

MATUSKA LAW OFFICES, LTD.
937 MICA DRIVE, SUITE 16A
CARSON CITY, NV 89705
(775) 392-2313

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, et al.

Case No.: 59188

District Court Case No. CV0363

FILED

DEC 22 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

J.W. BENTLEY AND MARYANN
BENTLEY, TRUSTEES OF THE
BENTLEY FAMILY 1995 TRUST,

Appellants,

v.

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.

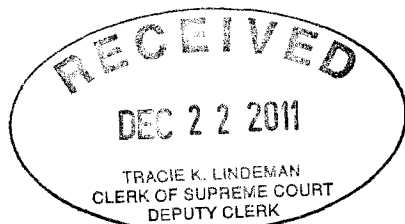
APPELLANTS' OPPOSITION TO SECOND MOTION TO DISMISS

MATUSKA LAW OFFICES
Michael L. Matuska, Esq./SBN 5711
937 Mica Drive, Suite 16A
Carson City, Nevada 89705
(775) 392-2313—Phone/(775) 392-2318—Fax

Thomas C. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno, Nevada 89505
(775) 348-7011 – Phone/(775) 348-7211-Fax

Attorneys for Appellants
J.W. BENTLEY AND MARYANN
BENTLEY, TRUSTEES OF THE BENTLEY
FAMILY 1995 TRUST

Attorneys for Respondents
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



11-39509

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTORNEY GENERAL, STATE OF NEVADA
Bryan L. Stockton, Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701
(775) 684-1228 - Phone/(775) 684-1103 - Fax

Attorneys for Respondents
THE STATE OF NEVADA,
OFFICE OF THE STATE ENGINEER

COME NOW PETITIONERS J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family 1995 Trust ("Bentley") by and through their counsel of record, Michael L. Matuska, Matuska Law Offices, Ltd., and hereby file this Opposition to the Second Motion to Dismiss filed by HALL RANCHES, LLC, DONALD S. FORRESTER and KRISTINA M. FORRESTER, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada limited liability company, RONALD R. MITCHELL and GINGER G. MITCHELL (collectively, "Respondents").

I. INTRODUCTION

Respondents have moved to dismiss this appeal on the basis that it is or will be rendered moot when the subject matter of this appeal, to-wit, the rotation schedule required by the Order of 15 April 2011 ("Order"), expires on 15 October 2011. A copy of that Order is attached hereto as *Exhibit 1* and was amended slightly by the Order of 20 June 2011 (*Exhibit 2*). Bentley challenges the order on two (2) separate bases: (1) the order is a form of restraining order which was entered without a hearing, a bond, or any form of due process; and (2) the order exceeds the jurisdiction of the lower court in a water rights adjudication matter as limited by NRS 533.090 *et seq.*

This is the second Motion to Dismiss filed by the Respondents. Their first Motion to Dismiss was filed on 5 October 2011. That motion was denied without prejudice on 14 October 2011. This Second Motion to Dismiss is identical to Respondents' earlier Motion to Dismiss.

///

II. FIRST APPEAL

This is the second year the lower court imposed a “temporary” rotation schedule. The first rotation schedule was imposed by Order dated 18 June 2010 (*Exhibit 3*). Bentley appealed from that order as Case No. 56551. Respondents moved to dismiss that appeal on 27 September 2010, on the basis that the rotation schedule was just temporary and would expire of its own accord on 15 October 2010. Bentley argued in its Opposition that Respondents’ Motion to Dismiss should be denied unless and until they withdrew their request for a rotation schedule with prejudice. They did not do so. Regardless, the first appeal was dismissed by way of the order dated 18 January 2011, which order concluded, *inter alia*, that the appeal was moot, as the challenged order expired on 15 October 2010. That allowed Respondents to file another request for a rotation schedule this year.

III. ANALYSIS

A. Exception to Mootness Doctrine

Nevada has recognized an exception to the mootness doctrine for “cases capable of repetition, yet evading review.” *State v. Washoe County Public Defender*, 775 P.2d 217, 105 Nev. 299 (citing *Cirac v. Lander*, 95 Nev. 723, 602 P.2d 1012 (1979), and *NCAA v. University of Nevada*, 97 Nev. 56, 624 P.2d 11 (1981)), and *Langston v. State of Nevada, ex. Rel. Dep’t. of Motor Vehicles*, 871 P.2d 362, 363, 110 Nev. 342 (1994) (citing *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 31 S.Ct. 279, 55 L.Ed. 310 (1911)).

In both appeals, Respondents could have filed their Motion(s) to Dismiss immediately when the appeals were filed. Instead, they waited until the “temporary” rotation schedule(s) were set to expire to file their Motion(s) to Dismiss. Respondents are

1 simply trying to manipulate the proceedings by filing repeated motions for the imposition
2 of a temporary rotation schedule in the lower court, and then waiting until the temporary
3 orders expire to file a motion to dismiss the appeal. The purpose of these shenanigans is to
4 avoid having this Court decide the substantive issues concerning the authority of the lower
5 court to impose a rotation schedule and whether the Rotation Schedules are a sort of non-
6 conforming preliminary injunction. It does not matter that the rotation schedules are
7 "temporary," as the issue will keep recurring.
8

9
10 Respondents have been very candid about their intent to use the adjudication
11 process to have the lower court impose a rotation schedule rather than adjudicate relative
12 claims to water. The lower court entered the order imposing the rotation schedules upon
13 request of the Respondents in a confusing brief entitled *Motion for Division of Water and*
14 *for Remand and Reference to State Engineer for Further Evidence (Exhibit 4)*, wherein
15 Respondents requested the following relief:
16

17 Therefore, the Intervenor hereby request that the Court order
18 the division of water from Sheridan Creek to be made by the
19 State Engineer ***in rotation without reference to the Diversion***
20 ***Agreement*** (or the Pond Water Agreement), in accordance
21 with the Final Order of Determination dated August 14, 2008,
[Exhibit 4, p.6, ll.21-27]
[Emphasis added]

22 It is respectfully requested that the Court enter an order
23 requiring the division of the water from Sheridan Creek by
24 the State Engineer be pursuant to the Final Order of
25 Determination during the time this action is pending and not
26 otherwise, and to specifically refer the case to the State
27 Engineer to perform a Seepage Test and Seepage Report
28 concerning the Bentleys' Old Pond and New Pond
[Exhibit 4, p.8, ll.6-13].

