NO.

FILED

JUL 10 2012

Eureka County Clerk
By B. Conley

FILED

JUL 20 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

NO. 61324

EUREKA COUNTY, a political subdivision of the State of Nevada,

Petitioner,

vs.

THE STATE OF NEVADA, EX. REL., STATE ENGINEER, DIVISION OF WATER RESOURCES, and KOBEH VALLEY RANCH, LLC, a Nevada limited liability company,

Respondents. /

Case No.: CV1108-155

Dept. No.: 2

EUREKA COUNTY, a political subdivision of the State of Nevada,

Petitioner,

vs.

THE STATE OF NEVADA, EX. REL., STATE ENGINEER, DIVISION OF WATER RESOURCES, and KOBEH VALLEY RANCH, LLC, a Nevada limited liability company,

Respondents. /

Case No.: CV1112-164

Dept. No.: 2

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, that EUREKA COUNTY, a political subdivision of the State of Nevada, Petitioner above-named, by and through its counsel, ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD. and THEODORE BEUTEL, ESQ., the EUREKA

ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

RECEIVED
JUL 19 2012
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

RECEIVED
JUL 10 2012
Eureka County
Clerk & Treasurer

12-22979

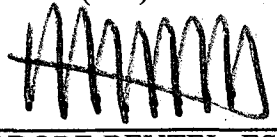
COUNTY DISTRICT ATTORNEY, hereby appeals to the Supreme Court of Nevada from the final Findings of Fact, Conclusions of Law, and Order Denying Petitions for Judicial Review entered in this action on the 13th day of June, 2012.

DATED this 10 day of July, 2012.

ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD.
KAREN A. PETERSON, ESQ.
Nevada State Bar No. 0366
JENNIFER MAHE, ESQ.
Nevada State Bar No. 9620
402 North Division Street
Carson City, NV 89703
Telephone: (775) 687-0202
Facsimile: (775) 882-7918

-and-

EUREKA COUNTY DISTRICT ATTORNEY
701 South Main Street
P.O. Box 190
Eureka, NV 89316
Telephone: (775) 237-5315
Facsimile: (775) 237-6005

By: 

THEODORE BEUTEL, ESQ.
Nevada State Bar No. 5222

Attorneys for Petitioner,
EUREKA COUNTY

ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
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E-Mail Address: law@allisonmackenzie.com

SEVENTH JUDICIAL DISTRICT COURT
COUNTY OF EUREKA, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, filed in case numbers: **CV1108-155 and CV1112-164**

✔ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

_____

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: July 10, 2012.

EUREKA COUNTY DISTRICT ATTORNEY
701 South Main Street
P.O. Box 190
Eureka, NV 89316
Telephone: (775) 237-5315
Facsimile: (775) 237-6005

By: _____
THEODORE BEUTEL, ESQ.
Nevada State Bar No. 5222

Attorneys for Petitioner,
EUREKA COUNTY

SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR COUNTY OF EUREKA, STATE OF NEVADA } SS

I, the Undersigned COUNTY CLERK and Ex-Officio CLERK of the SEVENTH JUDICIAL DISTRICT COURT do hereby CERTIFY that the foregoing is a full, true and correct copy of the original on file in my office and that I have carefully compared the same with the original.

WITNESS, My Hand and Seal of said DISTRICT COURT, this 16th day of July 2012

County Clerk and Ex-Officio Court Clerk

_____ Deputy Clerk

ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD., Attorneys at Law, and that on this date I caused the foregoing document to be served to all parties to this action by:

✔ Placing a true copy thereof in a sealed postage prepaid envelope, first class mail, in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]

___ Via electronic transmission

___ Hand-delivery [NRCP 5(b)(2)(A)]

Bryan L. Stockton, Esq.
Attorney General's Office
100 North Carson Street
Carson City, NV 89701

Ross E. de Lipkau, Esq.
John R. Zimmerman, Esq.
Francis Mark Wikstrom, Esq.
Parsons Behle & Latimer
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Reno, Nevada 89501

Laura A. Schroeder, Esq.
Therese A. Ure, Esq.
Schroeder Law Offices, P.C.
440 Marsh Avenue
Reno, Nevada 89509

Gordon H. DePaoli, Esq.
Dale E. Ferguson, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89511

Alan K. Chamberlain
Cedar Ranches, LLC
948 Temple View Drive
Las Vegas, NV 89110

B.G. Tackett
915 L Street, Suite C, Box 319
Sacramento, CA 95814

Gene P. Etcheverry
Lander County
315 South Humboldt Street
Battle Mountain, NV 89820

DATED this 10th day of July, 2012.

Nancy Fontenot
NANCY FONTENOT

ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

NO.

FILED

JUL 10 2012

Eureka County Clerk

By B. Conley

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

EUREKA COUNTY, a political subdivision of the State of Nevada,

Petitioner,

vs.

THE STATE OF NEVADA, EX. REL., STATE ENGINEER, DIVISION OF WATER RESOURCES, and KOBEH VALLEY RANCH, LLC, a Nevada limited liability company,

Respondents. /

Case No.: CV1108-155

Dept. No.: 2

EUREKA COUNTY, a political subdivision of the State of Nevada,

Petitioner,

vs.

THE STATE OF NEVADA, EX. REL., STATE ENGINEER, DIVISION OF WATER RESOURCES, and KOBEH VALLEY RANCH, LLC, a Nevada limited liability company,

Respondents. /

Case No.: CV1112-164

Dept. No.: 2

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Eureka County, a political subdivision of the State of Nevada.

RECEIVED

JUL 10 2012

Eureka County Clerk & Treasurer

ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

2. Identify the judge issuing the decision, judgment, or order appealed from:

Honorable Dan L. Papez.

3. Identify all parties to the proceedings in the district court (the use of et al. to denote parties is prohibited):

Petitioner: Eureka County, a political subdivision of the State of Nevada.

Respondents: The State of Nevada, ex. rel., State Engineer, Division of Water Resources, and Kobeh Valley Ranch, LLC, a Nevada limited liability company.

4. Identify all parties involved in this appeal (the use of et al. to denote parties is prohibited):

Eureka County, a political subdivision of the State of Nevada.

The State of Nevada, ex. rel., State Engineer, Division of Water Resources, and Kobeh Valley Ranch, LLC, a Nevada limited liability company.

5. Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent:

Karen A. Peterson, Esq.
Jennifer Mahe, Esq.
Allison, MacKenzie, Pavlakis, Wright & Fagan, Ltd.
402 North Division Street
Carson City, NV 89703
(775) 687-0202

~ and ~

Theodore Beutel, Esq.
Eureka County District Attorney
701 South Main Street
P.O. Box 190
Eureka, NV 89316
(775) 237-5315
Attorneys for Eureka County, a political subdivision of the State of Nevada

Bryan L. Stockton, Esq.
Attorney General's Office
100 North Carson Street
Carson City, NV 89701
(775) 684-1228
Attorneys for The State of Nevada, ex. rel. and
State Engineer, Division of Water Resources

Ross E. de Lipkau, Esq.
John R. Zimmerman, Esq.
Francis Mark Wikstrom, Esq.
Parsons Behle & Latimer
50 West Liberty Street, Suite 750
Reno, NV 89501
(775) 323-1601
Attorneys for Kobeh Valley Ranch, LLC, a Nevada limited liability company

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Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Appellant was represented by retained counsel in the district court.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellant is represented by retained counsel on appeal.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

Appellant was not granted leave to proceed in forma pauperis.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

Eureka County's Petition for Judicial Review was filed on August 8, 2011, in the Seventh Judicial District Court of the State of Nevada, in and for the County of Eureka, as Case No. CV1108-155; and

Eureka County's Petition for Judicial Review was filed on December 29, 2011, in the Seventh Judicial District Court of the State of Nevada, in and for the County of Eureka, as Case No. CV1112-164.

DATED this 10 day of July, 2012.

KAREN A. PETERSON, ESQ.
Nevada State Bar No. 0366
JENNIFER MAHE, ESQ.
Nevada State Bar No. 9620
ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD.
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Carson City, NV 89703
Telephone: (775) 687-0202
Facsimile: (775) 882-7918

-and-

By: _____

THEODORE BEUTEL, ESQ.
Nevada State Bar No. 5222
EUREKA COUNTY DISTRICT ATTORNEY
701 South Main Street
P.O. Box 190
Eureka, NV 89316
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Facsimile: (775) 237-6005

Attorneys for Petitioner,
EUREKA COUNTY

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E-Mail Address: law@allisonmackenzie.com

SEVENTH JUDICIAL DISTRICT COURT
COUNTY OF EUREKA, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, filed in case numbers: **CV1108-155 and CV1112-164**

✔ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

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(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: July 10, 2012.

EUREKA COUNTY DISTRICT ATTORNEY
701 South Main Street
P.O. Box 190
Eureka, NV 89316
Telephone: (775) 237-5315
Facsimile: (775) 237-6005

By: _____
THEODORE BEUTEL, ESQ.
Nevada State Bar No. 5222

Attorneys for Petitioner,
EUREKA COUNTY

SEVENTH JUDICIAL DISTRICT COURT,
IN AND FOR COUNTY OF EUREKA,
STATE OF NEVADA } SS

I, the Undersigned COUNTY CLERK and Ex-Officio CLERK of the SEVENTH JUDICIAL DISTRICT COURT do hereby CERTIFY that the foregoing is a full, true and correct copy of the original on file in my office and that I have carefully compared the same with the original.

DISTRICT COURT, this 16th day of July 2012 WITNESS, My Hand and Seal of said

County Clerk and Ex-Officio Court Clerk
Deanna Contreras Deputy Clerk

ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD.
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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD., Attorneys at Law, and that on this date I caused the foregoing document to be served to all parties to this action by:

✔ Placing a true copy thereof in a sealed postage prepaid envelope, first class mail, in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]

___ Via electronic transmission

___ Hand-delivery [NRCP 5(b)(2)(A)]

Bryan L. Stockton, Esq.
Attorney General's Office
100 North Carson Street
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Gene P. Etcheverry
Lander County
315 South Humboldt Street
Battle Mountain, NV 89820

DATED this 10th day of July, 2012.

Nancy Fontenot
NANCY FONTENOT

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Case #: CV-1108155

Judge: PAPEZ, DAN L.

Date Filed: 08/08/11 **Department:** 02

Case Type: GENCV GENERAL CIVIL

Title/Caption: EUREKA COUNTY, a political subdivision of the State of Nevada
vs.
THE STATE OF NEVADA, EX.REL., STATE ENGINEER, DIVISION OF WATER RESOURSES

Defendant(s)	Attorney(s)
STATE OF NEVADA	PARSONS BEHLE & LATIMER STOCKTON, BRIAN L. ESQ.
Defendant(s)	**Attorney(s)**
STATE ENGINEER	STOCKTON, BRIAN L. ESQ. PARSONS BEHLE & LATIMER
Defendant(s)	**Attorney(s)**
DIVISION OF WATER RESOURSES	PARSONS BEHLE & LATIMER STOCKTON, BRIAN L. ESQ.
Defendant(s)	**Attorney(s)**
KOBEH VALLEY RANCH	PARSONS BEHLE & LATIMER STOCKTON, BRIAN L. ESQ.
Plaintiff(s)	**Attorney(s)**
EUREKA COUNTY	BEUTEL, THEODORE ALLISON,MACKENZIE,PAVALAKIS

Filings:

Date	Pty	Filing	Fees
8/08/11		PETITION OF JUDICIAL REVIEW	
8/09/11		NOTICE OF PETITION FOR JUDICIAL REVIEW	
8/17/11		SUMMONS AND RETURN OF SERVICE	
8/17/11		SUMMONS AND RETURN OF SERVICE	
8/17/11		SUMMONS AND RETURN OF SERVICE	
8/17/11		SUMMONS AND RETURN OF SERVICE	
8/17/11		RECEIPT FOR DOCUMENTS	
8/17/11		AFFIDAVIT OF SERVICE	
8/17/11		RECEIPT FOR DOCUMENTS	
9/14/11		NOTICE OF INTENT TO DEFEND	
9/14/11		ORDER ALLOWING INTERVENTION OF KOBEH VALLEY RANCH,LLC TO INTERVENE AS A RESPONDENT	
9/07/11		STIPULATION TO ALLOW KOBEH VALLEY RANCH LLC TO INTERVENE AS A RESPONDENT	
10/03/11		ANSWER TO PETITION FOR JUDICIAL REVIEW	
10/14/11		STIPULATION TO CONSOLIDATE CV1108-156,CV1108-157 WITH THE EARLIEST OR FIRST ACTION FILED, ASSIGNED CASE NUMBER CV1108-155	
10/26/11		ORDER DIRECTING THE CONSOLIDATION OF ACTION CV1108-156 AND ACTION CV1108-157 WITH ACTION CV1108-155	

10/26/11	CERTIFICATE OF SERVICE
11/14/11	REQUEST FOR AND POINTS AND AUTHORITIES IN SUPPORT OF ISSUANCE OF WRIT OF PROHIBITON AND IN OPPOSITITON TO MOTION TO DISMISS
11/16/11	SUMMARY OF RECORD ON APPEAL
12/02/11	ORDER SETTING BRIEFING SCHEDULE
12/02/11	STIPULATION FOR EXTENTION OF TIME AND ORDER
12/12/11	NOTICE OF MOTION
12/12/11	MOTION TO ASSOCIATE COUNSEL
12/15/11	REQUEST FOR REVIEW
12/16/11	REPLY IN SUPPORT OF PARTIAL MOTION TO DISMISS AND OPPOSITION TO REQUEST FOR WRIT OF PROHIBITION
12/16/11	KOBEH VALLEY RANCH'S JOINDER IN THE STATE OF NEVADA AND JASON KING'S PARTIAL MOTION TO DISMISS
12/16/11	KOBEY VALLEY RANCH'S REPLY TO CONLEY/MORRISONS REQUEST FOR POINTS AND AUTHORITIES IN SUPPORT OF ISSUANCE OF WRIT OF PROHIBITION AND IN OPPOSITION TO MOTION TO DISMISS
12/19/11	ORDER ADMITTING TO PRACTICE
12/22/11	AMENDED CERTIFICATE OF SERVICE
12/30/11	OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
1/11/12	RECORD ON APPEAL
1/13/12	TABLE OF CONTENTS,EUREKA COUNTY OPENING BRIEF
1/13/12	EUREKA COUNTY'S SUPPLEMENTAL SUMMARY OF RECORD ON APPEAL-CV 1108-155
1/17/12	FIRST AMENDED PETITION FOR JUDICIAL REVIEW
1/17/12	AFFIDAVIT OF SERVICE
1/17/12	THERESE A UTE AFFIDAVIT OF SERVICE
1/17/12	NOTICE OF PETITION
1/17/12	PETITION FOR JUDICIAL REVIEW
1/17/12	AFFIDAVIT OF SERVICE
1/17/12	PETITIONER'S KENNETH F. BENSON, DIAMOND CATTLE COMPANY LLC AND MARGARET ANN ETCHEVERRY'S FAMILY LP'S OPENING BRIEF MOTION FOR EXTENTION OF TIME
1/24/12	RESPONDENT KOBEH VALLEY RANCH, LLC'S RESPONSE TO MOTION TO EXTEND TIME
1/26/12	AFFIDAVIT OF RESPONDENT KOBEH VALLEY RANCH, LLC'S RESPONSE TO MOTION TO EXTEND TIME
1/26/12	ORDER GRANTING EXTENTION
1/27/12	EUREKA COUNTY'S RESPONSE TO MOTION TO EXTEND TIME
1/27/12	PETITIONERS CONLEY LAND AND LIVESTOCK, LLC AND LLOYD MORRISON'S RESPONSE TO MOTION TO EXTEND TIME
1/27/12	PETITIONERS KENNETH F, BENSON, DIAMOND VALLEY CATTLE COMPANY AND ANN ETCHEVERRY'S FAMILY LP'S RESPONSE
1/27/12	TO MOTION TO EXTEND TIME
1/30/12	CERTIFICATE OF SERVICE
1/31/12	NOTICE OF SUPPLEMENTAL PETITION FOR JUDICAIL REVIEW
1/31/12	SUPPLEMENTAL PETITION FOR JUDICIAL REVIEW
2/01/12	ANSWER TO PETITION FOR JUDICIAL REVIEW (CASE NO.CV 1112-164)
2/01/12	ANSWER TO FIRST AMENDED PETITION FOR JUDICIAL REVIEW (CASE NO. CV 1112-165)
2/06/12	SUMMARY OF RECORD ON APPEAL
2/06/12	BATES STAMPED PAGES VOLUME I
2/06/12	BATES STAMPED PAGES VOLUME II
2/06/12	BATES STAMPED PAGES VOLUME III
2/13/12	SUPPLEMENTAL RECORD AND SUMMARY OF RECORD ON APPEAL
2/22/12	ORDER ALLOWING INTERVENTION OF KOBEH VALLEY RANCH, LLC AS A RESPONDENT AND CONSOLIDATION OF CASE NOS. CV 1108-155,

