

EXHIBIT 1

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1 Case No. 08-CV-0363-D

FILED

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DOUGLAS COUNTY
DISTRICT COURT CLERK

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4 TED THRAN
CLERK

5 BY ~~GREGORY~~ DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

8
9 In the Matter of the Determination of the
10 Relative rights in and to the Waters of Mott
11 Creek, Taylor Creek, Cary Creek (aka Carey
12 Creek), Monument Creek, and Bulls Canyon,
13 Stutler Creek (aka Stattler Creek), Sheridan
14 Creek, Gansberg Spring, Sharpe Spring,
Wheeler Creek No. 1, Wheeler Creek No. 2,
Miller Creek, Beers Spring, Luther Creek and
Various Unnamed Sources in Carson Valley,
Douglas Valley, Nevada.

SCHEDULING ORDER

15 TO COUNSEL:

16 After consideration of the Case Conference Report filed by counsel pursuant to Rule
17 16.1 (c) of the Nevada Rules of Civil Procedure, the following scheduling order is entered
18 pursuant to
19 NRCP 16 (b).

20 TRIAL

21
22 The trial is set for January 9, 2012 at 9:00 a.m. - firm setting. Trial statements are
23 due by December 30, 2011 which is five judicial days prior to trial. Motions in Limine shall
24 be filed not later than that date.

25 DISCOVERY

26
27 IT IS HEREBY ORDERED that discovery in this case shall be conducted in
28

1 compliance with the following schedule. No extensions or modifications shall be permitted
2 except by order of the Court.

3
4 1. Any and all additional discovery contemplated under NRCP 26 (a) and (b) shall be
5 completed by **November 10, 2011.**

6 2. Pursuant to NRCP 16.1(a)(2), the parties shall disclose to other parties the identity of
7 any person who may be used as an expert witness. The expert witness must prepare and sign a
8 written report that complies with the rule. This disclosure shall be completed no later than
9 **August 12, 2011.** If the expert witness is solely a rebuttal witness, the disclosure must be
10 made no later than thirty (30) days after the disclosure of the expert witness for the other party.
11 All parties have a continuing duty to supplement these disclosures. NRCP 26(e).
12

13 3. The parties may commence discovery at any time after the filing of a joint case
14 conference report, or no sooner than ten (10) days after a separate case conference report, or as
15 otherwise authorized by the Court. This discovery may include depositions, service of
16 interrogatories, requests for admissions, and requests for production of documents, within the
17 discovery period, or as otherwise authorized by the Court. NRCP 26(a) and (b).
18

19 4. Each party shall promptly supplement their list of expert witnesses as required by
20 NRCP 26(e)(1).

21 5. Each party shall promptly supplement any and all responses made to a discovery
22 request as required by NRCP 26(e).
23

24 6. Counsel is expected to share information informally to the extent feasible, and
25 conduct discovery in a spirit of good faith, cooperation, and efficiency. If there is a discovery
26 dispute the parties shall first attempt to resolve the matter. Thereafter the party requesting
27 discovery may schedule a conference with the Court, by telephone or otherwise.
28

1 7. All documents exchanged by the parties where no objections were made as to
2 authenticity or genuineness of the document are hereby deemed authentic and genuine. All
3 witnesses, documents and exhibits to be presented at trial, must be disclosed at least thirty (30)
4 days before trial. Objections must be made within fourteen (14) days thereafter or they are
5 hereby deemed waived unless excused for good cause shown. NRCP 16.1 (c)(4) and
6 16.1(a)(3).
7

8 8. For good cause the Court may permit the withdrawal of a waiver and the assertion of
9 any objection.
10


11 MOTIONS

12 Counsel shall have until August 12, 2011 to file, if necessary, motions to join other
13 parties and/or to amend pleadings in the case.

14 Dispositive motions, such as a motion for summary judgment, must be filed not later
15 than December 12, 2011, which is thirty (30) days after the discovery cut off date.