///

1 Viewed in this light, Respondents' entire argument in favor of dismissing the appeal
2 as moot is disingenuous.

3
4 **B. The Lower Court Exceeded Its Statutory Authority by**
5 **Imposing a Rotation Schedule**

6 There is no authority for the imposition of a Rotation Schedule over the objections
7 of the interested parties.¹ The water rights adjudication proceeding now pending in the
8 lower court is solely a creature of statute. The purpose and scope of the water rights
9 adjudication is to determine the relative rights to the various stream and creek systems, not
10 to enforce or quiet title to a private diversion agreement or enforce a rotation schedule.
11 This point is reinforced throughout NRS Chapter 533.²
12
13
14

15 ¹ Bentley is not the only interested party who objects to the imposition of a rotation
16 schedule. Dan and Elaine Barden and Joy Smith also object. Bentley has a lease
17 for Pestana's rights. Likewise, Respondents failed to join the Bardens, Smith, and
18 Pestana in their quiet title action or efforts to impose a rotation schedule.

19 ² "[D]etermination of the relative rights to the use of water of any stream."
20 NRS 533.090(1);

21 "[D]etermination of the relative rights to the use of water of any stream."
22 NRS 533.090(2);

23 "[D]etermination of the water rights in the stream." NRS 533.100(1);

24 "[A] preliminary order of determination establishing the several rights of claimants
25 to the waters of the stream." NRS 533.140(1);

26 "[Final] order of determination, defining the several rights to the waters of the
27 stream or stream system." NRS 533.160;

28 "Upon the final determination of the relative rights in and to the waters of any
stream system, the State Engineer shall issue to each person represented in such
determination a certificate" NRS 533.265(1);

1 Rather than cite any statutory authority [there is none], Respondents try to create the
2 false impression that a rotation schedule is needed to preserve the status quo to prevent
3 Bentley's "excessive" diversion. Respondents have never provided any evidence of
4 excessive diversions and their arguments in this regard are knowingly false and
5 misleading.³

7 The water rights adjudication process is solely a creature of statute. The relevant
8 sections are found at NRS 533.090–533.320. The only mention of a rotation schedule in
9 the Nevada Revised Statutes occurs in NRS 533.075. This is not part of the statutory
10 scheme for a water rights adjudication.

12 **NRS 533.075 Rotation in use of water.** To bring about a
13 more economical use of the available water supply, it shall be
14 lawful for water users owning lands to which water is
15 appurtenant to rotate in the use of the supply to which they
16 may be collectively entitled; or a single water user, having
17 lands to which water rights of a different priority attach, may
18 in like manner rotate in use, when such rotation can be made
without injury to lands enjoying an earlier priority, to the end
that each user may have an irrigation head of at least 2 cubic
feet per second.

19 NRS 533.075 allows water users to agree on a rotation schedule in order to "bring
20 about a more economical use of the available water supply." Nothing in NRS 533.075 or
21 elsewhere authorized the lower court to enforce a Rotation Schedule over the objection of
22

24 "No certificate need be issued by the State Engineer when printed copies of any
25 decree of final determination of relative rights contain a listing of the individual
26 rights so determined." NRS 533.265(4).

27 ³ In their last brief on the topic, Respondents boldly state their belief that they are not
28 required to provide evidence on this issue (See **Exhibit 5** – Reply to Opposition to Second
Motion for Division of Water at p.5 ("No further factual basis need be shown by
Intervenors.")).

1 the interested parties, especially when doing so creates waste and inefficiencies and
2 damage to lands to which the water rights are appurtenant⁴.

3
4 **C. This Appeal Will Not be Rendered Moot by the Pending Trial**

5 For these same reasons, the issue of the rotation schedule will not be rendered moot
6 by the pending trial, now scheduled to commence on 9 January 2012. Respondents do not
7 deny that they will request a permanent rotation schedule as a final remedy. Also, it is
8 unlikely that Respondents' Second Motion to Dismiss will be decided prior to trial.

9
10 In conclusion, there are no disputes about the relative claims to water, which should
11 be the only issue in a water rights adjudication. The lower court cannot and should not
12 proceed with the trial in excess of its jurisdiction and in light of this appeal. Because this
13 appeal challenges the statutory authority for the imposition of a rotation schedule, the issue
14 of the rotation schedule will likely arise again next irrigation season and will likely
15 eventually arise in context of a permanent rotation schedule order. This appeal, therefore,
16 falls within the exception to the mootness doctrine.

17
18 WHEREFORE, Bentley respectfully submits that this appeal is not moot and should
19 proceed unless and until Respondents withdraw any pending and further requests for the
20 imposition of a rotation schedule.

21
22 DATED this 21st day of December 2011.

23 MATUSKA LAW OFFICES, LTD.

24
25 By: 

26 MICHAEL L. MATUSKA

27
28 ⁴ See Footnote 3, supra.

CERTIFICATE OF SERVICE

I certify that on the 22nd day of December 2011, I served a copy of the **OPPOSITION TO SECOND MOTION TO DISMISS** upon all counsel of record:

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Bryan L. Stockton
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701

Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno NV 89505-3948

Dated this 22nd day of December 2011.

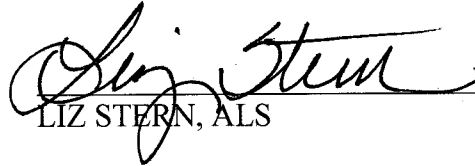

LIZ STERN, ALS

EXHIBIT 1

RECEIVED

APR 15 2011

DOUGLAS COUNTY
DISTRICT COURT CLERK

2011 APR 15 AM 10:16

RECEIVED

Case No. 08-CV-0363-D

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

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.