	CV 1108-156, CV 1108-157, 1112-164 AND CV 1112-165
2/23/12	ANSWER TO PETITION FOR JUDICIAL REVIEW
2/24/12	AFFIDAVIT OF SERVICE
2/24/12	RECEIPT FOR DOCUMENT
2/24/12	RECEIPT FOR DOCUMENT
2/24/12	AMENDED AFFIDAVIT OF SERVICE AS TO BRYAN STOCKTON
2/27/12	ANSWERING BRIEF OF RESPONDENT, KOBEH VALLEY RANCH, LLC
2/27/12	ANSWERING BRIEF
3/05/12	NOTICE OF INTENT TO DEFEND
3/28/12	PETITIONERS KENNTTH F. BENSON, DIAMOND VALLEY CATTLE COMPANY LLC AND MICHEL AND MARGRET ANN ETCHEVERRY FAMILY REPLY BRIEF
3/28/12	EUREKA COUNTY'S REPLY BRIEF
3/30/12	REPLY BRIEF O CONLEY LAND & LIVESTOCK, LLC AND LLOYD MORRISON
4/09/12	CORRECTED ANSWERING BRIEF
4/23/12	TRANSCRIPT
5/14/12	EUREKA COUNTY PROPOSED FINDING OF FACT CONCLUSION OF LAW AND ORDER
5/14/12	PROPOSED FINDING OF FACT, CONCLUSION OF LAW AND ORDER OF CONLEY LAND AND LIVESTOCK, LLC AND LLOYD MORRISON
5/16/12	PETITIONERS BENSON, DIAMOND VALLEY CATTLE CO.,AND ETCHEVERRY FAMILY LPS PROPOSED FINDING OF FACT AND CONCLUSION OF LAW
5/16/12	KOBEH VALLEY RANCH'S PROPOSED FINDINGS, CONCLUSION OF LAW, AND ORDER DENYING PETITIONERS FOR JUDICIAL REVIEW
5/16/12	FINDINGS OF FACTS, CONCLUSION OF LAW AND ORDER
6/13/12	FINDING OF FACT, CONCLUSION OF LAW, AND ORDER DENYING PETITIONS FOR JUDICIAL REVIEW
6/13/12	CERTIFICATE OF SERVICE
6/18/12	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER DENYING PETITIONS FOR JUDICIAL REVIEW
7/10/12	NOTICE OF APPEAL
7/10/12	CASE APPEAL STATEMENT

SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR COUNTY OF EUREKA, STATE OF NEVADA } SS

I, the Undersigned COUNTY CLERK and Ex-Officio CLERK of the SEVENTH JUDICIAL DISTRICT COURT do hereby CERTIFY that the foregoing is a full, true and correct copy of the original on file in my office and that I have carefully compared the same with the original.

WITNESS, My Hand and Seal of said DISTRICT COURT, this 16th day of July 20 12

County Clerk and Ex-Officio Court Clerk

Deanna Cantrell Deputy Clerk

Case #: CV-1112164

Judge: PAPEZ, DAN L.

Date Filed: 12/29/11 **Department:** 02

Case Type: CIVIL CIVIL

Title/Caption: EUREKA COUNTY,
a political subdivision of the State
of Nevada,
vs.
THE STATE OF NEVADA, EX REL., STATE ENGI
NEER, DIVISION OF WATER RESOURCES

Defendant(s)	Attorney(s)
THE STATE OF NEVADA, EX REL	No "Attorney 1" Listed

Defendant(s)	Attorney(s)
STATE ENGINEER,DIV OF WTR RES	No "Attorney 1" Listed

Plaintiff(s)	Attorney(s)
EUREKA COUNTY	ALLISON,MACKENZIE,PAVALAKIS

Filings:

Date	Pty	Filing	Fees
12/29/11		NOTICE OF PETITION FOR JUDICIAL REVIEW	
12/29/11		PETITION FOR JUDICIAL REVIEW (EXEMPT FROM ARBITRATION; JUDICIAL REVIEW OF ADMINISTRATIVE DECISION)	
1/10/12		STIPULATION TO (1) ALLOW KOBEH VALLEY RANCH, LLC TO INTERVENE AS A RESPONDENT, AND (2) CONSOLIDATE WITH CASE NOS CV1106-155 AND CV1108-157	
1/11/12		SUMMONS: THE STATE OF NEVADA	
1/11/12		SUMMONS;(FIRST ADDITION)(STATE ENGINEER, DIVISION OF WATER RESOURCES)	
1/11/12		AFFIDAVIT OF SERVICE	
1/11/12		AFFIDAVIT OF SERVICE	
1/11/12		RECEIPT FOR DOCUMENTS	
1/11/12		RECEIPT FOR DOCUMENTS	
1/11/12		RECEIPT FOR DOCUMENTS	
1/11/12		AFFIDAVIT OF SERVICE	
1/11/12		RECEIPT FOR DOCUMENTS	
1/12/12		ORDER ALLOWING INTERVENTION OF KOBEH VALLEY RANCH, LLC AS A PARTY RESPONDENT, AND CONSOLIDATING CV 1112-164 WITH CASE NOS. CV 1108-155, CV 1108-156 AND CV 1108-157	
1/13/12		EUREKA COUNTY'S SUMMARY OF RECORD ON APPEAL CV 1112-164	
1/23/12		MOTION FOR EXTENTION OF TIME	
1/24/12		RESPONDENT KOBEH VALLEY RANCH LLC'S RESPONSE TO MOTION TO EXTEND TIME	
1/26/12		AFFIDAVIT IN SUPPORT OF RESPONDENT KOBEH VALLEY RANCH LLC'S RESPONSE TO MOTION TO EXTEND TIME	
1/27/12		EUREKA COUNTY'S RESPONSE TO MOTION TO EXTEND TIME	
1/27/12		PETITIONERS CONLEY LAND & LIVESTOCK, LLC AND LLOYD MORRISON RESPONSE TO RESPONSE TO MOTION TO EXTEND TIME	
1/27/12		PETITIONERS KENNETH F. BENSON, DIAMOND CATTLE COMPANY LLC AND MARGARET ANN ETECHEVERRY FAMILY LP'S RESPONSE TO MOTION TO EXTEND TIME	

1/26/12	ORDER GRANTING EXTENTION
1/30/12	CERTIFICATE OF SERVICE
1/31/12	NOTICE OF SUPPLEMENTAL PETITION FOR JUDICIAL REVIEW
1/31/12	SUPPLEMENTAL PETITION FOR JUDICIAL REVIEW
2/01/12	ANSWER TO PETITION FOR JUDICIAL REVIEW (CASE NO CV 1112-164)
2/01/12	ANSWER TO FIRST PETITION FOR JUDICIAL REVIEW CASE NO CV1112-165)
2/06/12	SUMMARY OF RECORD ON APPEAL
2/06/12	BATES STAMPED VOLUME I
2/06/12	BATES STAMPED VOLUME II
2/06/12	BATES STAMPED VOLUME III
2/13/12	SUPPLEMENTAL RECORD AND SUMMARY OF RECORD ON APPEAL
2/22/12	ORDER ALLOWING INTERVENTION OF KOBEH VALLEY RANCH, LLC AS A RESPONDENT AND CONSOLIDATION OF CASE NOS. CV1108-155 CV1108-156, CV1108-157, CV1112-164 AND CV1112-165
2/23/12	ANSWER TO PETITION FOR JUDICIAL REVIEW
2/24/12	AFFIDAVIT OF SERVICE
2/24/12	RECEIPT OF DOCUMENTS
2/24/12	RECEIPT OF DOCUMENTS
2/24/12	AMENDED AFFIDAVIT OF SERVICE AS TO BRYAN STOCKTON
2/27/12	ANSWERING BRIEF OF RESPONDENT, KOBEH VALLEY RANCH, LLC
2/27/12	ANSWERING BRIEF
3/05/12	NOTICE OF INTENT TO DEFEND
3/28/12	PETITIONERS KENNETH F. BENSON, DIAMOND VALLEY CATTLE COMPANY LLC AND MICHEL AND MARGARET ANN ETCHEVERRY FAMILY LPS REPLY BRIEF
3/28/12	EUREKA COUNTY'S REPLY BRIEF
3/30/12	REPLY BRIEF OF CONLEY LAND AND LIVESTOCK. LLC AND LLOYD MORRISON
4/09/12	CORRECTED ANSWERING BRIEF
4/23/12	TRANSCRIPT
5/14/12	EUREKA COUNTY'S PROPOSED FINDING OF FACT CONCLUSION OF LAW ORDER
5/14/12	PROPOSED FINDING OF FACT CONCLUSION OF LAW AND ORDER OF CONLEY LAND AND LIVESTOCK,LLC AND LLOYD MORRISON
5/16/12	PETITIONERS BENSON, DIAMOND VALLEY CATTLE CO., AND ETCHEVERRY FAMILY LLC PROPOSED FINDING OF FACT AND CONCLUSION OF LAW
5/16/12	KOBEH VALLEY RANCH'S PROPOSED FINDINGS, CONCLUSION OF LAW, AND ORDER DENYING PETITIONS FOR JUDICIAL REVIEW
5/16/12	FINDING OF FACT, CONCLUSION OF LAW AND ORDER
6/13/12	FINDING OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING PETITION FOR JUDICIAL REVIEW
6/13/12	CERTIFICATE OF SERVICE
6/18/12	NOTICE OF ENTRY OF FINDING OF FAC, CONCLUSION OF LAW, AND ORDER DENYING PETITIONS FOR JUDICIAL REVIEW

SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR COUNTY OF EUREKA, STATE OF NEVADA } SS

I, the Undersigned COUNTY CLERK and Ex-Officio CLERK of the SEVENTH JUDICIAL DISTRICT COURT do hereby CERTIFY that the foregoing is a full, true and correct copy of the original on file in my office and that I have carefully compared the same with the original.

WITNESS, My Hand and Seal of said DISTRICT COURT, this 16th day of July 20 12.

County Clerk and Ex-Officio Court Clerk

Deanna Cantrell Deputy Clerk

NO.

FILED

SEP 2 0 2011

Eureka County Clerk
By Amanda Rosener

Case No.: CV1108-157

Dept. No.: 2

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

KENNETH F. BENSON, an individual, DIAMOND CATTLE COMPANY, LLC, a Nevada Limited Liability Company, and MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP, a Nevada Registered Foreign Limited Partnership,

Petitioners,

v.

STATE ENGINEER OF NEVADA, OFFICE OF THE STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,

Respondent.

ORDER ALLOWING INTERVENTION OF KOBEH VALLEY RANCH, LLC, AS A PARTY RESPONDENT

Based upon a stipulation of the parties, by and through their attorneys of record, and proposed Respondent, Kobeh Valley Ranch, LLC, and good cause appearing,

IT IS HEREBY ORDERED that Kobeh Valley Ranch, LLC is authorized to appear as a party Respondent in the action. All subsequent headings for documents filed herein shall reflect Kobeh Valley Ranch, LLC, a Nevada limited liability company, as a Respondent.

SEP 09 2011
Eureka County
Clerk & Treasurer

IT IS SO ORDERED.

DATED this 23 day of September, 2011.

BY THE COURT:

Dan L. Papez

DISTRICT JUDGE

Submitted by:
PARSONS BEHLE & LATIMER
Attorneys for Kobeh Valley Ranch, LLC
Ross E. de Lipkau, NSB No. 1628
John R. Zimmerman, NSB No. 9729
50 W. Liberty Street, Ste., 750
Reno, NV 89501
Telephone: (775) 323-1601

SEVENTH JUDICIAL DISTRICT COURT,
IN AND FOR COUNTY OF EUREKA,
STATE OF NEVADA } SS

I, the Undersigned COUNTY CLERK and Ex-Officio CLERK of the SEVENTH JUDICIAL DISTRICT COURT do hereby CERTIFY that the foregoing is a full, true and correct copy of the original on file in my office and that I have carefully compared the same with the original.

DISTRICT COURT, this 16th day of July 2012 WITNESS, My Hand and Seal of said

County Clerk and Ex-Officio Court Clerk

Deputy Clerk

NO.

FILED

OCT 26 2011

Eureka County Clerk

By: Dianna M Cantrell

Case No.: CV1108-155

Dept. No.: 2

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NEVADA

EUREKA COUNTY, a political subdivision of the State of Nevada,

Petitioner,

v.

THE STATE OF NEVADA, EX., REL., STATE ENGINEER, DIVISION WATER RESOURCES,

Respondent.

ORDER DIRECTING THE CONSOLIDATION OF ACTION CV1108-156, AND ACTION NO. CV1108-157 WITH ACTION CV1108-155

Based upon the stipulation of the parties, by and through their attorneys of record, and proposed Respondent, Kobeh Valley Ranch, LLC, and good cause appearing:

IT IS HEREBY ORDERED that Action CV1108-156 and Action CV1108-157 shall be consolidated with Action CV1108-155, filed with this Court on August 10, 2011.

IT IS FURTHER ORDERED that consolidation shall not have the effect of merging the petitions into one case.

IT IS FURTHER ORDERED that all subsequent headings for documents filed herein shall contain the three case numbers.

IT IS SO ORDERED.

DATED this 24th day of October, 2011.

BY THE COURT:

DISTRICT JUDGE

Submitted by:
PARSONS BEHLE & LATIMER
Attorneys for Kobeh Valley Ranch, LLC
Ross E. de Lipkau, NSB No. 1628
John R. Zimmerman, NSB No. 9729
50 W. Liberty Street, Ste., 750
Reno, NV 89501
Telephone: (775) 323-1601

SEVENTH JUDICIAL DISTRICT COURT,
IN AND FOR COUNTY OF EUREKA,
STATE OF NEVADA } SS

I, the Undersigned COUNTY CLERK and Ex-Officio CLERK of the SEVENTH JUDICIAL DISTRICT COURT do hereby CERTIFY that the foregoing is a full, true and correct copy of the original on file in my office and that I have carefully compared the same with the original.

DISTRICT COURT, this 16th day of July 20 12 WITNESS, My Hand and Seal of said

County Clerk and Ex-Officio Court Clerk
Deanna M Caldwell Deputy Clerk

NO.

FILED

DEC 02 2011

Eureka County Clerk

By Dianna M Caldwell

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

EUREKA COUNTY, a political subdivision of the State of Nevada,

Petitioner,

v.

THE STATE OF NEVADA, EX., REL., STATE ENGINEER, DIVISION WATER RESOURCES,

Respondent.

Case No. CV1108-155

Dept. No. 2

CONLEY LAND & LIVESTOCK LLC, a Nevada limited liability company; LLOYD MORRISON, an individual,

Petitioners,

v.

THE OFFICE OF THE State Engineer OF THE STATE OF NEVADA, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, JASON KING, STATE ENGINEER, KOBEH VALLEY RANCH, LLC, REAL PARTY IN INTEREST,

Respondents.

Case No. CV1108-156

Dept. No. 2

ORDER SETTING BRIEFING SCHEDULE

KENNETH F. BENSON, an individual, DIAMOND CATTLE COMPANY, LLC, a Nevada Limited Liability Company, and MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP, a Nevada Registered Foreign Limited Partnership,

Petitioners,

v.

