservation development, self-government, and tribal revenue outweigh the County's generalized revenue interest, particularly where the County provides minimal services connected to the Facility.

The Board should reverse the 2025-26 assessment and direct a refund of the property tax paid by Respondent.

BACKGROUND

The Reservation and Tribal Lease

The Moapa River Indian Reservation consists of approximately 72,000 acres owned by the United States and held in trust for the Tribe. Under a lease approved by the U.S. Department of the Interior, Respondent leases approximately 2,300 acres for a 50-year term to construct and operate the Facility. The Tribe provides certain services and receives payments in lieu of taxes (PILOT payments) under a

related agreement. During development, the State of Nevada informed Respondent that property taxes would be paid to the Tribe rather than the State because Nevada lacked jurisdiction over property taxes on tribal land. The Tribe and Respondent relied on that position in developing the Facility and structuring the PILOT arrangement.

The Facility

The Facility is a 300 MW photovoltaic solar project located entirely on the Reservation. Construction began in 2020, and commercial operations began in May 2023. The Facility includes module-tracker structures, solar panels, inverters, transmission infrastructure, water systems, and an electrical substation. These integrated components operate as one generating facility. Respondent sells the Facility's output to NV Energy under a 25-year power purchase agreement.

The module-tracker structures are fixed to the land with earth trusses and driven piles embedded in bedrock. The substation's transformers, control structures, breakers, switching equipment, and steel structures are anchored to concrete foundations. Removing these components would require industrial decommissioning and excavation and would substantially damage the improvements and the land.

The Assessment and Prior Proceedings

For tax year 2025-26, Clark County classified the Facility as personal property and assessed approximately \$2.47 million in tax. Respondent paid the assessment and appealed. On February 25, 2026, the Clark County Board of Equalization concluded that the Facility was not subject to property tax because it is located on Moapa tribal land. On August 24, 2026, the First Judicial District Court separately held that the Facility is exempt, both because it is a permanent improvement on tribal trust land and, alternatively, under Bracker balancing.

ARGUMENT

I. Federal Law Categorically Preempts the Tax

States may not tax Indian reservation land absent unmistakably clear congressional authorization. 25 U.S.C. § 5108 expressly provides that land held by the United States in trust for an Indian tribe is exempt from state and local taxation. The Supreme Court has long recognized that this protection extends to permanent improvements because those improvements are intimately connected with the land. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 158 (1973); *United States v. Rickert*, 188 U.S. 432, 442 (1903).

Chehalis is controlling in the Ninth Circuit. It establishes a simple rule: section 5108 preempts state and local taxation of permanent improvements on tribal trust land, regardless of who owns the improvements. 724 F.3d at 1159. The County therefore cannot avoid federal preemption by emphasizing that Respondent, rather than the Tribe, owns the Facility.

Federal leasing regulations confirm the same result. Under 25 C.F.R. § 162.017(a), permanent improvements on leased Indian land are not subject to state or local taxes, without regard to ownership. The regulations define permanent improvements as buildings, structures, and associated infrastructure attached to the leased premises, and specifically treat facilities and infrastructure installed under wind and solar resource leases as permanent improvements. See 25 C.F.R. §§ 162.003, 162.543-544.

The Nevada Department of Taxation reached the same conclusion in Guidance Letter 14-001, which states: "In the past, real and personal property owned by third parties, but located on trust lands, had been considered subject to property taxation in Nevada pursuant to NRS 361.045. Due to recent decisions by federal courts, however, any permanent improvements owned by any person or company and located on trust lands are not taxable property by the State of Nevada or its subdivisions."

II. The Facility Is a Permanent Improvement

The Facility satisfies the federal definition of a permanent improvement. Its principal structures are physically secured to the Reservation land through deep foundations embedded in bedrock or concrete. The components were designed and constructed for this location, operate together as a unified power plant, and cannot be moved intact. Their removal would require destructive decommissioning and substantial excavation.

Nevada guidance is consistent with this conclusion. Nevada Department of Taxation Guidance Letter 14-001 recognizes that buildings and improvements on tribal trust land are not taxable even when owned by a person or entity other than the tribe. Nevada has also repeatedly treated the integrated components of utility-scale solar facilities as real property. In all events, Chehalis makes clear that Nevada's personal-property label cannot override the federal exemption.

III. The Tax Is Also Preempted Under Bracker

Even if the Facility were not treated as a permanent improvement, the tax would still be preempted under Bracker. That analysis weighs the relevant federal and tribal interests against the state or local interest supporting the tax, with attention to the specific on-reservation activity at issue.