ORDER

THIS MATTER comes before the Court upon a Motion For
Extension of Time submitted by J.W. Bentley and MaryAnn
Bentley, Trustees of the Bentley Family Trust 1995 Trust
(hereinafter referred to as "Bentley"). The following have
opposed the Motion: Donald S. Forrester and Kristina M.

Forrester, Hall Ranches, LLC, Thomas J. Scyphers and
Kathleen M. Scyphers, Frank Scharo, Sheridan Creek Equestrian
Center, LLC, and Ronald R. Mitchell and Ginger G. Mitchell
(hereinafter referred to collectively as "Intervenors").

Bentley requests an extension of time to submit written
opposition to Intervenors' Second Motion For Division of Water.
Prior to Bentley's request being filed, the Court received a

1 Partial Opposition To Second Motion For Division Of Water
2 filed by the State Engineer. That partial opposition supports
3 the overall request to impose a rotation schedule for the 2011
4 irrigation season, pertaining to the waters of Sheridan Creek -
5 North Division, but proposes a different rotation schedule than
6 the one sought within Intervenor's Second Motion For Division
7 of Water. According to the State Engineer, his "proposed
8 rotation schedule allows for a more efficient distribution of
9 water. In addition, the Pestana parcel should not be included
10 at the present time as the property is not currently being
11 actively irrigated and all water right holders should share
12 equally in the excess created by the current non-use of water."

13 Partial Opposition To Second Motion For Division Of Water,
14 p. 2, lines 7-10.


15
16 Given the requested delay sought by Bentley, in briefing
17 the pending motion, and having examined all relevant pleadings
18 and papers on file herein, the Court now enters the following
19 order, good cause appearing:

20 The deadline to file Bentley's written opposition to the
21 Intervenor's Second Motion For Division of Water is hereby
22 extended to May 2, 2011. In the meantime, given that the 2011
23 irrigation schedule has already begun, the schedule proposed by
24 the State Engineer, as attached to the Partial Opposition, is
25 to be implemented as of the date of this Order by the State
26 Engineer until the pending motion has been fully briefed
27
28

1 and can be examined further by the Court.

2 IT IS SO ORDERED.

3 Dated this 15 day of April, 2011.

4
5
6 
7 DAVID R. GAMBLE
District Judge

8 Copies served by mail and fax this 15th day of April, 2011 to:

9 Bryan L. Stockton, Esq.
10 Deputy Attorney General
11 State of Nevada
12 100 North Carson Street
Carson City, NV 89701
Fax: 775-684-1103

13 Thomas J. Hall, Esq.
14 P. O. Box 3948
15 Reno, NV 89505
16 Fax: 775-348-7211

17 Michael L. Matuska, Esq.
18 P. O. Box 2860
19 Minden, NV 89423
20 Fax: 775-782-3081

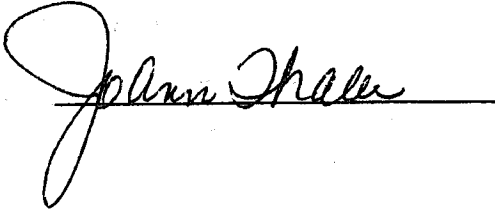
21
22
23
24
25
26
27
28 



EXHIBIT 2

EXHIBIT 2

FILED

RECEIVED

JUN 17 2011

DOUGLAS COUNTY
DISTRICT COURT CLERK

Case No.: 08-CV-0363-D

2011 JUN 20 AM 10:55

Dept. No.: I

TED THRAN
CLERK

This document does not contain personal information. **K. WILFERT** DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

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.

ORDER

This matter comes before the Court on the *Ex Parte* Motion of J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family 1995 Trust ("Bentley") to shorten time for HALL RANCHES, LLC, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company, and DONALD S. FORRESTER and KRISTINA M. FORRESTER, RONALD R. MITCHELL and GINGER G. MITCHELL (collectively, "Intervenors") to file an opposition the Motion to Amend Division of Water filed by the Nevada State Engineer on 10 July 2011. Bentley further requests an interim order approving the amended rotation schedule pending any opposition from the Intervenors, as was done on Intervenors' previous Motion for Division of Water pending receipt of an opposition from Bentley.

///

///

///

///

1 Based on the foregoing, and for good cause shown, IT IS HEREBY ORDERED that the
2 Nevada State Engineer's Motion to Amend Division of Water is GRANTED. The rotation
3 schedule set forth in that motion shall adopted effective immediately. This order may be
4 reconsidered upon receipt of an opposition from Intervenor, if any. Any such opposition shall be
5 filed on or before 6/24, 2011.

6
7 **IT IS SO ORDERED.**

8 DATED this 20 day of June 2011.

9
10 
11 **DISTRICT COURT JUDGE**

12 Submitted by:

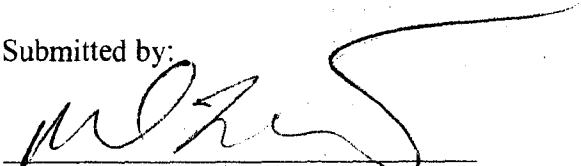
13 
14 Michael L. Matuska, Esq.
15 State Bar No. 5711
16 BROOKE · SHAW · ZUMPFT
17 1590 4th Street/P.O. Box 2860
18 Minden NV 89423
19 (775) 782-7171
20 (775) 782-3081 (Fax)



EXHIBIT 3

EXHIBIT 3

Case No.: 08-CV-0363-D

RECEIVED

FILED

Dept. No.: I

JUN 18 2010

2010 JUN 18 AM 11:51

DOUGLAS COUNTY
DISTRICT COURT CLERK

TED THUAN
CLERK

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

KBY WILFERT DEPUTY

IN AND FOR DOUGLAS COUNTY

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.

ORDER FOR DIVISION OF WATER

Upon the Motion for Division of Water filed herein on
January 8, 2010, by 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 Limited
Liability Company, and RONALD R. MITCHELL and GINGER G. MITCHELL
("Intervenors"), and upon a hearing having been held in this
matter on May 17, 2010, with all parties and their counsel
present and following the presentation of evidence and argument
by counsel, the Court entered its oral order for the Division of
Water and the implementation of a Rotation Schedule, and good
cause appearing,

1 NOW THEREFOR, the Court finds and concludes as follows:

2 1. NRS 533.230 provides as follows:

3 533.230. Division of water by State Engineer during
4 time order of determination is pending in district
5 court.