STATE ENGINEER OF NEVADA, OFFICE OF THE STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,

Respondent.

Case No. CV1108-157

Dept. No. 2

The parties approached this Court for assistance in setting a briefing schedule upon the Petition for Judicial Review in the above-entitled, consolidated matter. The Court considered the respective comments of counsel for the parties, and hereby sets the briefing schedule.

IT IS HEREBY ORDERED that the parties to this consolidated matter shall serve their respective briefs, with a courtesy copy to all counsel by electronic mail, in compliance with the following briefing schedule in this matter:

Petitioners' Opening Briefs	January 13, 2012
Respondents' Response Briefs	February 13, 2012
Petitioners' Reply Briefs	March 14, 2012

Briefs shall be mailed or Federal Expressed to the Court for filing on the same date that they are served or within a reasonable time thereafter as provided for in Rule 5(d) of the Nevada Rules of Civil Procedure.

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IT IS FURTHER ORDERED that the parties shall appear before this Court on April 3, 2012 at 10 a.m. for a one-day hearing pursuant to NRS 533.450(2).

DATED: ~~November~~ December 1, 2011.

Dan L. Papez
DISTRICT JUDGE

Submitted By:

Ross E. de Lipkau, Bar No. 1628
Michael R. Kealy, Bar No. 971
PARSONS BEHLE & LATIMER
50 West Liberty Street, Suite 750
Reno, NV 89501
Telephone: (775) 323-1601
Facsimile: (775) 348-7250
Attorneys for Respondent
KOBEH VALLEY RANCH, LLC

SEVENTH JUDICIAL DISTRICT COURT,
IN AND FOR COUNTY OF EUREKA,
STATE OF NEVADA } SS

I, the Undersigned COUNTY CLERK and Ex-Officio CLERK of the SEVENTH JUDICIAL DISTRICT COURT do hereby CERTIFY that the foregoing is a full, true and correct copy of the original on file in my office and that I have carefully compared the same with the original.

DISTRICT COURT, this 16th day of July 2012 WITNESS, My Hand and Seal of said

County Clerk and Ex-Officio Court Clerk
Deanna M Lambert Deputy Clerk

ORIGINAL

NO.

FILED

DEC 02 2011

Eureka County Clerk
By Joanne Coutard

CATHERINE CORTEZ MASTO
Attorney General
BRYAN L. STOCKTON
Nevada State Bar # 4764
Senior Deputy Attorney General
100 N. Carson Street
Carson City, Nevada 89701
(775) 684-1228
Attorneys for Respondents

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

CONLEY LAND & LIVESTOCK LLC, a Nevada Limited Liability company; LLOYD MORRISON, an individual,

Petitioner,

vs.

THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, JASON KING, State Engineer; KOBEH VALLEY RANCH, LLC, Real Party in Interest;

Respondents.

Case No: CV 1108-156

Dept No: II

Affirmation (Pursuant to NRS 239B.030)
The undersigned hereby affirm that this document does not contain a social security number of any person.

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

STIPULATION FOR EXTENSION OF TIME AND ORDER

Respondents, State of Nevada, and Jason King, P.E., in his capacity as State Engineer of Nevada, by and through their counsel, Attorney General Catherine Cortez Masto and Senior Deputy Attorney General Bryan Stockton, and Petitioners Conley Land and Livestock LLC, and Lloyd Morrison, by and through their attorney Dale E. Ferguson ("Conley/Morrison") hereby stipulate and agree as follows:

The State Engineer filed his Partial Motion to Dismiss and Notice of Intent to Defend (the "Motion to Dismiss") in this matter on or about September 14, 2011. Petitioner's responded with their Request for and Points and Authorities in Support of Issuance of Writ of Prohibition and in Opposition to Motion to Dismiss (the "Request and Opposition") on or about November 10, 2011. Currently Respondent's Reply to Petitioner's Request and Opposition is

due on or before December 2, 2011. The parties agree that more time is necessary for Respondents to prepare and file their reply to Petitioner's Request and Opposition. Therefore, the parties stipulate to the following:

1. Respondent's will have up to and including December 16, 2011 to prepare and file their reply to Petitioner's Request and Opposition.

DATED this 29 day of November 2011.

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

WOODBURN AND WEDGE

By: Dale E. Ferguson
GORDON H. DEPAOLI
DALE E. FERGUSON
Nevada State Bar #4956
6100 Neil Road, Suite 500
Reno, Nevada 89511
(775) 688-3000 Telephone

Attorneys for Petitioners
Conley/Morrison

CATHERINE CORTEZ MASTO
Attorney General

By: for
BRYAN L. STOCKTON
Senior Deputy Attorney General
Nevada State Bar # 4764
100 N. Carson Street
Carson City, Nevada 89701
(775) 684-1228 Telephone
(775) 684-1103 fax
bstockton@ag.nv.gov

Attorneys for Respondents
State Engineer

IT IS SO ORDERED.

Dated this 2nd of December, 2011.

/S/ Dan L. Papez
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I, Sandra Geyer certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 29th day of November 2011, I deposited for mailing at Carson City, Nevada, postage prepaid, a true and correct copy of the foregoing **STIPULATION FOR EXTENSION OF TIME**, addressed as follows:

Laura A. Schroeder, Esq.
Therese A. Ure, Esq.
Schroeder Law Offices, P.C.
440 Marsh Avenue
Reno, Nevada 89509

Ross E. deLipkau, Esq.
Parson, Behle & Latimer
50 West Liberty Street, Suite 750
Reno, Nevada 89501

Karen Peterson
Allison MacKenzie
P.O. Box 646
Carson City, Nevada 89702

Gordon H. DePaoli
Dale E. Ferguson
6100 Neil Road, Ste. 500
Reno, NV 89511

Sandra Geyer, Legal Secretary II

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

NO. _____

FILED

DEC 19 2011

Eureka County Clerk

By Deanna M Caubert

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NEVADA

EUREKA COUNTY, a political subdivision of the State of Nevada,

Petitioner,

v.

THE STATE OF NEVADA, EX., REL., STATE ENGINEER, DIVISION WATER RESOURCES,

Respondent.

Case No. CV1108-155

Dept. No. 2

CONLEY LAND & LIVESTOCK LLC, a Nevada limited liability company; LLOYD MORRISON, an individual,

Petitioners,

v.

THE OFFICE OF THE State Engineer OF THE STATE OF NEVADA, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, JASON KING, STATE ENGINEER, KOBEH VALLEY RANCH, LLC, REAL PARTY IN INTEREST,

Respondents.

Case No. CV1108-156

Dept. No. 2

DEC 12 2011

KENNETH F. BENSON, an individual, DIAMOND CATTLE COMPANY, LLC, a Nevada Limited Liability Company, and MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP, a Nevada Registered Foreign Limited Partnership,

Petitioners,

v.

STATE ENGINEER OF NEVADA, OFFICE OF THE STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,

Respondent.

Case No. CV1108-157

Dept. No. 2

ORDER ADMITTING TO PRACTICE

FRANCIS M. WIKSTROM, ESQ. having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a Certificate of Good Standing from the State of Utah, and State Bar of Nevada Statement; said application having been noticed, no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby

ORDERED that said application is hereby granted, and **FRANCIS M. WIKSTROM, ESQ.** is hereby admitted to practice in the above entitled Court for the purposes of the above entitled matter only.

Dated this 15th day of December, 2011.

/s/ Dan L. Papez
DISTRICT JUDGE

Submitted by:
PARSONS BEHLE & LATIMER

Ross E. de Lipkau
50 W. Liberty St., Ste. 750
Reno, NV 89501
(775) 323-1601

SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR COUNTY OF EUREKA, STATE OF NEVADA } SS

I, the Undersigned COUNTY CLERK and Ex-Officio CLERK of the SEVENTH JUDICIAL DISTRICT COURT do hereby CERTIFY that the foregoing is a full, true and correct copy of the original on file in my office and that I have carefully compared the same with the original.

WITNESS, My Hand and Seal of said DISTRICT COURT, this 16th day of July 20 12

County Clerk and Ex-Officio Court Clerk
Deanna McCutcheon Deputy Clerk

NO.

FILED

JAN 26 2012

Eureka County Clerk

By Deanna McIntosh

KENNETH F. BENSON, an individual; DIAMOND CATTLE COMPANY, LLC, a Nevada limited liability company; MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP, a Nevada registered foreign limited partnership, Petitioners, vs STATE ENGINEER OF NEVADA, OFFICE OF THE STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, Respondent.	Case No. CV1108-157 Dept. No. 2
EUREKA COUNTY, a political subdivision of the State of Nevada, Petitioner, vs THE STATE OF NEVADA, EX. REL., STATE ENGINEER, DIVISION OF WATER RESOURCES, Respondent.	Case No. CV1112-164 Dept. No. 2
KENNETH F. BENSON, an individual; DIAMOND CATTLE COMPANY, LLC, a Nevada limited liability company; and MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP, a Nevada registered foreign limited partnership, Petitioners, vs STATE ENGINEER OF NEVADA, OFFICE OF THE STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES Respondents.	Case No. CV1112-165 Dept. No. 2

ORDER GRANTING EXTENSION

GOOD CAUSE APPEARING, this Court will grant the Motion to Extend Time filed by the State Engineer, and permit a two-week extension of time in which all Respondents may file their Answering Briefs in this matter. The current deadline for Reply Brief to be filed by Petitioners is also extended by two weeks.

IT IS HEREBY ORDERED that a two-week extension of time for the Answering Briefs and Reply Briefs is GRANTED. Respondents' Answering Briefs will now be due on February 27, 2012, and Petitioners' Reply Briefs will now be due on March 28, 2012.

DATED: January 26, 2012.

DISTRICT JUDGE

Submitted By:

Ross E. de Lipkau, NSB No. 1628
John R. Zimmerman, NSB No. 9729
PARSONS BEHLE & LATIMER
50 West Liberty Street, Suite 750
Reno, NV 89501
Ph: 775.323.1601
Em: rdelipkau@parsonsbehle.com

Francis M. Wikstrom, *Pro Hac Vice*
UT Bar No. 3462
201 South Main Street; Suite 1800
Salt Lake City, UT 84111
Ph: 801.532.1234
Em: fwikstrom@parsonsbehle.com
ecf@parsonsbehle.com

Attorneys for Respondent
KOBEH VALLEY RANCH, LLC

SEVENTH JUDICIAL DISTRICT COURT,
IN AND FOR COUNTY OF EUREKA,
STATE OF NEVADA } SS

I, the Undersigned COUNTY CLERK and Ex-Officio CLERK of the SEVENTH JUDICIAL DISTRICT COURT do hereby CERTIFY that the foregoing is a full, true and correct copy of the original on file in my office and that I have carefully compared the same with the original.

DISTRICT COURT, this 16th day of July 2012 WITNESS, My Hand and Seal of said

County Clerk and Ex-Officio Court Clerk
Deanna Cantrell Deputy Clerk

NO.

FILED

FEB 22 2012

Eureka County Clerk

By

Case No.: CV1202-170

Dept. No.: 2

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF EUREKA

KENNETH F. BENSON, an individual; DIAMOND CATTLE COMPANY, LLC, a Nevada limited liability company; and MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP, a Nevada registered foreign limited partnership,

Petitioners,

vs

STATE ENGINEER OF NEVADA, OFFICE OF THE STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Respondent.

ORDER ALLOWING INTERVENTION OF KOBEH VALLEY RANCH, LLC AS A PARTY RESPONDENT, AND CONSOLIDATING CV1202-170 WITH CASE NOS. CV1108-155, CV1108-156, CV1108-157, CV1112-164 AND CV1112-165

Based upon a Stipulation of the parties and proposed Intervenor, Kobeh Valley Ranch, LLC, and good cause appearing,

IT IS HEREBY ORDERED that Kobeh Valley Ranch, LLC, is authorized to appear as a party Respondent in the above-captioned action, and to file a responsive pleading to the *Petition for Judicial Review*. All subsequent headings for documents filed herein shall reflect Kobeh Valley Ranch, LLC, as a Respondent.

IT IS FURTHER ORDERED that the above-captioned action shall be consolidated with Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164 and CV1112-165, previously consolidated.

RECEIVED
FEB 22 2012
Eureka County Clerk & Treasurer

IT IS SO ORDERED.

Dated: February 16, 2012 By: Dan L. Papez
DISTRICT JUDGE

Respectfully Submitted By:

PARSONS BEHLE & LATIMER
Attorneys for Kobeh Valley Ranch, LLC
Ross E. de Lipkau, NV Bar No. 1628
John R. Zimmerman, NV Bar No. 9729
50 W Liberty Street, Suite 750
Reno NV 89501
Ph: 775.323.1601
Fx: 775.348.7250
Em: rdelipkau@parsonsbehle.com
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Francis M. Wikstrom, *Pro Hac Vice*
UT Bar No. 3462
201 South Main Street; Suite 1800
Salt Lake City, UT 84111
Ph: 801.532.1234
Em: fwikstrom@parsonsbehle.com
ecf@parsonsbehle.com

SEVENTH JUDICIAL DISTRICT COURT,
IN AND FOR COUNTY OF EUREKA,
STATE OF NEVADA } SS

I, the Undersigned COUNTY CLERK and Ex-Officio CLERK of the SEVENTH JUDICIAL DISTRICT COURT do hereby CERTIFY that the foregoing is a full, true and correct copy of the original on file in my office and that I have carefully compared the same with the original.

WITNESS, My Hand and Seal of said DISTRICT COURT, this 16th day of July 20 12

County Clerk and Ex-Officio Court Clerk
Deanna M Cantrell Deputy Clerk

NO.

FILED

JUN 13 2012

Eureka County Clerk

By Pamela Postell

Case Nos. CV 1108-155
CV-1108-156
CV-1108-157
CV-1112-164
CV-1112-165
CV-1202-170

Dept No. 2

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF EUREKA

*****

EUREKA COUNTY, a political subdivision of the State of Nevada,

Petitioner,

v.

STATE OF NEVADA, EX. REL., STATE ENGINEER, DIVISION OF WATER RESOURCES,

Respondent.

CONLEY LAND & LIVESTOCK, LLC, a Nevada limited liability company, LLOYD MORRISON, an individual,

Petitioners,

v.

OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, JASON KING, State Engineer, KOBEH VALLEY RANCH, LLC, Real Party in Interest,

Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING PETITIONS FOR JUDICIAL REVIEW

NOT

SEVENTH JUDICIAL DISTRICT COURT
DAN L. PAPEZ
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA

SEVENTH JUDICIAL DISTRICT COURT
DAN L. PAPEZ
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA

KENNETH F. BENSON, an individual, DIAMOND CATTLE COMPANY, LLC, a Nevada limited liability company, and MICHEL and MARGARET ANN ETCHEVERRY FAMILY, LP, a Nevada registered foreign limited partnership,

Petitioners,

v.

STATE ENGINEER OF NEVADA, OFFICE OF THE STATE ENGINEER, DIVISION OF WATER RESOURCES DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,

Respondent.

EUREKA COUNTY, a political subdivision of the State of Nevada,

Petitioner,

v.

STATE OF NEVADA, EX. REL., STATE ENGINEER, DIVISION OF WATER RESOURCES,

Respondent.

KENNETH F. BENSON, an individual, DIAMOND CATTLE COMPANY, LLC, a Nevada limited liability company, and MICHEL and MARGARET ANN ETCHEVERRY FAMILY, LP, a Nevada registered foreign limited partnership,

Petitioners,

v.

STATE ENGINEER OF NEVADA, OFFICE OF THE STATE ENGINEER, DIVISION OF WATER RESOURCES DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,

Respondent.

KENNETH F. BENSON, an individual, DIAMOND CATTLE COMPANY, LLC, a Nevada limited liability company, and MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP, a Nevada registered foreign limited partnership,

Petitioners,

v.

STATE ENGINEER OF NEVADA, OFFICE OF THE STATE ENGINEER, DIVISION OF WATER RESOURCES DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,

Respondent.