Federal interests are substantial. Federal law comprehensively regulates leases of tribal land and specifically encourages productive use of tribal land for economic development, self-determination, and strong tribal government. The solar leasing regulations address the lease term, compensation, financing, insurance, ownership, and permanent-improvement status of project infrastructure. The County's tax conflicts directly with that framework.

The Tribe's interests are equally strong. The Facility supports economic development on the Reservation, and the Tribe receives PILOT payments under the Tribal Agreement. Dual taxation would diminish the Tribe's ability to obtain value from its land, exercise its own taxing authority, attract investment, and fund tribal services. It would also disrupt the economic arrangement on which the Tribe and Respondent relied when the Facility was developed.

By contrast, the County's asserted interest is principally a generalized interest in revenue. The County provides minimal services to the on-reservation Facility, while the Tribe maintains Reservation roads and provides relevant services. Ninth Circuit precedent requires a closer relationship between a state tax and services provided in connection with the taxed activity. The County's assessment is not narrowly tailored to such services and cannot outweigh the federal and tribal interests.

CONCLUSION

The Facility is a permanent improvement on land owned by the United States and held in trust for the Moapa Band of Paiutes. Under 25 U.S.C. § 5108, Mescalero, Chehalis, and 25 C.F.R. § 162.017, the Facility is exempt from state and local property tax regardless of its ownership or Nevada-law classification. The assessment is also independently preempted under Bracker because the federal and tribal interests outweigh the County's generalized revenue interest and the County provides minimal services connected to the Facility.

Respondent respectfully requests that the Board sustain the action of the County Board of Equalization and direct a refund of the property tax paid by Respondent.

Sincerely,



Eric Huswick (Sep 29, 2026 17:31:09 PDT)

Eric Huswick
Authorized Signatory

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of September, 2026, I emailed a copy of the above and foregoing Respondent's **ESM Opening brief**, addressed as follows

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PETITIONER'S
REPLY IN
SUPPORT OF
MOTION FOR STAY

BEFORE THE NEVADA STATE BOARD OF EQUALIZATION

IN THE MATTER OF:

CLARK COUNTY ASSESSOR, Petitioner

EAGLE SHADOW MOUNTAIN SOLAR,
325MK 8ME, LLC c/o AREVON ENERGY,
Respondent

Case No. 26-113

Account No: 229299

Assessment Year: 2025-2026

PETITIONERS' REPLY IN SUPPORT OF MOTION FOR STAY

Petitioners Clark County, Nevada and Clark County Assessor (hereinafter "County" or "Assessor") respectfully submit this reply in support of their Motion to Stay.

I. ARGUMENT

A. The State Board Has Authority to Stay/Continue This Proceeding for Good Cause, and NRS 361.380(1) Does Not Bar Such Relief.

NAC 361.705 authorizes parties to present motions to the State Board and NAC 361.706, in turn, authorizes the State Board, upon good cause shown, to grant a continuance "to defer a hearing to another day or time." Petitioners invoked that authority to request a stay, or, alternatively, a continuance of proceedings in Case No. 26—113 while appellate review proceeds in the related matter.

Respondent argues that NRS 361.380(1), and specifically its reference to hearings occurring "before November 1," imposes a mandatory jurisdictional deadline that prevents the State Board from granting the requested relief. Nevada Supreme Court precedent excludes such a rigid reading of Chapter 361's timing provisions.

In *Village League to Save Incline Assets, Inc. v. State ex rel. Bd. of Equalization*, the Nevada Supreme Court considered whether the statutory deadlines governing action by the State Board were mandatory or directory. *Village. League*, 124 Nev. 1079, 1087, 194 P.3d 1254, 1259–60 (2008). The Court explained that "[g]enerally, statutory deadlines in tax statutes that are developed to protect taxpayers are mandatory, while statutory deadlines that provide tax officials with guidelines for the performance of their duties are directory." *Id.* In determining whether a deadline is mandatory or directory, the Court looks not only to the

1 statutory language, but also to the broader statutory scheme and applicable policy and equity
2 considerations. *Id.*

3 The version of NRS 361.380 considered at the time of *Village League* provided: “The
4 State Board of Equalization shall conclude the business of equalization on cases that in its
5 opinion have a substantial effect on tax revenues on or before April 15. Cases having less
6 than a substantial effect on tax revenues may be heard at additional meetings which may be
7 held at any time and place in the state before October 1.” *Id.* at 1087–88, 194 P.3d at 1260.
8 Although the Court acknowledged that this language, viewed in isolation, suggested
9 mandatory deadlines, it concluded that the broader statutory scheme demonstrated otherwise.
10 *Id.* at 1088, 194 P.3d at 1260.