16 Any stipulated changes to these time periods must be submitted to the Court with a
17 proposed Order of confirmation.
18

19 DATED this 23 day of June 2011.

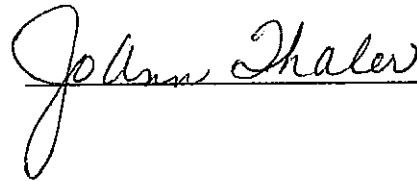
20 
21 _____
22 DAVID R. GAMBLE
23 DISTRICT JUDGE
24
25
26
27
28

1 Copies served by mail this 23 day of June 2011 to:

2 Bryan L. Stockton, Esq.
3 Deputy Attorney General
4 Office of the Attorney General
5 100 North Carson Street
6 Carson City, NV 89701

7 Michael L. Matuska, Esq.
8 P. O. Box 2860
9 Minden, NV 89423

10 Thomas J. Hall, Esq.
11 P. O. Box 3948
12 Reno, NV 89505

A handwritten signature in cursive script, reading "John Thaler", is written over a horizontal line.

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IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of the Determination
Of the Relative Rights in and to
The Waters of Mott Creek, Taylor
Creek, Cary Creek (aka Carey
Creek), Monument Creek, and Bulls
Canyon, Stutler Creek (aka Stattler
Creek), Sheridan Creek, Gansberg
Spring, Sharpe Spring, Wheeler
Creek No. 1 Wheeler Creek No. 2,
Miller Creek, Beers Spring, Luther
Creek and Various Unnamed Sources
in Carson Valley, Douglas Valley,
Nevada.

J.W. Bentley and Maryann Bentley,
Trustees of the Bentley Family
1995 Trust,

Appellants,

vs.

The State of Nevada Office of the
State Engineer; Hall Ranches, LLC,
Thomas J. Scyphers; Kathleen M.
Scyphers; Frank Scharo; Sheridan
Creek Equestrian Center, LLC;
Donald S. Forrester; Kristina M.
Forrester; Ronald R. Mitchell;
and Ginger G. Mitchell,

Respondents.

SECOND MOTION TO DISMISS

COME NOW, Real Parties in Interest DONALD S. FORRESTER and
KRISTINA M. FORRESTER, HALL RANCHES, LLC, a Nevada Limited
Liability Company, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS,
FRANK SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada

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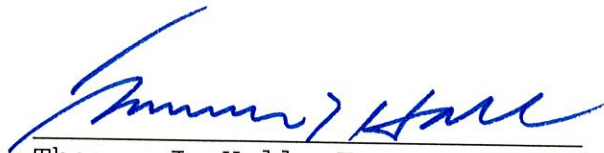
Supreme Court No. 59188
Tracie K. Lindeman
Clerk of Supreme Court

District Case No. CV0363

1 Limited Liability Company, RONALD R. MITCHELL and GINGER G.
2 MITCHELL ("Real Parties"), by and through their counsel, THOMAS
3 J. HALL, ESQ., and pursuant to Rule 27 of the Nevada Rules of
4 Appellate Procedure, move to dismiss the Appeal filed herein.

5 DATED this 14th day of December, 2011.
6
7

8 LAW OFFICES OF THOMAS J. HALL

9
10 

11 Thomas J. Hall, Esq.
12 Nevada State Bar No. 675
13 305 South Arlington Avenue
14 Post Office Box 3948
15 Reno, Nevada 89505
16 Telephone: 775-348-7011
17 Facsimile: 775-348-7211

18 MEMORANDUM OF POINTS AND AUTHORITIES

19 A. The Order For Division Of Water Was Only In Effect Until
20 October 15, 2011.

21 The Order For Division Of Water was filed following a
22 Second Motion for Division of Water filed on March 29, 2011. The
23 Court entered its Order For Division of Water on April 15, 2011,
24 for the 2011 irrigation season which ended October 15, 2011.
25 See, copy of the Order entered April 15, 2011, which states as
26 follows:

27 In the meantime, given that the 2011 irrigation
28 schedule has already begun, the schedule proposed by
the State Engineer, as attached to the Partial

1 Opposition, is to be implemented as of the date of
2 this Order by the State Engineer until the pending
3 motion has been fully briefed and can be further
4 examined further by the Court.