THIS MATTER is presently pending before the Court on Petitions for Judicial Review filed by Eureka County, a political subdivision of the State of Nevada, (hereafter "Eureka County") in Case No. CV1108-155, on August 8, 2011, and in Case No. CV 1112-164, on December 29, 2011, and by a Petition For Writ Of Prohibition,[1] Complaint, and Petition For Judicial Review filed by Conley Land & Livestock, LLC, a Nevada limited liability company; Lloyd Morrison, an individual, (hereafter "Conley-Morrison") in Case No. CV 1108-156, on August 10, 2011, and by Petitions For Judicial Review filed by Kenneth F. Benson, an individual; Diamond Cattle Company, LLC, a Nevada limited liability company; Michel and Margaret Ann Etcheverry Family, LP, a Nevada registered foreign limited partnership, (hereafter "Benson-Etcheverry") in Case No. CV-1108-157, on August 11, 2011, in Case No. CV-1112-165, on December 30, 2011, and a subsequent Amended Petition in Case No. CV 1112-165, filed on January

[1] Petitioners Conley-Morrison elected not to proceed with their Petition For Writ of Prohibition and to proceed solely on their Petition For Judicial Review. *See* Conley-Morrison's Jan. 13, 2012, Opening Br. at 5.

17, 2012, and a Petition For Judicial Review filed in Case No. CV 1202-170, on February 2, 2012. By stipulation of the parties and Order of the Court, all of the above-referenced cases were consolidated for review and determination by the Court, and additionally, Kobe Valley Ranch, LLC (hereafter "KVR") was allowed to intervene as a Respondent. The Office of the State Engineer of the State of Nevada (hereafter "State Engineer") is likewise a Respondent to the Petition. The Respondents filed their Answers to said Petitions and the cases have been fully briefed by the parties. Oral argument was heard on April 3, 2012 in Eureka District Court. Eureka County is represented by Karen Peterson, Esq., and Eureka County District Attorney Ted Beutel. Conley-Morrison is represented by Gordon DePaoli, Esq. and Dale Ferguson Esq. Benson-Etcheverry is represented by Laura Schroeder, Esq. and Therese Ure, Esq. The State Engineer is represented by Senior Deputy Attorney General Bryan Stockton, and KVR is represented by Ross E. de Lipkau, Esq., John R. Zimmerman, Esq., and Francis M. Wikstrom, Esq.

The Court having reviewed the Record on Appeal (ROA),[2] and having considered the arguments of the parties, the applicable law and facts, and all papers and pleadings in this matter, hereby makes the following findings of fact, conclusions of law, and judgment.

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[2] This includes the record on appeal dated October 27, 2011 filed by the State Engineer (hereinafter "R."), the record on appeal dated January 13, 2012 filed by Eureka County (hereinafter "EC ROA"), the supplemental record on appeal dated January 13, 2012 filed by Eureka County (hereinafter "SROA"), and the record on appeal dated February 3, 2012 filed by the State Engineer (hereinafter "ROA SE"). Additionally, this includes the record on appeal filed in consolidated cases CV 0904-122 and CV0904-123, which was incorporated by reference in the State Engineer's proceedings below (hereinafter "2009 R." or for transcripts "2009 Tr. Vol. Page:line").

FACTS AND PROCEDURAL HISTORY

The ROA in this matter shows that in 2005, General Moly, Inc. (hereafter "GMI") acquired a leasehold interest in a proposed molybdenum mine located in Eureka County, Nevada, commonly referred to as the Mount Hope Mine Project. GMI and its subsidiary, KVR, commenced a development plan for the mine and began the permitting process. The mine is projected to be one of the largest primary molybdenum mines in the world employing some 400 people and processing approximately 60,000 tons of ore per day. The expected mine life is 44 years.

Between May, 2005 and June, 2010 and as a part of its development plan, KVR filed applications with the State Engineer to appropriate new groundwater or to change the point of diversion, place of use and/or manner of use of existing water rights. The applications sought a total combined duty of 11,300 acre feet annually ("afa") of groundwater for mining and milling purposes associated with the proposed mine project.

The water requested in KVR's applications is located in two hydrographic basins, the Kobeh Valley Hydrographic Basin (hereafter "Kobeh Valley") and the Diamond Valley Hydrographic Basin (hereafter "Diamond Valley"). Kobeh Valley is located in Eureka County and Lander County, Nevada, and Diamond Valley is located entirely within Eureka County, Nevada.

The initial thirteen applications were protested by various entities and individuals including Eureka County, Tim Halpin, and the Eureka Producers' Cooperative. An administrative hearing to consider KVR's applications was held before the State Engineer on October 13-18, 2008. On March 26, 2009, the State Engineer issued Ruling #5966 granting therein a majority of KVR's applications subject to certain

terms and conditions. Eureka County, Tim Halpin and the Eureka Producers' Cooperative appealed Ruling #5966 to this Court by filing Petitions For Judicial Review. Those Petitions were heard and considered by this Court and on April 21, 2010, this Court issued its Order vacating Ruling #5966 and remanding the matter to the State Engineer for a new hearing.[3]

While these prior applications were pending before the State Engineer on remand, KVR filed new change applications seeking to change points of diversion and expand place of use of the applications approved in Ruling #5966. As referred to above, the prior applications and the new change applications were timely protested by individuals and entities on various grounds. The State Engineer thereafter noticed and held an administrative hearing on the applications on December 6-7, 2010 and on December 9-10, 2010.

By correspondence dated March 3, 2011 sent by the State Engineer to KVR, the State Engineer requested additional information regarding the scope of the interbasin transfer of water and an inventory as required by NRS 533.364. Both KVR and Eureka County provided responses to the State Engineer's request for additional information. Through correspondence dated April 20, 2011, the State Engineer requested additional information from KVR as required by NRS 533.364. Thereafter, the State Engineer noticed an additional hearing day on May 10, 2011 to discuss the requested information. On June 16, 2011, KVR provided its final, additional information to the State Engineer concerning inventory.

On July 15, 2011, the State Engineer issued Ruling #6127 granting KVR's

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[3] *See* Findings of Fact, Conclusions of Law and Order Granting Pets. For Judicial Review, Vacating Ruling #5966, And Remanding Matter For New Hr'g, filed on Apr. 21, 2010.

applications in the order in which they were filed.[4] The applications were granted subject to: (1) existing rights; (2) payment of statutory permit fees; (3) a monitoring, management and mitigation plan prepared in cooperation with Eureka County and approved by the State Engineer before any water is developed for mining; (4) all changes of irrigation rights will be limited to their consumptive uses; (5) no export of water from Diamond Valley hydrographic basin; (6) a total combined duty of 11,300 afa.

Subsequent to granting the applications, the State Engineer also granted the change applications which, when granted, modified the original applications to appropriate. On December 1, December 11 and December 14, 2011, the State Engineer issued the permits granted pursuant to Ruling #6127. Petitioners appeal Ruling #6127 on multiple grounds.

DISCUSSION

I. Standard of Review

Nevada law allows every person feeling aggrieved by an order or decision of the State Engineer to have that matter reviewed on appeal.[5] On appeal, the State Engineer's decision or ruling is prima facie correct, and the burden of proof is upon the person challenging the decision.[6] With regard to questions of fact, the reviewing court must limit its determination to whether substantial evidence in the record supports the

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[4] In his ruling, the State Engineer granted applications 72695, 72696, 72697, 72698, 73545, 73546, 73547, 73548, 3549, 73550, 73551, 73552, 74587, 75988, 75989, 75990, 75991, 75992, 75993, 75994, 75996, 75997, 75998, 75999, 76000, 76001, 76002, 76003, 76004, 76005, 76006, 76007, 76008, 76009, 76745, 76802, 76803, 76804, 76805, 76989, 76990, 77171, 77525, 77529, 77527, 77553, 78424, 79911, 79912, 79913, 79914, 79915, 79916, 79917, 79918, 79919, 79920, 79921, 79922, 79923, 79924, 79925, 79926, 79927, 79928, 79929, 79930, 79931, 79932, 79933, 79934, 79935, 79936, 79937, 79938, 79939, 79940, 79941 and 79942.

[5] NRS 533.450(1).

[6] NRS 533.450(10).

State Engineer's decision.[7] The court may not pass upon the credibility of witnesses, reweigh the evidence, nor substitute its judgment for that of the State Engineer.[8] Substantial evidence has been defined as "that which a reasonable mind might accept as adequate to support a conclusion."[9]

Unless the decision of an administrative agency is found to be arbitrary or capricious, such decision generally will not be disturbed on appeal.[10] A decision is regarded as arbitrary or capricious if it is "baseless or despotic" or evidences "a sudden turn of mind without apparent motive; a freak, whim, mere fancy."[11]

Because the State Engineer is authorized by Nevada law to decide and regulate the appropriation of water, "that office has the implied power to construe the State's water law provisions and great deference should be given to the State Engineer's interpretation when it is within the language of those provisions."[12] However, a reviewing court is not compelled to defer to the State Engineer's interpretation of a regulation or statute if the plain language of the provision requires an alternative interpretation.[13]

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[7] *Town of Eureka v. State Engineer*, 108 Nev. 163, 165, 826 P.2d 948, 949 (1992) (citing *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979)).

[8] *Revert*, 95 Nev. 782 at 786, 603 P.2d at 264 (citing *N. Las Vegas v. Pub. Serv. Comm'n*, 83 Nev. 279, 429, P.2d 66 (1967)).

[9] *City of Reno v. Estate of Wells*, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (1994).

[10] *United States v. Alpine Land & Reservoir Co.*, 919 F. Supp. 1470, 1474 (D. Nev. 1996).

[11] *Estate of Wells*, 110 Nev. at 1222, 885 P.2d at 548 (citing *City Council v. Irvine*, 102 Nev. 277, 278-79, 721 P.2d 371, 372 (1986)).

[12] *Anderson Family Assocs. v. State Engineer*, 124 Nev. 182, 186, 179 P.3d 1201, 1203 (2008); *United States v. State Engineer*, 117 Nev. 585, 589, 27 P.3d 51, 53 (2001).

[13] *Anderson Family Assocs.*, 124 Nev. at 186, 179 P.3d at 1203.

II. Eureka County's Assignment Of Error

A. Whether KVR's Applications Conflict With Existing Rights Or Protectable Interests In Domestic Wells.

Eureka County first contends in its appeal that the State Engineer acted arbitrarily and capriciously and in violation of NRS 533.370(2) in granting KVR's applications because said grant would conflict with existing water rights or protectable interests in domestic wells. In support of its argument, Eureka County points to the testimony and evidence admitted and considered by the State Engineer during the administrative hearing showing that springs in Kobeh Valley would be adversely affected by mine pumping. Specifically, Eureka County references the testimony of KVR's hydrology experts, Terry Katzer and Dwight Smith, both of whom acknowledged adverse effects to stock watering wells in Kobeh Valley by mine pumping.

The ROA reflects that both Terry Katzer and Dwight Smith acknowledged during their testimony that existing permit Spring #721, also known as the Etcheverry Mud Spring, a low flow spring used by wild horses and cattle, would be impacted by mine pumping and that a high probability existed that Mud Spring would cease to flow. Dwight Smith testified further that Lone Mountain Spring which is located near KVR's proposed well field would also potentially cease to flow.

Evidence of other potential conflicts with existing water rights were also presented during the administrative hearing. Martin Etcheverry, owner and operator of the Robert's Creek Ranch, testified that pump tests completed by KVR dropped by half the water flowing from Nichols Spring and that the Spring had not recovered some two and a half years later. Eureka County's expert witness, Dale Bugenig, summarized in his report that the expected 10 foot drawdown contour caused by mine pumping would

extend into the headwaters of Henderson Creek which would impact existing rights to water in Henderson Creek as defined in the Pete Hanson Creek Decree.

In his Ruling, the State Engineer determined that the water rights that might potentially be impacted by KVR's pumping are those that exist on the valley floor of Kobeh Valley within the predicted water level drawdown area.[14] The State Engineer found, however, that only two springs were likely to be affected by KVR's pumping,[15] and that those springs could be adequately and fully mitigated because they produce less that a gallon/minute, were for stockwatering uses, and exist on the valley floor. The evidence supporting this finding is the testimony of KVR's expert witnesses and the owners of the potentially impacted water rights and amount and use of those potentially impacted water sources.[16] As to other springs and stockwatering wells on the Kobeh Valley floor that might potentially be affected, the State Engineer conditioned his approval on the submission and approval of a monitoring, management, and mitigation plan ("3M Plan") that will carefully monitor them and require mitigation if they are in fact impacted.[17] There is nothing in the record to suggest that these other springs or wells are unique or that mitigation would not be possible and the uncertainty of any impacts supports the State Engineer's decision to protect rights to these sources through the development and implementation of an approved 3M Plan.

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[14] R. at 3593.

[15] The two springs specifically identified as likely to be impacted by KVR's pumping are Mud Springs and Lone Mountain Spring, which are subject to water rights held by the Etcheverrys and BLM. R. at 1556, 3522 (identified as water right No. 12748), 2009 R. at 3692-3710 (BLM stipulation). The record shows that Etcheverrys did not file a protest against the granting of these applications and BLM withdrew its protest.

[16] R. at 1379, 1445, 1519, 1735-36, 206:10-12, 314:3-8, 454:20-25, 455:1-8, 471:15-25, 472:1, 493:8-13.

[17] R. at 3592-93, 3598, 3610, 3613.

Eureka County argues that the State Engineer failed to consider the extent of the water rights on the two springs likely to be impacted, which according to Eureka County were granted for more than a few gallons/minute. The Court finds that the State Engineer did not ignore or fail to consider the extent of water rights on these sources, but instead recognized the evidence that these springs actually produce less water than is specified in the water right.[18] Further, even though the evidence showed that these springs may produce less than that of the applicable water right, the State Engineer concluded in the Ruling that KVR would be required to fulfill each water right to the extent of each right.[19]

At the hearing before the State Engineer, KVR's experts testified that there were several techniques available to mitigate any loss from these springs and wells, including deepening the impacted stockwatering wells, piping water from KVR's distribution system to the spring area,[20] and adjusting the volume or rate of water pumped from each of KVR's production wells.[21] The three Kobeh Valley ranchers called by Eureka County as witnesses each conceded that mitigation of their valley floor water rights was possible.[22] Eureka County implicitly acknowledged that mitigation could avoid conflicts with existing water rights by resolving any impacts to water sources

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[18] R. at 1735-36. Other evidence in the record shows that these springs were dry at one point in time. R. at 1445.

[19] R. at 3598.

[20] R. at 206:10-12, 454:20-25, 455:1-8, 471:13-20, 483:11-19, 493:6-13.

[21] R. at 314:3-8, 2009 R. Tr. Vol. IV at 783:1-5.

[22] Eureka County called John Colby (MW Cattle Company), James Etcheverry (on behalf of 3-Bar Ranch), and Martin Etcheverry (on behalf of the Etcheverry Family Limited Partnership as owner of Roberts Creek Ranch). None of the ranchers had protested the applications and only one appealed the Ruling (Etcheverry Family Limited Partnership). R. at 454:20-25, 455:1-8, 471:15-25, 493:8-13.

under a proposed 3M Plan.[23] The Court concludes that the State Engineer's determination is reasonable, within his field of expertise, and supported by substantial evidence in the record.

Eureka County also argues that pursuant to NRS 533.370(2) and notwithstanding evidence of mitigation potential, the State Engineer is not authorized to order mitigation of impacts and must deny any applications that could potentially impact an existing water right. The Court concludes that NRS 533.370(2) does not prevent the State Engineer from granting applications that may impact existing rights if the existing right can be protected through mitigation, thus avoiding a conflict with existing rights. Nevada is one of the driest states in the entire country and it is likely that the development of any future water rights in Kobeh Valley or for that matter in any other location in the State of Nevada will have some potential impact on existing water rights because each new development will necessarily have to use some transitional storage and lower the groundwater table to capture the perennial yield.[24] The Court concludes Nevada law allows the State Engineer to grant subsequent applications even if they may impact existing rights so long as those existing rights can be made whole through mitigation. NRS 533.370(2) requires the State Engineer to deny a water right application if there is no water available for appropriation in the basin or if the proposed use conflicts with existing rights. The statute does not require the State Engineer to deny applications that may impact certain water sources, if the applicant can successfully mitigate those impacts. NRS 534.110(5) states that "[t]his section does not

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[23] R. at 2321-22, 658:7-12, 728:7-11, 3296, 722:16-25, 723:4-14.