11 Central to the Court’s analysis was NRS 361.330, which provides that: “No
12 assessment of property is invalid, and no collection of taxes may be enjoined, restrained or
13 ordered to be refunded, on account of any failure ... [t]o do any act required by this chapter
14 within the time so required, if notice and an opportunity to be heard were afforded generally
15 to the class of taxpayers affected by the act required to be done.” NRS 361.330. The Court
16 held that NRS 361.330, “strongly indicates that the Legislature intended the deadlines in
17 Chapter 361 to be directory.” *Village League*, 124 Nev. at 1088, 194 P.3d at 1260.

18 The Court also considered the practical consequences of treating those deadlines as
19 mandatory or directory. A mandatory construction could prevent the State Board from
20 resolving taxpayer appeals whenever its statutory calendar proved insufficient, thereby
21 denying parties an opportunity to have their claims heard. *Id.* The Court declined to adopt a
22 construction producing such “harsh, unfair or absurd consequences” and held that the
23 “Legislature intended the statutory deadlines for the State Board to be directory.” *Id.* at
24 1087–89, 194 P.3d at 1260–61.

25 That reasoning remains applicable here. Although NRS 361.380 was amended in
26 2011, NRS 361.330, the statutory provision on which the Supreme Court relied in
27 determining legislative intent, remains materially unchanged. Nor does the current version of
28 NRS 361.380 state that the State Board loses jurisdiction over a pending appeal after

1 November 1. Rather, it directs the Board to convene annually and “hold such number of
2 meetings as may be necessary to care for the business of equalization presented to it,” while
3 providing that additional meetings “may be held” before November 1. NRS 361.380(1).
4 Nothing in that language demonstrates a legislative intent to overturn *Village League* and
5 transform the Board’s timing provisions into mandatory deadlines and jurisdictional
6 limitations.

7 Indeed, *Village League* is particularly informative because the State Board itself
8 continued the affected Incline Village and Crystal Bay matters while awaiting appellate
9 resolution of a related case. *Id.* at 1084, 194 P.3d at 1257. After the related appellate decision
10 issued, the State Board then held its first hearing on the merits of the Assessor’s appeal in
11 April 2007, after the statutory deadline. *Id.* at 1084, 194 P.3d at 1257-58. The Nevada
12 Supreme Court held that the State Board retained jurisdiction because the statutory deadline
13 was directory rather than mandatory. *Id.* at 1089, 194 P.3d at 1261.

14 Respondent’s interpretation of NRS 361.380 therefore cannot be reconciled with
15 *Village League*. The November 1 language does not automatically divest the State Board of
16 Jurisdiction over properly filed appeal or prevent the Board from deferring proceedings for
17 good cause.

18 Respondent separately argues that NAC 361.706 permits only a continuance to a strict
19 “date certain” and therefore cannot support the “open-ended relief” requested. But
20 Petitioners do not ask the Board to surrender control of its docket indefinitely. The requested
21 relief may be structured as a monitored stay or continuance tied to identifiable developments
22 in the related appellate proceeding, with periodic status conferences or a date certain on
23 which the Board will reconsider whether the stay should remain in place. The Board may
24 also permit either party to move to lift or modify the stay if circumstances change.

25 Accordingly, the State Board may, pursuant to NAC 361.706, stay or continue the
26 hearing to avoid unnecessary litigation of issues presently before the appellate court.

27 **B. Good Cause Exists Because the Related Appeal Presents the Same Legal Issues**
28 **Concerning the Same Property.**

1 Respondent's Opposition confirms that this appeal, Case No. 26-113, involves the
2 same Eagle Shadow Mountain Solar personal property and the same legal questions
3 presented in related Case No. 25-155. On August 24, 2026, the First Judicial District Court
4 reversed the State Board's November 26, 2025, decision in 25-155. The district court
5 concluded that the property was exempt based on express federal preemption and,
6 alternatively, under implied preemption. The Assessor has filed a notice of appeal of the
7 district court's August 24, 2026, order. The Nevada Supreme Court case number is 93391.

8 Respondent's Opposition acknowledges the overlap between the two proceedings.
9 Respondent relies on the district court's ruling in Case No. 25-155 and asks the State Board
10 to apply that ruling to the present case. But the district court's order is now the subject of
11 appellate review, and the same legal conclusions Respondent asks the State Board to adopt
12 here may therefore be affirmed, modified, or reversed through that process. That
13 circumstance establishes good cause for a stay. Proceeding now would require the parties
14 and the State Board to litigate the same preemption questions while those questions are being
15 reviewed in the related appeal.