6 From and after the filing of the order of
7 determination, evidence and transcript with the county
8 clerk, and during the time the hearing of the order is
9 pending in the district court, the division of water
from the stream involved in such determination shall
be made by the State Engineer in accordance with the
order of determination.

10 2. The Final Order of Determination dated August 14,
11 2008, on page 193 and 194, under Table 6 for Sheridan Creek -
12 North and South Diversions, states as follows:

13 The diversion rates for the north and south split of
14 Sheridan Creek are based on a spring and early summer
15 average stream flow of 3.5 c.f.s. Flow and diversion
16 rates during periods of drought and middle to late
17 irrigations season will generally be less than the
18 rates determined in the Preliminary Order of
19 Determination. Therefore, all parties will have to
share the water shortage during periods of low flow.
The total diversion from either the north or south
split can be used in its entirety in a rotation system
of irrigation.

20 3. The Court finds the 21 Day Rotation Schedule attached
21 hereto as Exhibit 1 is a fair and equitable Rotation Schedule
22 *for the 2010 irrigation season.*

23 4. The Court finds the parties should be ordered to
24 adhere to the 21 Day Rotation Schedule until further order of
25 this Court.

26 IT IS HEREBY ORDERED, that the State Engineer make division
27 of the water of Sheridan Creek in accordance with the Final
28 Order of Determination dated August 14, 2008 and specifically in

1 accordance with the attached 21 Day Rotation Schedule commencing
2 immediately and continuing until further order of this Court.

3 DATED this 18 day of June, 2010.

4
5 
6 _____
7 District Judge

8
9
10
11
12
13 Submitted by:
14 Thomas J. Hall, Esq.
15 Nevada Bar Number 0675
16 Post Office Box 3948
17 Reno, Nevada 89505
18 Telephone: (775) 348-7011
19 Facsimile: (775) 348-7211

20 Attorney for Intervenors
21
22
23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

SHERIDAN CREEK ADJUDICATION

21 DAY ROTATION SCHEDULE

The following property owners are entitled to receive water from Sheridan Creek in rotation. The list shows acreage to be supplied water from Sheridan Creek and may not include total acreage owned due to other rights from Park & Bull Ditch.

Group	Owner's Name	Acreage	Percentage of Total	21 Day Rotation	Group Combined
A	J.W. Bentley	12.93	7.67%	1.6	<u>1.6</u>
B	Hall Ranches, LLC	22.03	13.06%	2.7	
B	Thomas Scyphers	9.63	5.54%	1.2	
B	Frank Scharo	7.26	4.28%	0.9	<u>4.8</u>
C	Sheridan Equestrian, LLC	11.31	6.64%	1.4	
C	Ronald Mitchell	10.37	6.15%	1.3	<u>2.7</u>
D	Donald Forrester	49.56	29.40%	6.2	
D	Ernest Pestana	23.76	13.66%	2.9	
D	Allan D. Sapp (currently not in rotation)	5.10			
D	Daniel Barden (currently not in rotation)	7.23	4.29%	0.9	
D	Joy Smith a/k/a Joy Whipple (currently not in rotation)	<u>17.71</u>	<u>9.31%</u>	1.9	<u>11.9</u>
	Total acreage with water rights (not including Lodato)	176.61	100.00%	21.0	21.0



EXHIBIT 4

RECEIVED

JAN 8 2010

FILED

Case No.: 08-CV-0363-D

Dept. No.: I

DOUGLAS COUNTY
DISTRICT COURT CLERK 2010 JAN -8 AM 10:03

TED THIRAN
CLERK

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

WILLIAMS SECURITY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR DOUGLAS COUNTY

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.

MOTION FOR DIVISION OF WATER AND FOR REMAND AND REFERENCE TO
STATE ENGINEER FOR FURTHER EVIDENCE

Come now, 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 Limited Liability Company, and
RONALD R. MITCHELL and GINGER G. MITCHELL ("Intervenors"), by
and through their counsel, THOMAS J. HALL, ESQ., and move the
Court for an order directing the State Engineer to make a

1 division of all the water from Sheridan Creek stream involved in
2 these proceedings, in accordance with the Final Order of
3 Determination until further order of this Court, and also move
4 the Court pursuant to NRS 533.180 and 533.368 to refer the case
5 to the State Engineer to perform or order a Seepage Test of the
6 Old Pond and the New Pond built in 2008 by J.W. Bentley and
7 Maryann Bentley, Trustees of the Bentley Family Trust 1995
8 Trust, ("Bentleys"), and in support thereof, state as follows:
9

10 **I. STATEMENT OF FACTS.**

11 **A. The Intervenors Are Landowners And Water Right**
12 **Holders.**

13 J.W. Bentley and Maryann Bentley, as Trustees of the
14 Bentley Family Trust 1995 Trust, are successor landowners and
15 water right holders as set forth in the Final Order of
16 Determination, to wit:

<u>Owner</u>	<u>APN</u>	<u>Acreage</u>	<u>Proofs</u>
J.W. Bentley			V-06305
Maryann Bentley,	1219-14-001-013	12.93	V-06306
Trustees			V-06307
			V-06308

21
22 The Intervenors are landowners and water right holders that
23 own land downstream from the Bentley Property. They also hold
24 water rights in Sheridan Creek, historically used to irrigate
25 their lands. They are obviously and necessarily interested in
26 the excessive diversions made upstream by the Bentleys in
27 violation of custom, practice, agreements and decrees. A
28

1 tabulation of Intervenor's land holdings and water rights as set
2 forth in the Final Order of Determination follows:

3	<u>Intervenor</u>	<u>APN</u>	<u>Acreage</u>	<u>Proofs</u>
4	Donald S. and	1219-14-001-012	59.620	V-06309
5	Kristina Forrester			V-06310
6	Hall Ranches, LLC	1219-14-001-003	23.800	V-06340
7				V-06341
8	Thomas J. Scyphers	1219-14-001-004	13.010	V-06311
9	and Kathleen M.			V-06312
10	Scyphers			
11	Frank Scharo	1219-14-001-005	12.990	V-06311
12				V-06312
13	Sheridan Creek	1219-14-001-008	35.960	V-06310
14	Equestrian Center			
15	Glenn Roberson			
16	Ronald R. and	1219-14-001-009	10.020	V-06336
17	Ginger G. Mitchell	1219-14-001-010	10.480	V-06337
18		1219-14-001-011	10.370	
19	Total Acreage of Intervenor's		176.430	

20 **B. The Final Order of Determination Diversion Schedule.**

21 The Bentleys state in their Notice of Exceptions and
22 Exceptions to Final Order of Determination filed herein on
23 December 11, 2008, (the Amended Notice of Exceptions having been
24 stricken by the Court), in EXCEPTION NO. 1, DIVERSION SCHEDULE,
25 PROOFS V-06307 and V-06308, that they are informed and believe
26 that the Office of the State Engineer has created a Diversion
27 Schedule ("Diversion Schedule"), for the waters from Sheridan
28 Creek, Stutler Creek and Gansberg Springs. The Bentleys contend
they are not subject to any such Diversion Schedule because of a

1 Water Diversion and Use Agreement ("Diversion Agreement")¹, dated
2 June 9, 1986 and recorded by their predecessors in interest on
3 March 27, 1987, in Book 387, at Page 2726, as Document 152147,
4 Douglas County Records and attached as Exhibit 3 to their
5 Exceptions. For various reasons, the Intervenor believe that
6 the Diversion Agreement is unenforceable and, even if
7 enforceable, has been violated by the Bentleys. As noted, the
8 State Engineer does not recognize the Diversion Agreement in
9 administering the waters from Sheridan Creek².

11 C. Rotation Schedule Within The Final Order Of
12 Determination.

13 The Final Order of Determination dated August 14, 2008, on
14 page 193 and 194, under Table 6 for Sheridan Creek - North and
15 South Diversions, states in pertinent part as follows:

16 The diversion rates for the north and south split of
17 Sheridan Creek are based on a spring and early summer
18 average stream flow of 3.5 c.f.s. Flow and diversion

19 ¹ The State Engineer, by and through his counsel, has described
20 the Diversion Agreement as a Pond Water Agreement, to wit
(Partial Opposition to Motion to Dismiss, page 2, lines 3-7):

21 The State Engineer is prohibited by law from making
22 determinations as to title to water. NRS 533.386(4).
23 The pond water agreement appears to be a dispute over
24 an issue related to title and therefore the State
25 Engineer will not take a position on the agreement.
The jurisdiction of the decree court over the pond
agreement is not clearly proscribed by statute, but
may be beyond the scope of an adjudication.

26 ² See Partial Opposition to Motion to Dismiss filed December 18,
27 2009, page 2, lines 4-5: "The pond water agreement appears to be
28 a dispute over an issue related to title and therefore the State
Engineer will not take a position on the agreement."

1 rates during periods of drought and middle to late
2 irrigation season will generally be less than the
3 rates determined in the Preliminary Order of
4 Determination. Therefore, all parties will have to
5 share the water shortage during periods of low flow.
6 The total diversion from either the north or south
7 split can be used in its entirety in a rotation system
8 of irrigation. [Emphasis added.]

9 Prior to the construction of the Bentleys' New Pond, the
10 various water right users shared water rights on a rotation
11 basis as indicated by the State Engineer's notation under Table
12 6. The creation of the New Pond by the Bentleys has upset the
13 historic rotation schedule and has created the problems that
14 have precipitated the conflict now before the Court.

15 II. ANALYSIS AND DISCUSSION.

16 A. The Final Order Of Determination Must Be Complied With 17 Pending Resolution Of The Bentleys' Claims.

18 NRS 533.230 provides as follows:

19 533.230. Division of water by State Engineer during
20 time order of determination is pending in district
21 court.

22 From and after the filing of the order of
23 determination, evidence and transcript with the county
24 clerk, and during the time the hearing of the order is
25 pending in the district court, the division of water
26 from the stream involved in such determination shall
27 be made by the State Engineer in accordance with the
28 order of determination. [Emphasis added.]

It has been held that "[t]he findings of the state engineer
are entitled to the presumption of correctness that they support
the decree." Scossa v. Church, 46 Nev. 254, 259, 205 P. 518, 210
P. 563 (1923). "The decision of the State Engineer shall be

1 prima facie correct, and the burden of proof shall be upon the
2 party challenging the Engineer's decision." U.S. v. Alpine Land
3 & Reservoir Company, 503 F. Supp. 877, ____ (D. Nev. 1980); U.S.
4 v. Alpine Land & Reservoir Co., 279 F. 3d 1189, ____ (9th Cir.
5 2002), *amended opinion*, 291 F. 3d 1062 (9th Cir. 2002). In
6 Anderson Family Assocs v. State Engineer, 124 Nev. Adv. Op. 17,
7 179 P.3d 1201, 1203 (2008), the Nevada Supreme Court held as
8 follows:

9 Still, because the appropriation of water in Nevada is
10 governed by statute, and the State Engineer is
11 authorized to regulate water appropriations, that
12 office has the implied power to construe the state's
13 water law provisions and great deference should be
14 given to the State Engineer's interpretation when it
15 is within the languages of those provisions.

16 According to the Affidavit of Glenn Roberson attached
17 hereto, he is of the belief that the water wasted by the
18 Bentleys' New Pond is depleting the water source by
19 approximately one third. In short, the Intervenor's are not
20 getting the water they have historically received and as set
21 forth in the Final Order of Determination.

22 Therefore the Intervenor's hereby request that the Court
23 order the division of water from Sheridan Creek to be made by
24 the State Engineer in rotation without reference to the
25 Diversion Agreement (or the Pond Water Agreement), in accordance
26 with the Final Order of Determination dated August 14, 2008,
27 until final judgment in this matter.