[24] R. at 204:15-22, 357:21-25, 358:1-11, 359:11-17, 1088-90.

prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as any protectable interests in existing domestic wells as set forth in NRS 533.024 and the rights of holders of existing appropriations can be satisfied under such express conditions." Nothing in Nevada's water law statutes (NRS Ch. 533-534) prohibits the State Engineer from expressly conditioning approval of a permit on the submission and approval of a mitigation plan to protect the rights of prior appropriators. The Nevada Federal District Court – interpreting Nevada law – has held that the State Engineer "has the inherent authority to condition his approval of an application to appropriate based on his statutory authority to deny applications if they impair existing water rights."[25]

Eureka County's interpretation of NRS 533.370(2) advocates a "no impact rule" which would essentially prevent the State Engineer from allowing the perennial yield of any Nevada basin to be developed and used by new groundwater applicants because any new pumping would necessarily draw down the water table which is almost certain to impact other groundwater uses to some degree. Under Eureka County's interpretation that an impact is necessarily a conflict, no new applications could be approved even if the resulting impacts to existing rights could be fully mitigated so that existing users would receive the full measure of their water rights. In view of the legislative expressions in NRS 533.024(1)(b), 534.110(4)-(5), and 533.370(2), the Court concludes Eureka County's statutory interpretation of NRS 533.370(2) would create a near impossibility for the future development of any new groundwater in the State of

[25] *Alpine Land & Reservoir Co.*, 919 F. Supp. at 1479.

Nevada contrary to legislative intent and public policy. The Court concludes that NRS 533.370(2) does not require the State Engineer to deny an application if any potential impacts to existing rights can be mitigated and therefore the State Engineer did not act arbitrarily, capriciously, or in violation of Nevada law in conditionally approving KVR's applications.

The State Engineer also determined that pumping groundwater in Kobeh Valley would not conflict with existing rights or domestic wells in Diamond Valley.[26] KVR's expert witnesses testified that pumping groundwater in Kobeh Valley would not affect Diamond Valley water levels. These experts testified that the groundwater levels in Kobeh Valley are roughly 100 feet higher than those in Diamond Valley and have not lowered in response to significant agricultural pumping and water level declines in Diamond Valley.[27] KVR's experts also testified that there is a groundwater flow barrier between Kobeh Valley and Diamond Valley.[28] These expert conclusions are supported by several USGS[29] reports in the record that conclude, based on the area's geology and hydrogeology, that the subsurface flow of groundwater from Kobeh Valley to Diamond Valley through the alluvium is minimal,[30] and there is no evidence that subsurface groundwater from the deeper carbonate aquifer is flowing from Kobeh Valley to

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[26] R. at 3590.

[27] R. at 168:1-15, 215:12-25, 216:1-6, 242:4-14, 310:9-11; 2009 R. Tr. Vol. IV at 685:13-25, 797:14-25, 798:1-6.

[28] R. 1 at 68:1-15, 215:12-25, 216:1-6, 242:4-14; 2009 R. Tr. Vol. IV at 685:20-25, 796:17-24.

[29] United States Geological Survey.

[30] R. at 3588. One USGS scientist estimated the flow at less than 40 acre-feet annually (afa) through the alluvium in the Devil's Gate area. 2009 R. Vol. VI at 854.

Diamond Valley.[31] Another report showed that the geological structure separating the two valleys is not very permeable.[32] Lastly, KVR's groundwater flow model showed that KVR's pumping would not adversely affect Diamond Valley water levels.[33] This contradicts Petitioner's assertion that the State Engineer did not properly take into account the effect of Kobeh Valley pumping on Diamond Valley.[34]

The Court finds that this evidence is sufficient to convince a reasonable mind that these applications would not conflict with existing rights or domestic wells in Diamond Valley, and therefore, the State Engineer's finding in this regard is supported by substantial evidence.

The State Engineer likewise determined that pumping groundwater in Kobeh Valley would not conflict with existing rights on Roberts, Henderson, or Vinini Creeks. The evidence before the State Engineer was that water resources in, or originating from, the surrounding mountain ranges would not be affected by KVR's pumping because those sources were not hydraulically connected to the groundwater aquifer.[35] KVR's expert witnesses testified that the flow of those surface water sources was purely dependent on precipitation, snowmelt, and climatic conditions[36] and that groundwater pumping in Kobeh Valley would not affect stream flow in Roberts,

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[31] 2009 R. Vol. VI at 676, 852; 2009 R. Tr. Vol. IV at 796:10-24, 797:14-24; R. at 215:20-25.

[32] R. at 168:17-25, 169:1-25, 170:1-2 (citing Low, Dennis James, *1982 Geology of Whistler Mountain*; R. at 3109-3252).

[33] R. at 310:9-11, 3589-90.

[34] Benson/Etcheverry Opening Br. at 30-34.

[35] R. at 3591-92, 171:8-17, 172:2-11, 24-25, 173:1-2, 187:21-25, 188:1-12 (Roberts Creek), 181:3-25, 182:1-18, (Henderson Creek), 189:12-14 (Vinini Creek), 183:19-25, 184:2-7, 189:18-21 (Pete Hanson Creek), 1090-1093, 241:16-25, 246:8-13, 341:1-5 (area mountain creeks in general).

[36] R. at 180:20-25, 182:12-14, 188:21-25, 325:2-14, 312:12-15.

Henderson, or Vinini Creeks because the primary water source for those creeks is not hydraulically connected to the Kobeh Valley groundwater aquifer.[37] No contrary expert testimony was presented by Petitioners. The Court finds that the evidence is sufficient to convince a reasonable mind that these applications would not conflict with existing rights on Roberts, Henderson, or Vinini Creeks, and therefore, the State Engineer's finding in this regard is supported by substantial evidence.

B. Whether The State Engineer Violated Nevada Law By Conditioning The Approval of KVR's Applications On A 3M Plan Yet To Be Developed.

Eureka County next contends that the State Engineer's reliance on a future monitoring, management and mitigation plan in approving KVR's applications violates Nevada law. Eureka County argues that because a 3M Plan was not presented or reviewed at the administrative hearing, neither Eureka County nor any of the other protestants were given the opportunity to assess or challenge the plan. Eureka County offers as well that because no 3M Plan is yet in existence, there is no evidence in the record to support the State Engineer's conclusion that a 3M Plan will effectively mitigate impacts to existing water rights. Eureka County concludes that because the record is barren of any details of a 3M Plan, the State Engineer's reliance on the yet to be developed plan in approving the applications is arbitrary, capricious and in violation of Nevada law.

In support of its argument, Eureka County cites the Nevada Supreme Court's decision in *City of Reno v. Citizens For Cold Springs.*[38] In *City of Reno*, the city

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[37] R. at 3591-92, 170:3-8, 187:21-25, 188:1 (Roberts Creek), 181:19-23 (Henderson Creek), 189:12-17 (Vinini Creek), 189:18-21 (Pete Hanson Creek), 172:25, 173:1-2, 179:4-8, 186:19-25 (area mountain creeks in general).

[38] 126 Nev. , , 236 P.3d 10 (2010).

was required by its own municipal code to make a finding "regarding plans to supply adequate water services and infrastructure to support the proposed development" before adopting a master plan amendment and a zoning ordinance.[39] Unlike the municipal code at issue in that case, the Nevada water law statutes require no such prerequisite with regard to a mitigation plan. Further, the respondents in *City of Reno* argued that the city violated NRS 278.0282(1), which states that "before the adoption or amendment of any master plan . . . each governing body . . . shall submit the proposed plan or amendment to the regional planning commission."[40] Much like the State Engineer did here, the city conditionally approved the master-plan amendments, expressly stating that the amendments would not "become effective" until the Regional Planning Commission approved the amendments.[41] The court affirmed the City's actions, holding that the City did not violate NRS 278.0282 by conditionally approving amendments to the Reno Master Plan prior to submitting the amendments to the Regional Planning Commission for review because the master-plan amendments would only become effective after approval by the Regional Planning Commission. Similarly, KVR's applications were conditionally granted upon the approval of a 3M Plan to be later submitted to and approved by the State Engineer with input from Eureka County.[42]

The Court concludes that there is nothing in the State Engineer's enabling legislation or the State Engineer's policies that preclude him from granting applications

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[39] *Id.* at 17 (discussing former Reno Municipal Code §18.06.404(d)(1)(b)).

[40] *Id.* at 16.

[41] *Id.*

[42] The Court has considered other cases cited by Eureka County in support of their argument and finds that these cases are not on point and are not persuasive in the instant matter. *See San Joaquin Raptor Rescue Center v. County of Merced*, 149 Cal. App. 4th 645 (2007); *S. Fork Band Council of W. Shoshone v. United States DOI*, 588 F.3d 718, 727 (9th Cir. 2009).

contingent upon his subsequent review and approval of a 3M Plan to monitor, manage, and mitigate any impacts to prior appropriators. In the absence of such an express prohibition, and the Petitioners' failure to overcome the presumption that the State Engineer's interpretation of a statute is correct,[43] the Court will defer to the State Engineer's interpretation and administration of the statute.[44]

Eureka County also argues that in administrative proceedings before the State Engineer, the State Engineer is required to provide all parties a full opportunity to be heard in compliance with basic notions of fair play and due process.[45] Eureka County complains that, by the State Engineer's reliance on a 3M Plan that is yet undeveloped and not part of the administrative record, the due process rights of all of the protestants were violated. In this regard, Eureka County's argument appears to be twofold: (1) that the State Engineer relied upon a non-existent 3M Plan as a basis to grant KVR's applications; and (2) that Eureka County and other protestants had no opportunity to assess, challenge or otherwise be heard on the merits of a 3 M Plan.[46]

In *Mathews v. Eldridge,*[47] the United States Supreme Court held that due process is satisfied by giving both parties "a meaningful opportunity to present their

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[43] *See Anderson Family Assoc.*, 124 Nev. at 186, 179 P.3d at 1203 (recognizing that the State Engineer "has the implied power to construe the state's water law provisions and great deference should be given to the State Engineer's interpretation when it is within the language of those provisions"); *see also United States. v. State Engineer*, 117 Nev. at 589, 27 P.3d at 53; *Pyramid Lake Paiute Tribe v. Washoe County*, 112 Nev. 743, 747-48, 918 P.2d 697, 700 (1996); *State v. Morros*, 104 Nev. 709, 713, 766 P.2d 263, 266 (1988).

[44] *Morros*, 104 Nev. at 713, 766 P.2d at 266.

[45] *Revert*, 95 Nev. at 787, 603 P.2d at 264.

[46] *English v. City of Long Beach*, 35 Cal. 155, 158, 217 P.2d 22, 24 (1950); *Corcoran v. San Francisco City and County Emp. Ret. Sys.*, 114 Cal. App. 2d 738, 745, 251 P.2d 59, 63 (1952); *Welch v. County Bd. of Sch. Trustees of Peoria County*, 22 Ill. App. 2d 231, 236, 160 N.E.2d 505, 507 (Ill. App. Ct. 1959).

[47] 424 U.S. 319, 334, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

case." Due process, "unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances."[48] Rather, "due process is flexible and calls for such procedural protections as the particular situation demands."[49] The Nevada Supreme Court has recognized that due process means that "interested parties are given an 'opportunity to be heard at a meaningful time and in a meaningful manner.'"[50]

In the instant matter, the State Engineer's determination to grant KVR's applications and permits and condition pumping on his later approval of a 3M Plan is not inconsistent with basic notions of fairness and a full opportunity to be heard.

Eureka County's meaningful opportunity to participate in and be heard in the development of a 3M Plan is expressly set forth in Ruling #6127.[51] It must be clear that in order to develop an effective 3M Plan sufficient to meet the State Engineer's approval, KVR, Eureka County, and other interested parties must have sufficient time to identify the scope of the impacts of mine pumping and to determine how best to mitigate impacts to existing rights. The input of Eureka County will obviously be of the most valuable assistance in developing the 3M Plan and that input will be given at the most meaningful time, during the actual development of the Plan. In the event Eureka County or other interested persons "feel aggrieved" by the State Engineer's determination of the sufficiency of the 3M Plan, the matter may be appealed to district court.[52] This entire

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[48] *Id.*

[49] *Burleigh v. State Bar of Nevada*, 98 Nev. 140, 145, 643 P.2d 1201, 1204 (1982).

[50] *J.D. Constr. v. IBEX Int'l Corp.*, 126 Nev. , , 240 P.3d 1033, 1041 (2010) (quoting *Mathews*, 424 U.S. at 333).

[51] Ruling #6127 at 42.

[52] NRS 533.450(1).

range of participation by Eureka County in developing the 3M Plan satisfies all due process afforded by law. The Court therefore concludes that Petitioners' due process rights were not violated by the State Engineer's approval of the applications subject to approval of a 3M Plan.

The State Engineer granted KVR's applications upon evidence before him that unappropriated water was available in Kobeh Valley and that the water could be appropriated and used by KVR in a mining project without conflict to existing rights because existing rights could be made whole through mitigation. The key to protecting existing rights will be the 3M Plan which will first serve to identify impacts and the extent of those impacts, and second, to develop and implement mitigation efforts to ensure impacted existing rights are made whole. As inferred from the record, test pumping and analysis of pumping data, as it relates to impacts to existing rights, obviously takes time to complete. That data will form the basis of a 3M Plan ultimately submitted to the State Engineer for approval. The specifics of a 3M Plan not known at the time of the hearings will be made known after the data is collected and analyzed with input from Eureka County. The Plan will be submitted to the State Engineer in all transparency and the State Engineer must approve the 3M Plan before production pumping is allowed. In the Court's view, that developmental sequence does not violate the due process rights of Eureka County or other Petitioners and the Court so finds.

C. Whether Substantial Evidence Supports The State Engineer's Determination That A Mitigation Plan Will Be Effective.

Eureka County next argues that assuming arguendo that the State Engineer is allowed to conditionally grant KVR's applications based upon the future drafting of a 3M Plan, there is insufficient evidence in the record to establish that any

proposed mitigation would be effective. Eureka County maintains that because KVR provided only "minuscule and cursory" information to the State Engineer as to what mitigation measures would be undertaken, whether or not such mitigation would be effective is speculative at best and that the information is insufficient to support the State Engineer's conclusions.

Eureka County points to evidence it presented at the hearing that suggests mitigation would be ineffective. Mr. Garaventa, a rancher operating near the proposed well field, testified that in previous experiences where mining operations supplied water for livestock and wildlife, the water froze in the troughs in cold months and was unavailable for the animals. Other ranchers testified that it was essential that stock water be disbursed to avoid over-grazing near a single source. Witness John Colby, president of MW Cattle Company, testified that when cattle have traveled far to water sources "to get a drink," the calves suffer weight loss which in turn harms business. Eureka County argues as well that because mitigation efforts may require approval from the federal government, the provisions of the National Environmental Policy Act ("NEPA") may further complicate the mitigation plan. Finally, Eureka County argues that KVR's track record in actually implementing mitigation has been poor to date as KVR failed to mitigate known impacts to Nichols Spring caused by its test pumping. Eureka County maintains that at the administrative hearing it produced "a wealth of evidence" detailing extreme challenges faced by KVR in mitigating impacts to existing rights while KVR produced no evidence on planned mitigation measures. Eureka County concludes that the State Engineer's findings on the effectiveness of mitigation to be arbitrary and capricious and not based on substantial evidence.