16 **C. A Stay Avoids Duplicative Proceedings and Does Not Unfairly Prejudice**
17 **Respondent.**

18 Respondent argues that a stay would unnecessarily delay final resolution and any
19 corresponding refund or credit, invoking NRS 360.29's taxpayer protections. By contrast,
20 proceeding immediately creates a substantial risk of duplicative litigation, inconsistent
21 rulings, and additional proceedings after appellate review. Respondent acknowledges this
22 possibility by arguing that, if the Nevada Supreme Court ultimately reverses the district
23 court's order, the Assessor could later seek reconsideration or other relief from whatever
24 decision the State Board enters here. [Opp. To Motion for Stay at 5].

25 That approach multiplies proceedings rather than conserving them. It would require
26 the State Board to decide the preemption issues now, then entertain reconsideration or
27 further proceedings if appellate guidance later changes or clarifies the governing framework.
28 A stay or reasonable continuance avoids these consequences while addressing Respondent's

1 concern regarding indefinite delay. The Board may require periodic status conferences and
2 permit either party to move to lift or modify the stay if circumstances warrant. This
3 measured approach conserves agency and party resources, minimizes the risk of inconsistent
4 or short-lived rulings, and allows the Board to decide this appeal with the benefit of appellate
5 guidance on the same legal issues. A stay will conserve resources and avoid inconsistent
6 rulings on overlapping dispositive issues while appellate proceedings are pursued

7 **III. Conclusion**

8 Good cause exists to stay this proceeding. The Board has ample authority under NAC
9 361.705 and NAC 361.706 to grant a practical stay that conserves resources, avoids
10 inconsistent rulings on overlapping dispositive issues, and promotes uniform administration
11 once appellate guidance issues from the related case. Therefore, Petitioners respectfully
12 request that the Board grant the Motion to Stay.

13 DATED this 1st day of October, 2026.

14 Respectfully submitted,

15 STEVEN B. WOLFSON
16 DISTRICT ATTORNEY

17 By: /s/ Lisa Logsdon
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ASSESSOR'S REPLY BRIEF

BEFORE THE NEVADA STATE BOARD OF EQUALIZATION

IN THE MATTER OF:

CLARK COUNTY ASSESSOR, Petitioner

EAGLE SHADOW MOUNTAIN SOLAR, 325MK
8ME, LLC c/o AREVON ENERGY, Respondent

Case No. 26-113

Account No: 229299

Assessment Year: 2025-2026

ASSESSOR’S REPLY IN ACCORDANCE WITH NAC 361.703

Pursuant to NAC 361.703(4), the Assessor submits this reply to Respondent’s response brief in this matter. NAC 361.703(4) permits a party served with a response to a brief, memorandum, or other written explanation to file a written reply. Unless otherwise directed by the State Board of Equalization (“State Board”), the reply must be filed with the State Board and served on the other parties not later than three (3) days after service of the response. Respondent served their response on September 29, 2026.

A. INTRODUCTION

This matter involves the personal property assessment of a utility-scale photovoltaic power plant situated on Moapa Band of Paiutes Tribal Land. The facility is wholly owned by a non-tribal entity, Eagle Shadow Mountain Solar / Arevon Energy, and became commercially operational in May 2023. The Assessor seeks reversal of the County Board’s exemption decision and affirmation of the Assessor’s taxable value of \$282,630,733 for fiscal year 2025/2026.

Respondent’s response advances two principal themes: first, that the facility is a federally exempt “permanent improvement;” and second, that categorical or implied preemption bars County taxation. The record and controlling Nevada classification rules refute both positions. Nevada law classifies property owned and controlled by the lessee with contractual removal obligations as personal property; the facility’s components include separable, equipment-level assets that remain taxable; federal income-tax regulations do not govern Nevada ad valorem classification; no categorical federal preemption applies to non-tribal-owned property; and Bracker balancing, applied to the actual burdens and interests

1 here, confirms no implied preemption. The Board should again affirm the Assessor's
2 classification and valuation and reject Respondent's sweeping preemption theory.

3 **B. ARGUMENT**

4 **1. The Facility Is Taxable Tangible Personal Property Under Nevada Law and**
5 **Is Not a Federally Exempt "Permanent Improvement"**

6 Respondent's reliance on a categorical "permanent improvement" label to claim federal
7 exemption ignores Respondent's present ownership and control during the lease term and the
8 contractually required decommissioning/removal framework. Those facts demonstrate the
9 parties' intent that the improvements remain Respondent's property and be removed or sold
10 at fair market value at lease end, which is inconsistent with treating the solar facility as a
11 trust-land "permanent improvement" exempt from local taxation. Under NRS 361.035 and the
12 Department's Personal Property Manual, the record supports the Assessor's personal-property
13 determination.