1 B. The Court Should Remand To The Division Of Water
2 Resources For Tests.

3 NRS 533.180 provides as follows:

4 533.180. Court may refer case to State Engineer for
5 further evidence.

6 The court may, if necessary, refer the case or any
7 part thereof for such further evidence to be taken by
8 the State Engineer as it may direct, and may require a
9 further determination by him, subject to the court's
10 instructions.

11 See also NRS 533.358(2), for procedural requirements, to
12 wit:

13 533.368. Court may refer case to State Engineer
14 State engineer to determine need for study; cost of
15 study paid by applicant; regulations.

16 2. The required study must be conducted by the State
17 Engineer or by a person designated by him, the
18 applicant or a consultant approved by the State
19 Engineer, as determined by the State Engineer.

20 The Intervenors were informed by J. W. Bentley that an
21 engineer, had prepared and performed a Seepage Test and Seepage
22 Report. The Bentleys, through counsel, in their Reply filed
23 December 31, 2009, state that there is no Seepage Test or
24 Seepage Report. Reply, page 6, lines 14-15. Since the Bentleys
25 contend that no Seepage Test or Seepage Report has been
26 conducted, they are obviously not in a position to contest
27 Intervenors' statements that the Bentleys' New Pond has depleted
28 by one third the available water flowing to the Intervenors'
29 lands from Sheridan Creek.

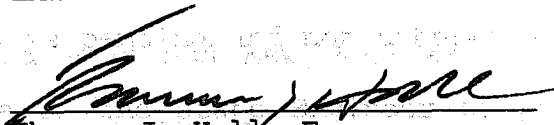
1 The State Engineer is most qualified as an independent and
2 neutral agency to prepare or order a Seepage Test and Seepage
3 Report of the Bentleys' Old Pond and New Pond and to provide
4 such evidence to the Court in this matter.


5 **III. CONCLUSION.**

6 It is respectfully requested that the Court enter an order
7 requiring the division of the water from Sheridan Creek by the
8 State Engineer be pursuant to the Final Order of Determination
9 during the time this action is pending and not otherwise, and to
10 specifically refer the case to the State Engineer to perform a
11 Seepage Test and Seepage Report concerning the Bentleys' Old
12 Pond and New Pond.
13

14 DATED this 8th day of January, 2010.

15
16 LAW OFFICES OF THOMAS J. HALL

17
18 
19 Thomas J. Hall, Esq.
20 Nevada State Bar No. 675
21 305 South Arlington Avenue
22 Post Office Box 3948
23 Reno, Nevada 89505
24 Telephone: 775-348-7011
25 Facsimile: 775-348-7211

26
27 
28 Thomas J. Hall, Esq.
Nevada State Bar No. 675
305 South Arlington Avenue
Post Office Box 3948
Reno, Nevada 89505
Telephone: 775-348-7011
Facsimile: 775-348-7211

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION
(Pursuant to NRS 239B.030)

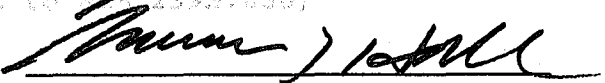
Case No. 08-CV-0363-D

The undersigned does hereby affirm that the preceding document, **Motion for Division of Water and for Remand and Reference to State Engineer for Further Evidence**, does not contain the social security number of any person.

DATED this 8th day of January, 2010.

LAW OFFICES OF THOMAS J. HALL

(Pursuant to NRS 239B.030)


THOMAS J. HALL, ESQ.

Case No.: 08-CV-0363-D

Dept. No.: I

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

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR DOUGLAS COUNTY

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.

AFFIDAVIT OF GLENN ROBERSON IN SUPPORT OF MOTION FOR

DIVISION OF WATER AND FOR REMAND AND REFERENCE

TO STATE ENGINEER FOR FURTHER EVIDENCE

GLENN ROBERSON, being duly sworn upon his oath, deposes and
says:

1. I reside at 551 Centerville Lane, Gardnerville,
Nevada, 89460.

//////

//////

1 2. On October 18, 2005, my family acquired approximately
2 35.960 acres, more or less, denominated as Douglas County APN
3 1219-14-001-008, together with appurtenant water rights.

4 3. On March 11, 2008, my family transferred said land to
5 the Sheridan Creek Equestrian Center, LLC, a Nevada Limited
6 Liability Company. I serve as Manager of this LLC.

7 4. Since our purchase in 2005, I have become very
8 familiar with the diversion of water through Sheridan Creek and
9 the irrigation of our land and our neighbors' land.

10 5. I am familiar with the claimants J.W. Bentley and
11 Maryann Bentley.

12 6. I have observed the flow of water through the Bentley
13 Property prior to the Bentleys' purchase and after the Bentleys'
14 purchase.

15 7. After their purchase, the Bentleys relocated and
16 changed some of the ditches on their property.

17 8. I have attended several meetings at the Bentley
18 property in the past to determine what changes were being made
19 in regards to the construction of a New Pond.

20 9. I recall Mr. Bentley discussing a soil test and an issue
21 relating to water loss and seepage. I recall Mr. Bentley
22 telling me that he had calculated the water loss and seepage
23 from his New Pond which was substantial.

24 10. After construction of the Bentleys' New Pond, I have
25 noticed a decrease of approximately one third of the water
26

1 coming down the irrigation ditches downstream from the Bentley
2 Property to our property.

3 11. The Affiant has personal knowledge of statements
4 contained in this Affidavit and could testify under oath and at
5 hearing concerning these matters.

6 Further, your Affiant saeth naught.

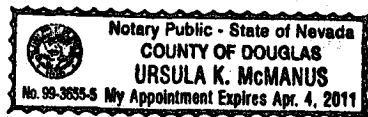
7
8
9 
Glenn Roberson

10
11
12
13
14 STATE OF NEVADA)
15) ss.
16 COUNTY OF DOUGLAS)

17 On January 8, 2010, before me, the undersigned, a Notary
18 Public in and for said State, personally appeared GLENN
19 ROBERSON, personally known to me or proved to me on the basis of
satisfactory evidence to be the person who executed the above
instrument.