KVR counters that substantial evidence supports the State Engineer's conclusion that any impacts to the water rights to springs and stockwatering wells located on the floor of Kobeh Valley could successfully be mitigated to avoid conflicts to those prior rights. KVR recounts the testimony of its experts that the only springs likely to be impacted near KVR's production wells are Mud Springs and Lone Mountain Spring,[53] which produce less that one gallon per minute and which apparently have run dry at times.[54] KVR's experts testified that any impacts to any stockwatering springs or wells could be fully mitigated thus fully avoiding conflicts with existing rights.[55] KVR also references its mitigation plan entered into with the BLM, the owner of 29 springs in Kobeh Valley, which describes potential mitigation measures that KVR would undertake to meet BLM needs.[56] KVR also argues that because only 1,100 afa of existing rights in Kobeh Valley are not owned or controlled by KVR, the mitigation requirements it would have to undertake would be limited.[57]

Commenting further on the effectiveness of a mitigation plan, KVR discounts the testimony of Kobeh Valley rancher John Colby regarding dispersed water sources available for cattle because Mr. Colby was describing water sources in the Simpson Park Mountains which will not be impacted by mine pumping.[58]

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[53] R. at 187:10-16, 355:5-11.

[54] R. at 1379, 1735-36, 1445.

[55] R. at 314:3-8, 198:4-7, 206:10-12.

[56] 2009 R. at 3703-04.

[57] R. at 3598.

[58] R. at 463:21-25, 466:5-19.

Regarding whether Roberts Creek will be affected by mine pumping, KVR contends that Petitioners did not provide any expert testimony that Roberts Creek would be affected by mine pumping while KVR's experts testified that because Roberts Creek was not hydraulically connected to the groundwater aquifer, Roberts Creek was unlikely to be affected by mine pumping.[59] Additionally, Martin Etcheverry testified that he could see no impact to the springs that are tributaries to Roberts Creek.[60]

Concerning KVR's Well #206 and its possible impacts to Nichols Spring, according to KVR, Martin Etcheverry conceded that any loss of flow to Nichols Spring could be mitigated by a substitute supply of water.[61] Mr. Etcheverry testified that water tanks supplied and installed by KVR at various places on the floor of Kobeh Valley would mitigate impacts to his other water sources.[62]

Although conflicting evidence was presented at the administrative hearing regarding whether mitigation efforts by KVR would be effective, the State Engineer found that potential impacts to existing water rights in Kobeh Valley could be mitigated. Supporting the State Engineer's finding was the testimony of KVR's experts and concession by Petitioners that mitigation was possible for the potentially affected existing rights. It is not the function of the Court to reweigh the evidence supporting the State Engineer's findings or substitute its judgment for that of the State Engineer. The Court therefore finds that sufficient evidence was presented to convince a reasonable mind that any potential impacts caused by mine pumping to existing rights can be fully

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[59] R. at 3591-92, 171:8-17, 172:2-11, 24-25, 173:1-2, 187:21-25, 188:1012.

[60] R. at 458:4-6, 458:14-20.

[61] R. at 455:1-7.

[62] R. at 454:20-25.

mitigated. The Court therefore concludes the State Engineer's determination is supported by substantial evidence.

D. Whether KVR's Applications Are Defective In Form And Content.

Under Nevada law, any person seeking to appropriate public waters, or to change the place of diversion, manner of use or place of use of water already appropriated, must first make application to the State Engineer for a permit to do so.[63] Such applications must contain "[a] substantially accurate description of the location of the place at which the water is to be diverted from its source . . . ",[64] and must further " . . . be accompanied or followed by such maps and drawings and such other data as may be prescribed by the State Engineer . . ."[65] Both new appropriation applications and change applications are required by the State Engineer to describe the proposed place of use by legal subdivision.[66] These descriptions must match the diversion point and place of use shown on the supporting maps.[67] Nevada law requires the State Engineer to address all of the crucial issues necessary for a full and fair determination of a pending application,[68] including identifying the place of use and point of diversion. A decision by the State Engineer that fails to appropriately address crucial issues connected with an application may constitute a manifest abuse of discretion.[69]

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[63] NRS 533.325.

[64] NRS 533.335(5).

[65] NRS 533.350.

[66] R. at 3583.

[67] R. at 3583.

[68] *Revert*, 95 Nev. at 787, 603 P.2d at 264.

[69] *Id. at* 787, 603 P.2d at 265.

Eureka County maintains that KVR's applications are defective because (1) the applications fail to accurately describe the place of use; and (2) KVR is unable to identify all well locations for the project. Regarding the first issue, KVR's applications identify the place of use as a 90,000 acre area.[70] KVR's plan of operations identifies the area where the mine will be located and where the water will be put to beneficial use to be approximately 14,000 acres.[71] Eureka County maintains that KVR provided no adequate reason supporting a 90,000 acre place of use determination and that the sole reason for requesting an additional 76,000 acres was to prevent a "hardship" to KVR in having to re-apply for a change application in the event place of use needed to expand.[72]

In its response, KVR points to the administrative record showing that its applications comply with Nevada law by describing the place of use by legal subdivision and by further depicting the place of use on an accompanying map.[73] KVR presented evidence that shows that its Project is a large mine and that the water sought to be appropriated would be used within the entire mine site.[74] KVR concedes that while most of the water will be put to beneficial use within the 14,000 acre plan of operations boundary,[75] some water will be used outside the plan of operations boundary for

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[70] ROA Vol. I at 000133.

[71] *Id.*

[72] ROA Vol. I at 000093-94.

[73] R. at 999-1023, 1943-2294.

[74] R. at 144:14-19, 861:9-14.

[75] R. at 857:25, 858:1-5, 949, 1003, 1187.

exploration drilling, dust suppression and environmental mitigation.[76] Because KVR provided evidence that some water would be put to beneficial use upon the entire 90,000 acre mine site as described on its applications, the Court finds that substantial evidence supports the State Engineer's determination that KVR's applications adequately describe place of use. The Court concludes that the State Engineer did not abuse his discretion by approving the applications without restricting the place of use.

The second issue raised by Eureka County regarding the sufficiency of KVR's applications is that KVR was unable to identify all the well locations for the project. Eureka County references that testimony of KVR's hydrogeologist Jack Childress that the specific location of KVR's production wells is not know.[77] KVR's model report stated as well that ". . .[t]he exact number, locations, well depths, and well pumping rates have a degree of uncertainty which will remain until production wells are constructed and actual pumping rates determined."[78] Eureka County contends that because only 44 percent of the proposed production wells have a known location, leaving 56 percent unknown, the impacts of pumping from the unknown 56 percent are unknown to KVR or the State Engineer. Eureka County argues that the State Engineer is therefore making a decision on potential impacts from production well pumping without any impact information from the unknown well sites and that his decision is therefore arbitrary, capricious and not based upon substantial evidence.

The administrative record shows that KVR described the location of each proposed point of diversion by survey description on its applications and supporting

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[76] R. at 92:20-25, 93:1-23; 135:5-16.

[77] ROA Vol. II at 000250.

[78] ROA Vol. VII at 001364-65.

maps.[79] While the exact number, location, well depths and pumping rates of production wells are uncertain, the State Engineer may by regulation grant some leeway in where the wells are finally located as long as the drill site is not more that 300 feet from the location of the existing point of diversion described in the permit and within the same quarter-quarter section as described in the permit.[80] The State Engineer stated these parameters in his Ruling.[81] The Court is unaware of any law or regulation and none are cited by the parties, that require KVR to actually drill, construct, and test all proposed production wells before filing an application to appropriate water. Given the uncertainty of whether groundwater applications for projects as large as the Mount Hope Mine Project will be granted, requiring KVR or any entity in a similar situation to locate, drill, construct, and test production wells prior to submitting an application to appropriate, will be cost prohibitive and severely limit the development of such projects. Surely the law does not intend that result.

The Court concludes that the State Engineer's responsibility is limited to reviewing the well locations described in the applications to determine whether the applications are sufficient as to form and content. The Court finds that the State Engineer's finding that KVR's applications met the requirements for describing the proposed points of diversion is supported by substantial evidence.

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[79] R. at 999-1023, 1943-44 and 2156 admitted at the hearing as exhibits 21-25, 42, and 99-125.

[80] NAC 534.300(4).

[81] Ruling #6127 at 12.

E. Whether the State Engineer's Reliance On KVR's Model Was An Abuse Of Discretion.

Eureka County next contends that in determining potential impacts from KVR's groundwater pumping, the State Engineer's reliance on KVR's computer model was an abuse of discretion.

In support of its applications, KVR developed a computerized groundwater flow model to estimate the potential water table drawdown by its proposed pumping and presented the results to the State Engineer in a comprehensive report.[82] The record shows that both the model and the report are based on substantial research regarding the geology and hydrogeology of the area and have been through several updates based on test drilling, peer-review and collaboration, and refinements.[83] KVR's expert testified that a model is designed to predict drawdown on a regional basis and is not intended to be an exact calculator.[84] Eureka County was the only Petitioner to present expert witness testimony about KVR's model. Eureka County's expert reported that there were no "fatal flaws" in the model, but testified that the model's predictive capability was limited.[85] Eureka County's expert, however, also testified that her primary concerns had been largely rectified by later modeling work and that she could be wrong about the effect of her remaining concerns.[86] This witness also stated in her report that there is a degree of uncertainty with the use of any model because they are

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[82] R. at 1132-1752.

[83] R. at 265:4-25, 269:11-15, 273:19-23, 275:16-25, 275:1-9, 277:15-25, 288:2-6. This peer-review included Eureka County and BLM and KVR's expert hydrogeologist and groundwater modeler testified that he had run the latest version of the model over a thousand times. R. at 293:13-20.

[84] R. at 265:22-25, 266:5-6, 301:24-25, 302:1-3.

[85] R. at 2841, 620:1-20.

[86] R. at 618:20-25, 619:1-6, 18-25, 620:1-20.

simplifications of complex natural systems.[87] The State Engineer noted this inherent uncertainty and still concluded that Eureka County's expert witness failed to show that the model's results were not substantially valid.[88] This determination is supported by other evidence in the record, as discussed above in Section II(A), and is within an area of the State Engineer's specialized knowledge and experience. Based on the foregoing evidence, the Court finds that the State Engineer did not abuse his discretion by relying in part on the model to analyze the potential drawdown in Diamond Valley, Kobeh Valley, and the Roberts Mountains that could be caused by KVR's pumping.

Eureka County also contends that displaying the model results with ten-foot drawdown contours caused the State Engineer to disregard or minimize impacts to water sources that may occur where there is less that ten feet of drawdown.[89] KVR's witness testified that they were not relying solely on the ten-foot drawdown contour to evaluate impacts.[90] In addition, the State Engineer did not limit his review of potential impacts to areas within the ten foot drawdown contour, but instead recognized that potential impacts could occur to valley floor sources in direct contact with the groundwater aquifer and close to KVR's production wells.[91] Eureka County itself presented evidence to the State Engineer that showed the area in which the model predicted five feet of drawdown to occur.[92] Therefore, there is evidence in the record to

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[87] R. at 3298.

[88] R. at 3590.

[89] Eureka County Opening Br. at 25-26; Benson/Etcheverry Opening Br. at 34 n. 12.

[90] R. at 156:17-19.

[91] R. at 3593.

[92] R. at 3275-76.

show that the State Engineer did consider potential impacts of less that ten feet. Taking these factors into considerations, the Court concludes that it is not an abuse of discretion to allow the reporting of modeled groundwater data based on ten foot drawdown contour lines.

Eureka County also asserts that the model was poorly calibrated. The record shows that the model was appropriately calibrated in Kobeh Valley, especially on the valley floor where the only potential impacts would occur.[93] Eureka County relies on a statement from the State Engineer's staff regarding a calibration failure as to the Model's simulation of the predicted drawdown in Diamond Valley from existing agricultural pumping. KVR's expert testified that the model's calibration level in Diamond Valley was not a failure and did not affect simulated drawdown in Kobeh Valley.[94] As discussed above in Section II(A), other evidence established that the impacts to Diamond Valley and the Roberts Mountains surface water sources were unlikely and this evidence is sufficient to support the State Engineer's conclusion that these sources were unlikely to be impacted. Petitioners have not met their burden to show that the State Engineer's decision was not supported by substantial evidence. Moreover, the State Engineer's acceptance of the model is supported by the review and approval of the model by BLM's staff hydrologist and its independent third-party reviewer and by the testimony of Eureka County's expert witness.[95] Petitioners did not present a competing groundwater model.

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[93] R. at 342:11-14, 279:1, 289:9, 685:15-22.

[94] R. at 401:15-21, 420:18-24, 423:8-20, 424:6-24.

[95] R. at 1080-81; 107:12-17, 108:1-4, 342:7-10, 343:2-5, 346:25, 347:1-10.

The model's predictions are supported by other evidence in the record. Petitioners agree that there are several acceptable means to estimate potential drawdown from groundwater pumping.[96] USGS reports from 1962 to 2006 conclude that only relatively small amounts of groundwater flow from Kobeh Valley to Diamond Valley.[97] This supports the model's prediction that granting the applications will not measurably impact water sources in Diamond Valley. KVR's expert witnesses also described three other reasons why pumping in Kobeh Valley would not affect Diamond Valley water levels. First, groundwater levels in Kobeh Valley are roughly 100 feet higher than those in Diamond Valley and have not lowered despite fifty years of pumping above the perennial yield in that basin.[98] Second, the geologic structures separating the valleys are not very permeable.[99] Third, there is a groundwater flow barrier between Kobeh Valley and Diamond Valley preventing pumping in Kobeh Valley from influencing any subsurface groundwater flow to Diamond Valley.[100]

Accordingly, the State Engineer's conclusions regarding the model are based on expert testimony, other evidence in the record, his credibility findings, and the absence of contradictory evidence from Petitioners.[101] All of this evidence is sufficient to overcome Petitioner's assertion that the State Engineer's reliance on the model was

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[96] R. at 600:18-20, 602:22-25, 603:1-17.

[97] 2009 R. at 1023, 852, 854, 676.

[98] R. at 168:1-15, 215:12-25, 216:1, 242:1-16; 2009 R. Tr. Vol. IV at 685:13-25.

[99] R. at 168:17-25, 169:1-25, 170:1-2, (citing Low, *1982 Geology of Whistler Mountain*, R. at 3109-3252).

[100] 2009 R. Tr. Vol. IV at 796:10-25, 797:14-25, 798:1-6.

[101] Additionally, the evidence also showed that this model is being used as part of the environmental review process for the Mt. Hope Project and was approved by the BLM for that purpose. R. at 1080-81; 107:12-17, 108:1-4, 342:7-10, 343:2-5, 346:25, 347:1-10.

unreasonable. Based on the above, the Court finds that the State Engineer's ultimate determinations regarding the lack of conflicts are supported by the model and other substantial evidence and this Court will not substitute its judgment for that of the State Engineer.

F. Whether The State Engineer's Determination That Unappropriated Water In Kobeh Valley Is Available For KVR's Mine Project Is Supported by Substantial Evidence.

Eureka County next contends that the State Engineer erred in determining the perennial yield of Kobeh Valley and that the evidence is insufficient to show that there is unappropriated water available to satisfy the water appropriation requirements for KVR's Project. Specifically, Eureka County argues that because the State Engineer failed to account for the uncaptured evapotranspiration[102] in his evaluation of how much water is available in Kobeh Valley for appropriation, his determination that 15,000 afa is the perennial yield of Kobeh Valley is overstated and in error. Eureka County contends that due to this error and KVR's stated intent that it will initially capture no evapotranspiration and will only capture approximately 4,000 afa of the evapotranspiration in Kobeh Valley at the end of the 44 year mine life, an overdraft or groundwater mining situation will be created.

Nevada law requires the State Engineer to reject an application "where there is no unappropriated water in the proposed source of supply."[103] The State Engineer determines the amount of groundwater available for appropriation in any given hydrographic basin by determining the perennial yield of the basin and the total amount

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[102] Evapotranspiration is defined by the State Engineer as "[t]he process by which plants take in water through their roots and then give if off through the leaves as a by-product of respiration; the loss of water to the atmosphere from the earth's surface by evaporation and by transpiration through plants."