14 Nevada's classification framework is clear. Property otherwise within NRS 361.035
15 may be personal property when there is an agreement to dismantle or remove such property.
16 NRS 361.035(3). Here, the lease squarely triggers NRS 361.035(3). Upon lease termination,
17 Section 12 of the lease requires, at the Tribe's election, that Eagle Shadow must remove all of
18 the Tenant's Property, including Tenant Infrastructure Improvements. Section 12 also requires
19 a decommissioning plan which will restore the property to substantially the same condition as
20 the beginning of the lease. *See* definition of "decommissioning" in Section 12.02 of the lease.
21 These provisions satisfy NRS 361.035(3). Alternatively, the Tribe may require removal of all
22 Tenant's Property except certain infrastructure or decline removal and purchase at fair market
23 value. Since the lease has a requirement to remove the Tenant Improvements under Nevada
24 law the Tenant Improvements are personal property in accordance with NRS 361.035(3).

25 Respondent's "permanence" assertions do not defeat Nevada's statutory classification.
26 Respondent cites driven piles, earth trusses embedded in bedrock, concrete substation
27 foundations, and claims removal would require industrial decommissioning and excavation
28 and substantially damage improvements and land. The Assessor's analysis, however,

1 documents component-level removability for substantial portions of the facility. Panels can be
2 disconnected from wires and supports; the Ojjo truss foundation is screwed into the ground
3 and can be unscrewed for removal; and direct-embedded posts are removable without damage.
4 This record-based, component-level framing confirms that, even accepting Respondent's
5 claims about certain foundations, large categories of separable equipment remain taxable
6 personal property under Nevada law.

7 Nevada's administrative guidance likewise directs assessors to apply the annexation,
8 adaptation, and intent tests, and to consider written agreements between landowners and
9 equipment owners. Appendix E, of the Nevada Department of Taxation's Personal Property
10 Manual, provides guidance on real versus personal classification. It applies three tests:
11 physical annexation, constructive annexation, and intent. Intent includes reliance on written
12 agreements between the real property owner and the property owner. Here, present ownership
13 and control reside with the lessee, the lease obligates decommissioning and removal at or
14 before termination, and security and planning for removal are embedded in the project
15 documents. Tenant Improvements are owned and controlled by Eagle Shadow. These present
16 contractual obligations and recorded intent confirm personal property classification.

17 Respondent's reliance on federal income tax regulations does not control Nevada
18 classification. The Assessor disagrees that 26 C.F.R. 1.856-10 and 1.1031(a)-3 govern Nevada
19 property-tax classification. Those regulations address federal income-tax determinations only.
20 In any event, Example 8 under 26 C.F.R. 1.856-10 recognizes that certain solar equipment
21 (e.g., photovoltaic modules) functions as machinery or equipment, not realty. Example 8
22 reflects that IRS does not treat all solar equipment as real property.

23 Finally, Nevada practice and valuation guidance align with this classification. Clark
24 County values all utility-grade photovoltaic facilities as personal property using the Utility
25 Photovoltaic Solar table in Appendix F, and the Assessor maintained a taxable value of
26 \$282,630,733 for FY 2025–2026. The County Board did little or no analysis regarding the
27 characteristics of the property to determine whether the property is real or personal property
28 and as a result jumped to an erroneous legal conclusion. The Assessor correctly categorized

1 this property as taxable personal property under Nevada law. Because Nevada law, the lease's
2 ownership/removal terms, and the Manual analyses all point to personal property, the County's
3 Board's decision should be reversed as the improvements in this case are personal property
4 and should be taxed accordingly.

5 **2. No Categorical Federal Preemption Bars Clark County's Tax on**
6 **Respondent's Non-Tribal-Owned Property**

7 Respondent's categorical preemption theory, anchored to *Chehalis* and 25 C.F.R.
8 162.017(a), fails on this record. *Chehalis* involved tribal ownership in the improvements at
9 issue. By contrast, the Moapa Band holds no ownership interest in Respondent's
10 improvements, they are owned by Eagle Shadow / Arevon. Nevada and persuasive authority
11 confirm there is no categorical bar in these circumstances. The Arizona Supreme Court in
12 *South Point Energy* held that Section 5 of the Indian Reorganization Act is not an express
13 exemption for state and local taxation of permanent improvements owned by non-Indian
14 lessees on tribal trust land where the lessee owns and must remove the improvements, and it
15 distinguished *Chehalis* on tribal-ownership grounds. *South Point Energy Center, LLC v.*
16 *Arizona Department of Revenue*, 508 P.3d 246 (Ariz. 2022). The Arizona Supreme Court,
17 which is subject to Ninth Circuit Court of Appeal precedent, found that the *Chehalis* decision
18 was distinguishable because the tribe did not have any ownership interest in the solar facility.
19 Respondent's categorical-preemption theory should be rejected.