20 WITNESS my hand and official seal.

21
22 
23 NOTARY PUBLIC



1
2 **CERTIFICATE OF HAND DELIVERY**

3 I certify that on this date pursuant to NRCP 5(b), I,
4 Thomas J. Hall, Esq., hand delivered a true and correct copy of
5 the Motion for Division of Water and for Remand and Reference to
6 State Engineer for Further Evidence, to:

7
8 Michael L. Matuska, Esq.
9 Brooke, Shaw, Zumpft
10 1590 Fourth Street, Suite 100
11 Minden, Nevada 89423

12
13 DATED this 8th day of January, 2010.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Thomas J. Hall, Esq.

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCP 5(b), I placed in the U.S. Mail, postage prepaid, a true and correct copy of the Motion for Division of Water and for Remand and Reference to State Engineer for Further Evidence, addressed to:

Thomas J. Scyphers	Ronald R. Mitchell
Kathleen M. Scyphers	Ginger G. Mitchell
1304 S. Aylesbury Court	Post Office Box 5607
Gardnerville, Nevada 89460	Stateline, Nevada 89449
State of Nevada	Donald S. Forrester
Department of Conservation and	Kristina M. Forrester
Natural Resources	913 Sheridan Lane
Division of Water Resources	Gardnerville, Nevada 89460
901 S. Stewart Street, Suite 2002	
Carson City, Nevada 89701	Frank Scharo
	Post Office Box 1225
Bryan L. Stockton, Esq.	Minden, Nevada 89423
Deputy Attorney General	
100 North Carson Street	
Carson City, Nevada 89701	
Hall Ranches, LLC	
Post Office Box 3948	
Reno, Nevada 89505	
Sheridan Equestrian Center, LLC	
Glenn A. Roberson, Jr.	
281 Tiger Wood Court	
Gardnerville, Nevada 89460	

DATED this 8th day of January, 2010.

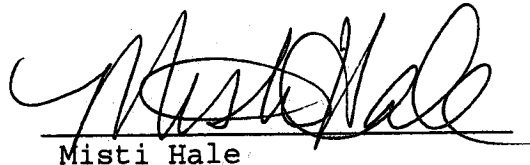

Misti Hale

EXHIBIT 5

10/10/75

10/10/75

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211

10 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR DOUGLAS COUNTY**

12 In the Matter of the Determination of
13 the Relative Rights in and to the
14 Waters of Mott Creek, Taylor Creek,
15 Cary Creek (aka Carey Creek), Monument
16 Creek, and Bulls Canyon, Stutler Creek
17 (aka Stattler Creek), Sheridan Creek,
18 Gansberg Spring, Sharpe Spring,
19 Wheeler Creek No., 1 Wheeler Creek
20 No. 2, Miller Creek, Beers Spring,
21 Luther Creek and Various Unnamed
22 Sources in Carson Valley, Douglas
23 Valley, Nevada.

24 **REPLY IN SUPPORT OF SECOND MOTION FOR DIVISION OF WATER**

25 Come now, DONALD S. FORRESTER and KRISTINA M. FORRESTER,
26 HALL RANCHES, LLC, a Nevada Limited Liability Company, THOMAS J.
27 SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK
28 EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company, and
RONALD R. MITCHELL and GINGER G. MITCHELL ("Intervenors"), by
and through their counsel, THOMAS J. HALL, ESQ., and submit
their Reply in Support of Second Motion for Division of Water as
follows:

1 **A. Procedural Note.**

2 On March 29, 2011, Intervenors filed their Second Motion
3 for Division of Water ("Motion").

4 On April 5, 2011, the State Engineer filed is Partial
5 Opposition to Motion for Division of Water, attaching a proposed
6 Rotation Schedule.

7 On April 15, 2011, this Court entered its Order adopting
8 the 2011 Rotation Schedule proposed by the State Engineer until
9 the Motion has been fully briefed and can be further examined by
10 the Court.

11
12 **B. Good and Sound Legal Reasons and Authorities Exist**
13 **Supporting Imposition of the 2011 Rotation Schedule.**

14 As set forth in the Motion, NRS 533.230 clearly provides
15 that "the division of water from the stream involved in such
16 determination shall be made by the State Engineer in accordance
17 with the order of determination." Nowhere in the Final Order of
18 Determination dated August 14, 2008, is there any provision for
19 the Bentleys to receive water pursuant to the Diversion
20 Agreement. In fact, as stated by the State Engineer, in his
21 Partial Opposition, "the State Engineer administers the water of
22 Sheridan Creek in accordance with the orders of this Court and
23 the Final Orders of Determination." Partial Opposition, page 2,
24 lines 15-16. Further, the State Engineer states (Partial
25 Opposition, page 2, lines 17-21):
26
27
28

1 The State Engineer does recognize that the Diversion
2 Agreement exists and, to the extent that water use
3 under that agreement is non-consumptive, the State
4 Engineer does not oppose or support implementation of
the Diversion Agreement. Exhibit B and Exhibit C. The
State Engineer takes no position in the dispute over
the validity of the agreement. See, NRS 533.386(4)¹.

5 As noted previously, for various reasons the Intervenor
6 believe that the Diversion Agreement is unenforceable and even
7 if enforceable, has been violated by the Bentleys. However, case
8 law supports the Motion as fully set forth at page 10 and
9 following. Specifically, the Intervenor cited to the Court,
10 the following authoritative statement:
11

12 And upon the question of the application of the
13 [rotation] principle without contract or statute the
14 courts are gradually falling in line, and are granting
the right of rotation upon the theory that it tends to
15 extend the duty of water and the suppression of waste.
[Emphasis added.]

16 Substantial case authority supporting this statement was
17 included in the Motion.
18

19
20 ¹ NRS 533.386(4) provides:

21 4. If, from the conveyance documents or other information
22 in the Office of the State Engineer, it appears to the
23 State Engineer that there is a conflict in the chain of
title, the State Engineer shall reject the report of
conveyance and return it to the person who submitted it,
together with:

24 (a) An explanation that a conflict appears to exist in
the chain of title; and

25 (b) A notice stating that the State Engineer will not
26 take further action with respect to the report of
conveyance until a court of competent jurisdiction has
27 determined the conflicting claims to ownership of the water
right and the determination has become final or until a
final resolution of the conflicting claims has otherwise
28 occurred. The notice must also include a statement of the
provisions of subsection 5.