[103] NRS 533.370(2).

of existing rights.[104] The perennial yield is:

> the maximum amount of groundwater that can be salvaged each year over the long term without depleting the groundwater reservoir. Perennial yield is ultimately limited to the maximum amount of natural discharge that can be salvaged for beneficial use. The perennial yield cannot be more than the natural recharge to a groundwater basin and in some cases is less. If the perennial yield is exceeded, groundwater levels will decline and steady-state conditions will not be achieved, a situation commonly referred to as groundwater mining.[105]

The State Engineer also considers in determining perennial yield, the natural discharge from a groundwater basin, including evapotranspiration.[106]

Eureka County's challenge to the State Engineer's perennial yield finding appears to be premised on an immediate recovery expectation, that unless the pumping in any given basin immediately prevents an equal amount of groundwater from being discharged through evapotranspiration, the appropriation of any groundwater would exceed the perennial year and is not therefore authorized by law.

KVR responds that capturing groundwater naturally discharged through evapotranspiration is a long term process that would require pumping for 100-150 years before an equal volume of evapotranspiration could be captured.[107] Contrary to Eureka County's position, Eureka County's own expert appears to have accepted the long term process premise by testifying that it would take at least 50 years to capture groundwater

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[104] R. at 3584.

[105] ROA Vol. XVIII at 003584.

[106] *Id.* at 003585.

[107] R. at 3584, 1088-90; 2009 Tr. Vol. IX at 10:9-16; R. at 1090.

being discharged naturally.[108]

NRS 533.370(2) requires the State Engineer to determine whether there is unappropriated water. Here, the State Engineer found that KVR's Project will require 11,300 afa annually, that the perennial yield of Kobeh Valley is 15,000 afa, and that the total volume of existing rights is 1,100 afa, leaving the remaining 13,900 afa more than enough to satisfy KVR's request for 11,300 afa.[109] The Court is unaware of any requirement that in determining perennial yield, the State Engineer deduct from the available perennial yield, naturally discharged groundwater that is not immediately salvaged or captured by the appropriator at the proposed place of diversion. The Court is likewise unaware of any requirement that KVR capture the full amount of evapotranspiration within the 44 year life of the mine in order to appropriate the requested groundwater. The Court defers to the State Engineer's expertise in determining the perennial yield of any water basin in Nevada to the end that all water basins in Nevada remain in balance and to the further end that the scarce water resources in Nevada are preserved, protected and wisely used for the benefit of all of its citizens. The Court declines to impose Eureka County's formula of calculating perennial yield and therefore finds and concludes that the State Engineer's determination of perennial yield in Kobeh Valley is supported by substantial evidence.

Eureka County's allegation that KVR's pumping will create an "overdraft or constitute groundwater mining" is contrary to basic hydrogeology and Nevada's established practice of allowing appropriators to use transitional storage to capture the

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[108] R. at 570:8-19.

[109] Eureka County's expert agreed that the natural discharge from Kobeh Valley was approximately 16,000 afa. No contrary evidence was presented. 2009 R. Tr. Vol. I at 195:1-3.

perennial yield and ignores the statutory concept of "reasonable lowering" of the water table.[110] Transitional storage is the volume of groundwater in an aquifer that can be used during the transition period between natural equilibrium (groundwater is discharged solely by evapotranspiration of subsurface outflows) and pumping equilibrium (groundwater is discharged solely by pumping and all evapotraspiration has ceased).[111] The use of transitional storage is a matter of physics and is used in the development of any well in any groundwater basin. Eureka County also ignores the fact that some transitional storage must always be used to withdraw groundwater from a basin and, instead, assert that the total of all natural and artificial discharges (evapotraspiration and pumping) cannot exceed the perennial yield, at any time. This position, however, would effectively prohibit the State Engineer from granting any groundwater rights in any basin in Nevada because, as stated above, no groundwater can be developed without using transitional storage until the pumping equilibrium is reached. The Court concludes that the State Engineer did not abuse his discretion and that his determination regarding water available for appropriation is supported by substantial evidence.

G. Whether The State Engineer Abused His Discretion In Revising The Perennial Yield Of Three Basins.

Eureka County contends that the State Engineer improperly revised the perennial yield of Monitor Valley, Southern Part, from 10,000 afa to 9,000 afa, Monitor Valley, Northern Part, from 8,000 afa to 2,000 afa, and Koebeh Valley from 16,000 afa to 15,000 afa. Eureka County maintains that no information was presented or discussed

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[110] 2009 R. Tr. Vol. IV at 808:23-25, 809:1-4; Tr. Vol. V at 909:2-4, 24-25, 921:9-12; R. at 3584-85, 1090, 203:18-22, 204:1–25.

[111] R. at 1089 (citing USGS reports); 2009 R. Vol. IV at 825:20-24; 2009 R. Vol. V at 909:2-4.

by any party during the administrative hearing concerning these revisions and therefore the change is not supported by the record.

NRS 533.070(2) requires the State Engineer to determine the perennial yield of any given basin to determine the availability of unappropriated water. In this matter, the State Engineer was apparently concerned that the original 16,000 afa perennial yield estimate for Kobeh Valley was prone to double counting (when the perennial yield of all basins in a flow system exceed their combined evapotranspiration or recharge rates) because a part of that amount was estimated subsurface inflow from other basins.[112] The State Engineer apparently believed that limiting the perennial yield to the natural discharge rate (15,000 afa) was the conservative approach and ensured Kobeh Valley would not be depleted over the long term.[113]

From a procedural standpoint, it does not appear that the Nevada Administrative Procedures Act, cited by Eureka County as support for its challenge, requires the State Engineer to notify any existing or unidentified future appropriator of his intent to revise perennial yield determinations in the subject basins. NRS 533.070(2) specifically provides the authority to the State Engineer to determine water availability in any given basin and he does so by estimating perennial yield. After evaluating the evidence presented at the administrative hearing which included Eureka County's expert witness, the State Engineer determined the perennial yield of Kobeh Valley to be 15,000 afa.[114] The evidence of record and the State Engineer's thought

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[112] R. at 3585-86.

[113] R. at 3586 (because the State Engineer actually **lowered** the perennial yield determination for Kobeh Valley, the Court is puzzled by Eureka County's complaint.)

[114] R. at 1271, 1463, 1497, 2009 R. at 678 (2006 USGS Report of the Diamond Valley Flow System), 1091 (1964 USGS Reconnaissance Series Report No. 30).

processes in determining Kobeh Valley's perennial yield are supported by substantial evidence and the Court so finds.

H. Whether The State Engineer's Determination That The Requirements For An Interbasin Transfer Of Water Had Been Met Is Supported By Substantial Evidence.

In his Ruling, the State Engineer expressly acknowledged that KVR was requesting an interbasin transfer of groundwater with a point of diversion in Kobeh Valley and a place of use in Diamond Valley.[115] In determining whether an application for an interbasin transfer of water must be rejected, NRS 533.070(3) requires the State Engineer to consider five factors: (1) whether the applicant has justified the need to import water from another basin; (2) if the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out; (3) whether the proposed action is environmentally sound as it relates to the basin from which the water is exported; (4) whether the proposed action is an appropriate long term use which will not unduly limit the future growth and development in the basin from which the water is exported; and (5) any other factor the State Engineer determines to be relevant.

1. Interbasin Transfer To Pine Valley.

Eureka County first challenges the use of imported Kobeh Valley water in Pine Valley on the grounds that the State Engineer did not consider all of the factors required under NRS 533.370(3). The State Engineer and KVR both concede that the permits should be restricted to prohibit use of imported water in Pine Valley and

[115] ROA Vol. XVIII at 0003594.

accordingly, it is so ordered.

2. Whether Granting KVR's Applications Was Environmentally Sound As To Kobeh Valley.

In determining whether to approve an interbasin transfer of groundwater, the State Engineer is required to consider whether such transfer is "environmentally sound as it relates to the basin from which the water is exported."[116] The State Engineer has interpreted the phrase "environmentally sound" within the parameters of Nevada water law to mean "whether the use of water is sustainable over the long-term without unreasonable impacts to the water resources and the hydrologic-related natural resources that are dependant on those water resources."[117] In applying this definition of "environmentally sound" to the proposed interbasin transfer of water from Kobeh Valley to Diamond Valley, the State Engineer used the perennial yield and amount of existing rights to determine there would be 2,600 afa available for future appropriation if KVR's applications were granted.[118] The State Engineer also considered potential impacted springs and the necessity of a 3M Plan.[119] The State Engineer concluded that because only a few minor springs located on the valley floor could potentially be impacted by mine pumping and because any such impacts could be fully mitigated, there would be no impairment to the hydrologic related natural resources in Kobeh Valley.[120]

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[116] NRS 533.370(3)(c).

[117] R. at 3597.

[118] R. at 3598.

[119] *Id.*

[120] *Id.*

Eureka County contends that the State Engineer's definition and application of the statutory term "environmentally sound" is too narrow and that more than a simple review of impacts to existing water rights and discussion of a 3M Plan is necessary for a proper determination of whether the proposed interbasin transfer of water is "environmentally sound." Eureka County argues that the State Engineer's "environmentally sound" analysis is nothing more than a reiteration of his analysis of impacts to existing rights made pursuant to NRS 533.370(2).

In support of its argument, Eureka County points to legislative testimony given regarding interbasin water transfers. In discussing Senate Bill 108 in the 1999 Nevada Legislative Session, State Water Planner Naomi Duerr referenced an excerpt from a Draft Nevada State Water Plan as follows:

> Nevada has many threatened and endangered species and unique ecosystems, and has lost much of its wetland environments. Protection of water quality and recreation opportunities depend in large part on water availability. Because the water needs for these beneficial uses of water have not been adequately quantified and few water rights have been obtained to support them in the past, a thorough evaluation of the potential environmental impacts must precede any large scale water transfer.[121]

Eureka County also references the testimony of its witness, Rex Massey, who testified that Kobeh Valley supports important outdoor recreation resources and activities such as camping, fishing, hiking, biking, hunting and wildlife viewing and that these activities provide social and economic benefits.[122] Further evidence provided at the hearing shows that a potential drawdown of water on Roberts Mountain could result

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[121] *See* Minutes For Feb. 10, 1999, Senate Comm. on Natural Res. at 6-9.

[122] ROA Vol. IV at 000695.

in reduced spring and surface flows negatively affecting wet meadows and associated wildlife habitat and could further affect a potential Lahontan Cutthroat Trout recovery project on Henderson and Vinini Creek.[123] Eureka County contends that because the State Engineer failed to consider or discuss the impacts of mine pumping on these important issues, his determination that the proposed interbasin transfer of water is "environmentally sound" is arbitrary, capricious and not based upon substantial evidence.

In his discussion of whether the interbasin transfer of water from Kobeh Valley to Diamond Valley is "environmentally sound" and what that term means, the State Engineer stated in his Ruling that "the public record and discussion leading up to the enactment of NRS 533.370(3)(c) do not specify any operational or measurable criteria for use as the basis for a quantitive definition,"[124] and that "this provision of water law provides no guidance as to what constitutes the parameters of 'environmentally sound.'"[125] In support of the State Engineer's conclusion that he was left to determine the interpretation of "environmentally sound," the State Engineer references the testimony of Senator Mark James concerning the interbasin transfer statute wherein Senator James "pointed out that by the language 'environmentally sound' it was not his intention to create an environmental impact statement process for every interbasin water transfer application and that the State Engineer's responsibility should be for the hydrologic environmental impact in the basin of export."[126]

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[123] ROA Vol. VI at 001066; Vol. IV at 00736-37.

[124] R. at 3597.

[125] *Id.*

[126] R. at 3597-98.

The legislative history of the interbasin transfer statute supports the State Engineer's position that the meaning of the term "environmentally sound" was left to his discretion.[127] While not minimizing the importance of Eureka County's environmental impact concerns of the proposed interbasin transfer, the Court concludes that the State Engineer's interpretation of the interbasin transfer criteria is reasonable and should be afforded deference. Because the State Engineer determined that potential impacts to springs in Kobeh Valley could be mitigated, he concluded there would be no unreasonable impairment to the hydrologic related natural resources in Kobeh Valley.[128] The Court therefore concludes that the State Engineer applied the correct standard in determining the interbasin transfer of water from Kobeh Valley to Diamond Valley was environmentally sound and concludes further that the State Engineer's finding is supported by substantial evidence.

3. Whether The Proposed Action Is An Appropriate Long-Term Use That Will Not Unduly Limit Future Growth And Development In Kobeh Valley.

In determining whether to approve an interbasin transfer of water, the State Engineer must also consider "whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported."[129]

The State Engineer determined that the proposed action would not unduly limit future growth and development of Kobeh Valley. Based on the evidence

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[127] It would seem to the Court that the Nevada Legislature purposely left the interpretation of the term "environmentally sound" to the State Engineer as the Nevada Legislature could have, but chose not to, supply its own definition.

[128] R. at 3598.

[129] NRS 533.370(3)(d).

presented, the State engineer determined that substantial water would still be available to satisfy significant future growth and that the proposed action is the type of growth expected in the area, which is supported by Eureka County's evidence of several potential mining projects in the County.[130] The State Engineer's Ruling shows that 2,600 afa of Kobeh Valley's perennial yield will be available for future growth after granting KVR's applications. [131]

Petitioners did not dispute this finding on appeal. Instead, Petitioner Eureka County asserts that granting the applications would prevent the maximum development of residential property in Kobeh Valley based on testimony that as many as 2,988 residential lots could be created in Kobeh Valley if all private land in the valley was subdivided into 2.5-acre lots. The Court finds that this testimony is not supported by evidence as the likelihood or feasibility of such growth was contradicted by the testimony of the Eureka County public works director who stated that the County has enough water rights to meet anticipated future growth for 20 years.[132] Further, testimony from Eureka County's socioeconomic consultant about future growth in Kobeh Valley was contradicted by his own testimony that Eureka County's non-mining base population was stable and unlikely to grow.[133] The Court concludes that the State Engineer's determination that granting the applications would not restrict future growth and development is supported by substantial evidence.

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[130] R. at 3600, 747:1-25, 748:1-7, 3527-35.

[131] R. at 3588.

[132] R. at 526:8-11.

[133] R. at 700:22-25, 701:10.

4. Whether The State Engineer Erred By Failing To Find The Bartine Ranch Water Rights Were Subject To Forfeiture.

Eureka County next contends that the State Engineer should have forfeited all of KVR's existing certificated groundwater rights at the Bartine Ranch or alternatively, should have forfeited all but those which are appurtenant to 65.54 acres.[134] Eureka County points out that the Bartine Rights were issued for irrigation to be completed utilizing artesian wells and the supporting structures, a small ditch and a groundwater well with ditches.[135]Eureka County asserts that although the artesian wells had provided natural drainage, no irrigation had occurred on the Bartine Ranch for more that five years.

In support of its argument, Eureka County offered the testimony of Eureka County Commission Chairman James Ithurralde and Mr. Damale who both testified that neither had seen irrigation on the Bartine Ranch.[136] Several other witnesses also testified that no irrigation had occurred on the Bartine Ranch although the artesian wells provided a flow of natural drainage.[137] Eureka County's expert witness testified that at least 65 acres at the Bartine Ranch had been irrigated and Eureka County's public works director testified that he had observed agricultural activity at the Bartine Ranch during the last five years.[138]

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[134] KVR Filed change applications for Certificates 2780 (App. 76989, 79223) 2880 (App. 76990, 79935).

[135] ROA Vol. XVIII at 003602.

[136] CV0904 ROA Tr. Vol. 3 at 407:19-24, 408:15-18, 423:9-19, 459:10-21, 484:1-18.

[137] CV0904 ROA Tr. Vol. 1 at 117:7-25, 118:1-7; Vol. 2 at 401:7-18.

[138] R. at 564:17-19, 565:19-21, 522:12-19.

Nevada law provides that the failure to put a certified groundwater right to beneficial use for five consecutive years causes a forfeiture of the unused portion of the rights.[139] The party asserting forfeiture bears the burden of proving non-use by clear and convincing evidence.[140] The Nevada Supreme Court has never addressed the issue of what beneficial use is necessary to avoid forfeiture.

In reviewing the Bartine Ranch water forfeiture issue, the State Engineer recognized that while there was some evidence of non-use of Bartine water, based upon the record as a whole, there was not clear and convincing evidence of forfeiture.[141] In reaching his conclusion, the State Engineer noted that both Bartine Certificates irrigate the same acreage being 65.54 acres of land and are supplemental to each other by place of use.[142] The State Engineer also found that crop inventories and records from pumpage inventories introduced at the administrative hearing indicated Bartine water usage in recent years.[143] The State Engineer also heard testimony from Eureka County's public works director that he had observed agricultural activity on the Bartine property within the last five years.