20 The Department of the Interior's leasing regulation does not itself preempt county
21 taxation. In reviewing 25 CFR 162.017(a), the Ninth Circuit in *Desert Water Agency v. United*
22 *States Department of Interior*, 849 F.3d 1250 (9th Cir. 2017) adopted the Interior's position
23 that 25 CFR 162.017(a) has no effect on preemption and has no legal effect at all as it does
24 not purport to preempt any specific state taxes. The only thing 25 CFR 162.017(a) does,
25 according to the Department of Interior, is to state publicly the agency's interpretation of
26 existing law (namely *Bracker*). *Id.* at 1255. Respondent's reliance on 25 C.F.R. 162.017(a) as
27 a stand-alone bar is therefore inconsistent with controlling Ninth Circuit authority.

1 For similar reasons, Respondent's reliance on Nevada Department of Taxation
2 Guidance Letter 14-001 does not establish a categorical exemption here. The guidance does
3 not create a bright-line rule that all non-tribal property located on trust land is exempt from
4 taxation. While it recognizes that certain real property improvements on tribal trust land may
5 be non-taxable, it also expressly acknowledges that personal property owned by unrelated third
6 parties and located on trust land may continue to be taxable by the State and its subdivisions.
7 The Assessor's position is consistent with that guidance because the assessment at issue is
8 imposed on Respondent's Tenant Improvements as personal property owned by a non-tribal
9 entity, not on tribal land or tribal property. Accordingly, even under the Department's
10 guidance, the Tenant Improvements remain taxable.

11 **3. The *Bracker* Balancing Confirms the County's Tax Is Not Impliedly**
12 **Preempted**

13 The County Board failed to conduct the particularized, fact-specific inquiry required
14 by *Bracker*. Instead, it treated the facility's location on tribal land as dispositive without
15 analyzing the relevant factors, such as: (1) the extent of the federal and tribal regulations
16 governing the taxed activity; (2) whether the economic burden of the tax falls on the tribe or
17 non-Indian entity and (3) the extent of the state interest in justifying the imposition of the
18 taxes.

19 First, although federal and tribal law regulate the leasing framework for trust land, that
20 regulatory backdrop does not create tax immunity for a non-tribal entity's property. Consistent
21 with *Desert Water Agency*, there is no federal or tribal regulatory scheme governing county
22 ad valorem property taxes that would displace Nevada's taxation of Respondent's property.
23 While NRS 372.800 allows the tribe to collect sales and use tax, Clark County is not aware of
24 any tribal law applicable to ad valorem taxes requiring the Tribe to tax the property of the
25 Respondent.

26 Second, the economic burden of the tax falls on Respondent, not the Tribe. The land
27 itself is not taxed, only the personal property that is owned by Respondent. Respondent, not
28

1 the Tribe, is responsible for payment of the personal property taxes assessed on Respondent's
2 Tenant Improvements.

3 Third, the County's interests are substantial. Clark County has a statutory duty to assess
4 taxable property uniformly, and ad valorem revenues fund core governmental services that
5 benefit reservation residents and on-reservation activities. Those services include public
6 education through the Clark County School District and emergency and fire services available
7 to the reservation and the Facility and its employees. These are legitimate governmental
8 interests that support the assessment.

9 Balancing these considerations, there is no overarching federal interest that warrants
10 preemption here. Taxation of Respondent's personal property does not impede the Tribe's
11 ability to lease the land or to collect its PILOT payments. Where, as here, the tax burden falls
12 on a non-Indian commercial operator and the County provides substantial services supported
13 by ad valorem revenues, *Bracker* does not preempt the County's assessment. *See also Barona*
14 *Band of Mission Indians v. Yee*, 528 F.3d 1184 (9th Cir. 2008) (recognizing that the federal
15 interest in promoting tribal economic development diminishes where commercial activity is
16 structured to exploit tax exemptions). Accordingly, the County's assessment is lawful and
17 should be upheld.