5 Under the Final Order of Determination, the 2011 irrigation
6 season runs from April 1, 2011 to October 15, 2011. See Order of
7 Determination, Period of Use, 1 App. 98-99. Therefore, the
8 Rotation Schedule ordered by the District Court will have ended
9 by the time the Court completes the briefing schedule.

10 **B. This Court Does Not Give Advisory Opinions.**

11 This Court is prohibited from giving advisory opinions.
12 Nev. Const. Art. 6 § 4; Applebaum v. Applebaum, 97 Nev. 11, 12,
13 621 P.2d 1110 (1981) ("This court will not render advisory
14 opinions on moot or abstract questions. Decisions may be
15 rendered only where actual controversies exist."); State
16 Engineer v. Truckee-Carson Irrig., 116 Nev. 1024, 1032, 13 P.3d
17 395 (2008). This appeal is the second appeal filed by the
18 Bentleys in this matter and raises the identical issue presented
19 in their Appeal filed on July 12, 2010. In the Order Dismissing
20 Appeal dated January 18, 2011, this Court stated:

22 . . . the appeal is moot, as the challenged order
23 expired by its own terms at the end of the 2010
24 irrigation season, October 15, 2010. Marquis & Aurbach
25 v. Dist. Ct., 122 Nev. 1147, 1162 n.32, 146 P.3d 1130,
26 1140 n.32 (2006) (citing University of Nevada v.
27 Tarkanian, 95 Nev. 389, 394, 594 P.2d 1159, 1162
(1979), for the proposition "that the duty of this
28 court is to resolve actual controversies and not to
opine on moot questions or abstract propositions").

1 **C. The Trial in District Court is Set for January, 2012.**

2 The issues raised in this Appeal became moot on October 15,
3 2011, at the end of the 2011 irrigation season.

4 The trial in the underlying case has a firm setting for
5 January 9, 11, 12, 13, 19 and 20, 2012. See Scheduling Order,
6 filed July 23, 2011, attached hereto and incorporated herein by
7 this reference as Exhibit 1. The desire of the Appellants to
8 obtain a final decision on the merits of the case, including all
9 aspects, can and will be heard by the Court at the January, 2012
10 trial. An appeal from the final decision of the District Court
11 will then be reviewable by the Supreme Court, pursuant to NRAP
12 3A(b)(1) and (3).
13

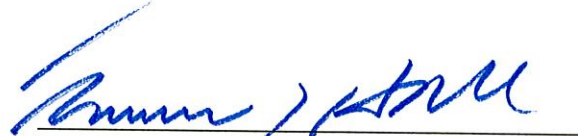
14 An interlocutory appeal is moot given the imminent trial in
15 January 2012. The Appellants, by pursuing the appeal, have only
16 delayed the proper and full consideration of the case on its
17 merits at the District Court. The mootness doctrine precludes
18 such piecemeal litigation. No case cited by Appellants regarding
19 an exception to the mootness doctrine is applicable, inasmuch as
20 trial on the merits will occur before this appeal can ever be
21 heard.
22

23 Consequently, the Appeal filed by the Bentleys, used to
24 perpetuate their continuing efforts to keep this litigation as
25 costly as possible, should be dismissed.
26
27
28

1 Pursuant to NRS 239B.030, the undersigned affirms that the
2 preceding document does not contain the social security number
3 of any person.

4 Respectfully submitted this 14th day of December, 2011.
5

6 LAW OFFICES OF THOMAS J. HALL
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William E. Nork, Esq.
825 W. 12th Street
Reno, Nevada 89503.

Dated this 14th day of December, 2011.


Emily A. Heavrin