1 More specifically, and as this Court recognized, the State
2 Engineer has stated and acknowledged that "this proposed [2011]
3 rotation schedule allows for a more efficient distribution of
4 water."

5 Intervenor's are in agreement with the statement and the
6 proposed Rotation Schedule for the 2011 irrigation season. As
7 previously stated, "[t]he findings of the state engineer are
8 entitled to the presumption of correctness that they support the
9 decree." Scossa v. Church, 46 Nev. 254, 259, 205 P. 518, 210 P.
10 563 (1923). "The decision of the State Engineer shall be prima
11 facie correct, and the burden of proof shall be upon the party
12 challenging the Engineer's decision." U.S. v. Alpine Land &
13 Reservoir Company, 503 F. Supp. 877, (D. Nev.
14 1980) (Administrative Provision §7); U.S. v. Alpine Land &
15 Reservoir Co., 279 F. 3d 1189, 1197-98 (9th Cir. 2002), amended
16 opinion, 291 F. 3d 1062 (9th Cir. 2002). In Andersen Family
17 Assocs. v. State Engineer, 124 Nev. 182, 186, 179 P.3d 1201
18 (2008), the Nevada Supreme Court held:

21 Still, because the appropriation of water in Nevada is
22 governed by statute, and the State Engineer is
23 authorized to regulate water appropriations, that
24 office has the implied power to construe the state's
25 water law provisions and great deference should be
26 given to the State Engineer's interpretation when it
27 is within the language of those provisions.

28 Therefore, the Intervenor's request that the Court order the
division of water from Sheridan Creek to be made by the State
Engineer in rotation without reference to the Diversion

1 Agreement (or as it is sometimes called, the Pond Water
2 Agreement), in accordance with the Final Order of Determination
3 dated August 14, 2008, for the 2011 Irrigation Season.

4 **C. No Further Factual Basis Need be Shown by Intervenors.**

5 Because the division of water is to be based on the Final
6 Order of Determination no other factual basis need be shown.
7 Under the authorities cited above, Intervenors are not required
8 to provide further evidence of a more economical use of the
9 available water supply. The Bentleys are certainly allowed 1.6
10 days of water within the 21 day rotation, but they are not
11 entitled to priority over the other water right holders to
12 demand a continuous flow into the Bentleys' Old and New Ponds.
13 The same can be said of Joy Smith and Daniel Barden, who in past
14 years, because of their geographic and strategic location, have
15 been able to intercept and obtain water on a continuous 24/7
16 basis, irrespective of diminished seasonal flows. However,
17 neither they nor the Bentleys are entitled to any preference
18 under the Final Order of Determination. Furthermore, Smith and
19 Barden do not even have the illusion of entitlement under a
20 Diversion Agreement and are simply taking water that belongs to
21 others.
22
23
24

25 Neither Smith nor Barden have filed any Objections or
26 Exceptions to the Final Order of Determination, they have not
27 filed a Petition to Intervene in this action, they have not
28 retained counsel (at least not Bentleys' counsel in this

1 matter), and they have filed no Appearances. Therefore, they
2 have the status of water right holders (the same as
3 Intervenor), and are very limited to comment on the Final Order
4 of Determination, certainly not to the extent of upsetting, but
5 must only comply with, the Final Order of Determination at this
6 time.

7 The Bentleys make a great deal about the various uses of
8 the water by the Intervenor. Inasmuch as there are six (6)
9 Intervenor, all who own and use their property and water in
10 different forms and fashion, it is not necessary, reasonable or
11 required to prove an exact style of their use to suit the
12 Bentleys, or Ms. Smith or Mr. Barden. While the Bentleys, Smith
13 and Barden demand uses that exceed their rights, it is odd that
14 they would quibble with the Intervenor who have historically
15 used less than their entitlements.
16

17 All parties are obligated to abide by the Final Order
18 Determination and the rotation schedule as ordered by this Court
19 on June 18, 2010, and as provisionally ordered by this Court on
20 an interim basis on April 15, 2011.
21

22 **D. Conclusion.**

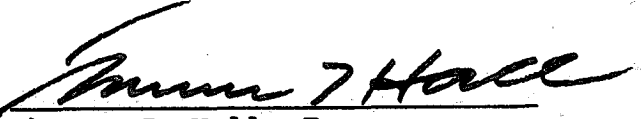
23 Wherefore it is respectfully requested that the Court enter
24 an order requiring the division of the water from Sheridan Creek
25 by the State Engineer be pursuant to the Final Order of
26 Determination and the rotation schedule proposed by the State
27

1 Engineer for the 2011 Irrigation Season, or until further order
2 of this Court.

3 The undersigned does hereby affirm that the preceding
4 document does not contain the social security number of any
5 person.

6 DATED this 4th day of May, 2011.

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

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCP 5(b), I placed in the U.S. Mail, postage prepaid, a true and correct copy of the **Reply in Support of Second Motion for Division of Water**, addressed to:

Michael M. Matuska, Esq.
Brooke, Shaw, Zumpft
Post Office Box 2860
Minden, Nevada 89423

Ronald R. Mitchell
Ginger G. Mitchell
Post Office Box 5607
Stateline, Nevada 89449

State of Nevada
Department of Conservation and
Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

Bryan L. Stockton, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701

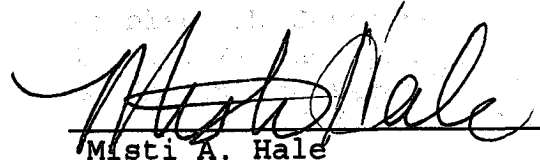
Frank Scharo
Post Office Box 1225
Minden, Nevada 89423

Hall Ranches, LLC
Post Office Box 3948
Reno, Nevada 89505

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
Gardnerville, Nevada 89460

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 4th of May, 2011.


Misti A. Hale