18 **D. CONCLUSION**

19 For the reasons stated above, Clark County respectfully requests that the State Board
20 reverse the County Board's decision, uphold the Assessor's determination that the Facility is
21 taxable personal property and not tax-exempt, and affirm the Assessor's FY 2025/2026 taxable
22 value of \$282,630,733

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1 DATED this 1st day of October, 2026.

2 STEVEN B. WOLFSON
3 DISTRICT ATTORNEY

4 By: /s/ Lisa Logsdon
5 LISA LOGSDON, County Counsel
6 State Bar No. 11409
7 TAYLOR DUFFY, Deputy District Attorney
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10 P. O. Box 552215
11 Las Vegas, Nevada 89155-2215
12 Attorney for Petitioner
13 Clark County Assessor

14 **CERTIFICATE OF ELECTRONIC SERVICE**

15 I hereby certify that on the 1st day of October, 2026, I emailed a copy of the above
16 and foregoing **Assessor's Reply in Accordance with NAC 361.703.** addressed as follows:

17 State Board of Equalization
18 c/o Kari Skalsky
19 Denise Mosely
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22 moselyd@tax.state.nv.us

23 James Wadhams
24 jlw@wadhamsnv.com
25 Attorney for Taxpayer Eagle Shadow Mountain

26 Eagle Shadow Mountain Solar, Taxpayer
27 Eric Huswick
28 EHuswick@arevonenergy.com
James Bergstrom
Jbergstrom@arevonenergy.com

/s/ Lisa Logsdon
An Employee of the Clark County District
Attorney's Office – Civil Division

SBE NOTICE OF HEARING



STATE OF NEVADA
DEPARTMENT OF TAXATION

MAIN OFFICE
3850 Arrowhead Drive
Carson City, Nevada 89706

JOE LOMBARDO
Governor

GEORGE KELESIS
Chair, Nevada Tax Commission

SHELLIE HUGHES
Executive Director

September 28, 2026

**STATE BOARD OF EQUALIZATION
NOTICE OF HEARING**

CERTIFIED MAIL – 9489 0090 0027 6613 8215 64

PETITIONER:

Briana Johnson
Clark County Assessor
Jacob Reyes, Property Appraiser II
500 S Grand Central Pkwy, 2nd Floor
Las Vegas NV 89155

CERTIFIED MAIL – 9489 0090 0027 6528 8053 76

RESPONDENT:

Eagle Shadow Mountain Solar/Arevon Energy
James Bergstrom, Senior Tax Manager
8800 Gainey Center Dr, Ste 100
Scottsdale AZ 85258-2193

DATE/ TIME: Wednesday, October 14, 2026 at 9:00 a.m.

PLACE: Nevada Department of Taxation
700 E Warm Springs Rd., Room 150
Las Vegas, Nevada 89119

ZOOM

<https://us02web.zoom.us/j/84349113453>

Webinar ID: 843 4911 3453

Phone Number: 1-669-900-9128

Hearings begin on the first day. It is each taxpayer's or his representative's responsibility to be present when the case is called.

LEGAL AUTHORITY AND JURISDICTION OF THE STATE BOARD OF EQUALIZATION: NRS 361.360 & NRS 361.400

BRIEF STATEMENT OF MATTER: Consideration of Petitioner's Motion to Stay further proceedings pursuant to NAC 361.706 and; Assessor Appeal from Action of a County Board of Equalization pursuant to NRS 361.360 & 361.400

Case No: 26-113

Account number : 229299

The State Board of Equalization (State Board) will consider the Petitioner's Motion to Stay and if applicable, the Assessor's appeal from Action of a County Board of Equalization at the time and place stated above. As such all parties should arrive prepared to present their case. Please be aware that the time is approximate and although you may be assured the matter(s) will not be heard prior to the stated time, be prepared for possible delays as several matters are scheduled at the same time. If the taxpayer or his representative is not present when his hearing is called, the State Board will invoke the requirements of NRS 361.385 and NAC 361.708(4). The State Board may (a) proceed with the hearing; (b) dismiss the proceeding with or without prejudice; or (c) recess the hearing for a period to be set by the State Board to enable the party to attend.

Please be aware the State Board will limit its consideration to the issues and contentions set forth in the petition. Other issues may be heard if the requirements of NAC 361.745 are met.

A meeting agenda will be posted on the Department's website (<https://tax.nv.gov>) three (3) days prior to the scheduled meeting. If you would like an agenda emailed or mailed to you, please contact Denise Mosely at (775) 684-2160 or stateboard@tax.state.nv.us. If a party wishes to obtain a transcript of any hearing conducted before the State Board, the party must pay for the transcript or obtain a copy from the reporter provided by the State Board at the party's expense pursuant to NAC 361.731.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this hearing should notify the Department at least 3 days before the hearing. In order to comply with the security procedures of the Department, you will be required to show identification and sign a visitor's log prior to entering the hearing room.

If you need an accommodation in order to communicate during the hearing, the Department will provide one at no cost to you. Arrangements for an interpreter should be made as soon as possible, but no later than 14 days before the scheduled meeting. Please contact Denise Mosely at (775) 684-2160 at least 14 days in advance to request an interpreter in your preferred language. You may also submit your request through stateboard@tax.state.nv.us.

Si necesita una ayuda para comunicarse durante la audiencia, el Departamento se lo proporcionará sin costo alguno. Los trámites para conseguir un intérprete deben hacerse lo antes posible, pero a más tardar 14 días antes de la cita programada. Por favor, póngase en contacto con Denise Mosely al (775) 684-2160 con al menos 14 días de anticipación para solicitar un intérprete en su idioma de preferencia. También puede solicitarlo a través de stateboard@tax.state.nv.us.

If you have any questions, please call (775) 684-2160.

Shellie Hughes
Secretary to the State Board of Equalization

By: 
Denise Mosely
Program Officer II, Boards and Commissions
Department of Taxation

CC: **CERTIFIED MAIL** - 9489 0090 0027 6528 6949 70
PETITIONER AUTHORIZED AGENT:
Wadhams Advisors
James Wadhams, Attorney
300 S Curry St., 5 & 6
Carson City NV 89703

**STATE BOARD OF EQUALIZATION
NOTICE OF HEARING
CERTIFICATE OF SERVICE
26-113**

I hereby certify that on this day I served the foregoing document upon all parties of record in this proceeding by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

CERTIFIED MAIL– 9489 0090 0027 6613 8215 64

PETITIONER:

Briana Johnson

Clark County Assessor

500 S Grand Central Pkwy, 2nd Floor

Las Vegas NV 89155

Electronic mail: bap@ClarkCountyNV.gov; meo@ClarkCountyNV.gov; lisa.logsdon@clarkcountydav.gov
Millicent.Washington@ClarkCountyNV.gov; Courtney.Moerschell@ClarkCountyNV.gov

CERTIFIED MAIL – 9489 0090 0027 6528 8053 76

RESPONDENT:

Eagle Shadow Mountain Solar/Arevon Energy

James Bergstrom, Senior Tax Manager

8800 Gainey Center Dr, STE 100

Scottsdale AZ 85258-2193

Electronic mail: jbergstrom@arevonenergy.com

CERTIFIED MAIL - 9489 0090 0027 6528 6949 70

PETITIONER AUTHORIZED AGENT:

Wadhams Advisors

James Wadhams, Attorney

300 S Curry St., 5 & 6

Carson City NV 89703

Electronic mail: jlw@wadhamsnv.com

Dated at this 28 day of the month of September of the year 2026.



Denise Mosely, Program Officer II
Department of Taxation
State Board of Equalization



October 05, 2026

Dear State Board:

The following is in response to your request for proof of delivery on your item with the tracking number:
9489 0090 0027 6528 8053 76.

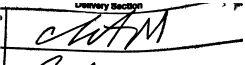
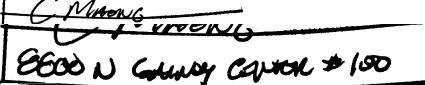
Item Details

Status:	Delivered, Front Desk/Reception/Mail Room
Status Date / Time:	October 05, 2026, 10:24 am
Location:	SCOTTSDALE, AZ 85258
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic

Shipment Details

Weight: 1lb, 9.3oz

Recipient Signature

Signature of Recipient:	
Address of Recipient:	

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004



October 06, 2026

Dear State Board:

The following is in response to your request for proof of delivery on your item with the tracking number:
9489 0090 0027 6613 8215 64.

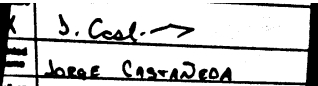
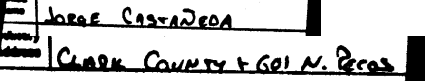
Item Details

Status:	Delivered, Individual Picked Up at Post Office
Status Date / Time:	October 06, 2026, 06:49 am
Location:	LAS VEGAS, NV 89106
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic

Shipment Details

Weight: 1lb, 7.4oz

Recipient Signature

Signature of Recipient:	
Address of Recipient:	

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

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