Although Eureka County does not dispute the accuracy of the crop inventories, it contends that they only evidence the natural flow of water from the artesian wells, which it argues is not a beneficial use sufficient to defeat a forfeiture claim. Eureka County cites court decisions from the intermediate appellate courts of

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[139] NRS 534.090(1).

[140] *Town of Eureka*, 108 Nev. at 169, 826 P.2d at 952.

[141] R. at 3601-02.

[142] Ruling #6127 at 31.

[143] *Id.* at 30.

Oregon and New Mexico for the proposition that artesian flow is not a beneficial use. The Court concludes that these two cases do not mandate the result asserted by Eureka County. In *Staats v. Newman*, an Oregon Administrative Law Judge ("ALJ") found that although petitioners had ditches on their land, those ditches "were in disrepair" and that most of the irrigation on the land was better understood as "subirrigation," or "naturally occurring subsurface seepage and capillary action."[144] The ALJ held that "subirrigation" did not amount to beneficial use.[145] Here, there is no evidence of "subirrigation use" at the Bartine Ranch and the crop inventories show some water was used to irrigate pasture grass.

Under the New Mexico case cited by Eureka County, running water over land on which crops grow qualifies as "beneficial use."[146] Here, the State Engineer found[147] and Eureka County admits[148] that the Bartine water rights were perfected for irrigation using artesian wells and ditches and the State Engineer expressly found that "there was some artesian flow of water on the property."[149] The Court concludes that the use of the water under the Bartine Ranch water rights is a beneficial use because the water was used "for the purpose for which the right [wa]s acquired or claimed."[150]

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[144] 988 P.2d 439, 440 (Or. Ct. App. 1999) (quotation marks omitted).

[145] *Id.* at 441 (emphasis added).

[146] *Martinez v. McDermett*, 901 P.2d 745, 750 (N.M. Ct. App. 1995) (finding "beneficial use" for purposes of establishing priority dates because "[c]learly, growing crops constitutes a beneficial use of water").

[147] R. at 3602.

[148] Eureka County Opening Br. at 40, 11, 6-8.

[149] R. at 3602; *see also* Eureka County Opening Br. at 40 (citing the testimony of Mr. Damele, in which he noted the "natural drainage of the two artesian wells").

[150] NRS 534.090(1); *see also Staats*, 988 P.2d at 441 ("The use must be what is permitted in the water right itself").

Eureka County argues that even if the crop inventories and evidence of artesian flow irrigating pasture grass is sufficient to overcome a forfeiture claim, then the State Engineer should have forfeited that portion of the Bartine Ranch water rights that were not used within the acreage specified on the crop inventories. A review of the crop inventories show that while they specify the number of acres irrigated, they do not show which acres.[151] Because water rights are appurtenant to the land on which they were placed to beneficial use, a claim of forfeiture requires a showing of which land was not irrigated for five consecutive years. Here, the State Engineer did not have evidence before him to determine which acres were not irrigated under the Bartine Ranch water rights, and therefore, he could not determine which rights were unused. Because Eureka County had the burden to prove forfeiture by clear and convincing evidence and failed to present any evidence specifically identifying the acres that it claimed had not been irrigated, the Court concludes that the State Engineer's decision not to forfeit any of the Bartine Ranch water rights is supported by the record and is not arbitrary, capricious, or an abuse of discretion.

J. Whether The State Engineer Violated The Provisions Of NRS 533.325 By Acting On Change Applications Pending New Appropriations.

Eureka County and Conley-Morrison next challenge the authority of the State Engineer to review applications to appropriate and applications to change their points of diversion in a single proceeding. The challenge is to thirteen of the eighty-eight applications addressed in the State Engineer's Ruling.

The State Engineer accepted, noticed, reviewed, and acted on KVR's applications to appropriate (i.e. new appropriations) and their accompanying change

[151] 2009 R. at 2106-59.

principles of "judicial economy."[156] Had Petitioners given the State Engineer an opportunity to address their argument about change applications, the State Engineer could have easily avoided the issue by modifying the process by which he granted the applications, although, as noted below, he was not required to do so. In light of these considerations, the Court declines to address an argument Petitioners could have presented to the State Engineer, especially where Petitioners were unable to describe at oral argument any injury they have suffered as a result of the manner in which the State Engineer proceeded.

Additionally, in the protests that Eureka County and Morrison filed with the State Engineer, they expressly requested the State Engineer act on the applications to appropriate prior to the change applications, which is exactly what the State Engineer did in this case. The State Engineer granted the applications and issued the permits in the sequence in which they were filed. Accordingly, not only did Eureka County and Morrison fail to raise the issue before the State Engineer, they actually requested the State Engineer take the action that they now complain of on appeal. In Nevada, the doctrine of invited error does not allow a party to complain on appeal of errors which that party itself induced or provoked the hearing officer or opposing party to commit.[157]

Regardless of Petitioners' failure to raise this issue below, the Court concludes that it lacks merit. In Petitioners' view, NRS 533.325 prohibits an applicant from filing, and the State Engineer from accepting, noticing, reviewing, and acting on an application to change a pending application to appropriate. By its terms, however, the

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[157] *Clark Co. Sch. Dist. v. Richardson Constr. Inc.*, 123 Nev. 382, 388, 168 P.3d 87, 91-92 (2007); *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994).

statute does not expressly speak to the order in which the State Engineer may grant applications to appropriate or applications to change. The provision on applications to appropriate, NRS 533.325, simply requires that a person receive a permit before "performing any work in connection" with the appropriation of water or with a change in place of diversion, manner of use, or nature of use. And the provision on change applications, NRS 533.345, merely mandates that the change application contain enough information for the State Engineer to have a "full understanding of the proposed change." Neither provision mandates the manner or order in which the State Engineer must perform his duties.

The State Engineer interprets the statute as allowing him to accept, notice, review, consider and sequentially grant applications to appropriate and their related change applications during the same proceeding and then sequentially issue permits in the same order. In so doing, the original application is granted first and then is superseded by the later granted change application. The permits are then issued accordingly. The Court sees no reason to disturb the State Engineer's application of the statute. The State Engineer's interpretation is reasonable and entitled to deference.[158]

Further, public policy counsels in favor of the State Engineer's interpretation.[159] The process of reviewing an application is a lengthy one and approval often takes several years. Where, as here, the applicant discovers that the locations at which it originally sought to appropriate water are impractical, it does not make sense to

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[158] *See Pyramid Lake, 112 Nev. at 747, 918 P.2d at 700 (1996)* ("An agency charged with the duty of administering an act is impliedly clothed with power to construe it as a necessary precedent to administrative action").

[159] *Desert Valley Water Co. v. State*, 104 Nev. 718, 720, 766 P.2d 886, 887 (1988) ("The words of the statute should be construed in light of the policy and spirit of the law, and the interpretation made should avoid absurd results").

require the applicant to either file a new application to appropriate, thereby risking its priority under the old application, or await approval of its original application to appropriate before filing an application to change. Adopting either requirement would lead to delay and waist limited state resources. Petitioners offer no reason to believe that such an arduous process makes sense and are unable to identify any harm they have suffered as a result of the manner in which the State Engineer granted KVR's change applications.[160] Here, the State Engineer granted the applications in the order in which they were filed and issued permits on the applications to appropriate prior to the applications to change. Accordingly, the Court concludes that the State Engineer did not exceed his authority by accepting, noticing, reviewing, and acting on the applications in sequence in the same proceeding.

K. Whether The State Engineer's Acceptance Of KVR's Inventory Was An Abuse Of Discretion.

NRS 533.364(1) requires the State Engineer to complete an inventory prior to the approval of an application for an interbasin transfer of more that 250 acre-feet of groundwater from a basin that has not previously been inventoried. This requirement applies to any interbasin groundwater transfer that was noticed for a hearing on or after July 1, 2009.[161] The statute requires the inventory to include three items:

> (a) The total amount of surface water and groundwater appropriated in accordance with a decreed, certified or permitted right;
>
> (b) An estimate of the amount and location of all surface water and groundwater that is available for appropriation in the basin; and

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[160] Apr. 3, 2012 Oral Arg. Tr. at 17:19-23, 116:16-23.

[161] NRS 533.364(2)(a).

(c) The name of each owner of record set forth in the records of the Office of the State Engineer for each d3creed, certified or permitted right in the basin.

The statute expressly states that the State Engineer is not required to initiate or complete a determination of surface or groundwater rights or to "otherwise quantify any vested claims."[162] The inventory statute does not contemplate any sort of adversarial hearing in conjunction with the inventory process. The statutorily required inventory is a ministerial task that must be completed before the State Engineer approves an application involving an interbasin transfer greater than 250 acre-feet. Once an inventory is completed, the State Engineer may approve any number of interbasin transfers without conducting new inventories. The estimate of the total amount of groundwater available for appropriation is only a one-time estimate and does not affect the obligation of the State Engineer to determine whether water is available for appropriation for each application submitted to him. The statute only requires that the State Engineer complete the inventory within one year of its commencement and before approval of an interbasin transfer.[163]

Eureka County asserts that the State Engineer violated its due process rights by not holding a hearing and allowing the County to examine witnesses, and that the inventory was inadequate. Respondents counter that nothing in NRS 533.364(1) requires the State Engineer to provide notice and an opportunity to comment or provide a hearing on the inventory. KVR asserts that the inventory met the statutory requirements. Additionally, KVR argues that the State Engineer's acceptance of the

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[162] *Id.*

[163] NRS 533.364(4).

inventory is not an appealable decision under NRS 533.450 and that Eureka County failed to file and serve its petitions for judicial review within the statutory appeal period. Because the latter two arguments are jurisdictional, the Court will discuss them first.

The inventory required under NRS 533.364(1) is a listing of the decreed, certified and permitted rights, the names of water users holding those rights, and an estimate of the water available for appropriation in a particular basin. The inventory is not required to contain any findings or determinations of the State Engineer. The inventory is a list of names and water rights and an estimate of the total amount of water available for appropriation in Kobeh Valley. The names of the individuals and entities that hold decreed water rights in the basin are matters of public record. NRS 533.364(1)(b)'s plain terms require only that the State Engineer provide an "estimate" of the water available for appropriation. When the Nevada Legislature uses unambiguous terms, the Court will not give those terms anything other than their customary meaning.[164] The word "estimate" suggests flexibility and discretion. The Nevada Legislature confirmed that was its intent when it explained that it used the term "estimate" to require the State Engineer to take "a snapshot in time" of the water available for appropriation within a basin.[165]

NRS 533.450 permits judicial review only of an "order or decision of the State Engineer . . . affecting [a] person's interests."[166] The completion and acceptance of a statutorily required inventory is not an "order or decision" subject to judicial review

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[164] *See e.g., Madera v. State Indus. Ins. Sys.*, 114 Nev. 253, 257, 956 P.2d 117, 120 (1998); *Desert Valley*, 104 Nev. at 720, 766 P.2d at 887.

[165] *See* Nevada Assembly Committee Minutes, Comm. on Gov't Affairs, 2009 Leg. 75th Sess. (Statement of Pete Goicoechea, Member, Assembly Comm. On Gov't Affairs) (Mar. 24, 2009).

[166] NRS 533.364(4).

under NRS 533.450. Thus, while the State Engineer's Ruling approving KVR's applications can be challenged, the inventory itself is not a separate "order or decision" of the State Engineer that can be independently challenged. Moreover, the acceptance of the inventory by the State Engineer does not affect any interest of Eureka County or the other Petitioners. Therefore, the Court concludes that the State Engineer's acceptance of the inventory is not appealable.

Even if the State Engineer's acceptance of the inventory is appealable, Eureka County did not timely file and serve its petitions for judicial review. An appeal of a State Engineer order or decision must be filed and notice served on the State Engineer within 30 days after the date of the order or decision.[167] Here, the State Engineer's letter accepting the inventory is dated June 22, 2011. Accordingly, Eureka County should have filed and served its appeal by July 22, 2011. Eureka County filed its petitions on August 8, 2011, and therefore, it was not timely filed under NRS 533.450(1), (3). Relying on the APA, Eureka County argues that the appeal period does not begin to run until the date the letter was served. As stated above, the APA does not apply to the State Engineer except for the adoption of his rules of practice,[168] so it is not controlling here. Further, NRS 533.450 expressly states that the 30-day appeal period begins to run from the date of the order or decision. Additionally, Eureka County does not contest that NRS 533.450(1) requires that notice of the appeal be personally served on the State Engineer within the same 30-day period. Here, the record shows that Eureka County served the State Engineer with its petition on August 9, 2011.[169]

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[167] NRS 533.450(1).

[168] NRS 233B.039(1)(j).

[169] *See* Notice of Pet. for Judicial Review filed Aug. 9, 2011 in Case No. CV 1108-155.

Accordingly, even under the County's argument, it did not timely comply with NRS 533.450(3) and the Court lacks jurisdiction to consider the State Engineer's acceptance of the inventory.

Even assuming the State Engineer's acceptance of the inventory is an appealable decision and Eureka County timely appealed, the Court concludes that the State Engineer did not violate Eureka County's due process rights because the County had a full opportunity to challenge whether water was available for appropriation in Kobeh Valley, which was a predicate finding to the State Engineer's Ruling. Moreover, Eureka County has not pointed to any evidence in the record to show that the inventory is inconsistent with the finding of the State Engineer regarding water available for appropriation.[170] Eureka County fully participated in the proceedings below and in this appeal and, therefore, was not denied any due process rights. The Court also concludes that the State Engineer's finding of available water in Kobeh Valley is supported by substantial evidence.[171]

L. Whether The Permits As Issued Are Inconsistent And Contradictory To Ruling #6127.

A portion of KVR's applications sought to change existing irrigation water rights in Diamond Valley. In the Ruling, the State Engineer determined that the Diamond Valley permits must expressly restrict water use to within that basin.[172] As required by the Ruling, the Diamond Valley permits, as amended, expressly restrict the

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[170] *See* R. at 3588, 2594.

[171] *See supra*, §§ F, G.

[172] R. at 3595.

place of use to that basin.[173] Petitioners argue that the permits are ambiguous as to this restriction because the applications included places of use in Kobeh Valley and Pine Valley and the permits state that the "point of diversion and place of use are as described on the submitted application to support this permit."[174] The Court concludes that the permits, as amended, are not ambiguous because, even thought they refer to the point of diversion and place of use described on the applications, the amended permits clearly limit the place of use to Diamond Valley.

The Ruling also states that any unused water pumped under the Diamond Valley permits must be returned to that basin.[175] The express permit term in the Diamond Valley permits restricting the place of use to that basin necessarily includes the requirement that any unused Diamond Valley water must be returned to that basin. Because KVR may not use Diamond Valley water in another basin, discharging any water to another basin without the right to use it there would be an unlawful waste of water. Further, the State Engineer's failure to include this restriction in the permit terms is reasonable considering the record shows that KVR would consume all water produced in Diamond Valley in that basin.[176]

Petitioners Benson-Etcheverry assert that the permits allow KVR to divert more than 11,300 afa. After reviewing the permits the Court concludes that this assertion is incorrect because they clearly are limited to a total combined annual volume

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[173] ROA SE at 273-82, 342-81, 430-37.

[174] *See e.g.*, ROA SE at 373.

[175] R. at 3595.

[176] R. at 871:5-14.

of 11,300 acre-feet.[177] Benson-Etcheverry also argue that the permits to change existing irrigation rights allow KVR to divert more that the consumptive use amount of the existing right. This assertion is also incorrect because while the permits were approved for the full amount of the existing irrigation water right, they expressly state that only the consumptive use amount of the existing right may be diverted.[178] This language is based on NRS 533.3703, which allows the State Engineer to consider the consumptive use amount of an existing water right and the consumptive use amount of the proposed change to determine if the change complies with NRS 533.370(2). Here, KVR is switching from a use that is only partially consumptive (irrigation) to one that is fully consumptive (mining and milling). Accordingly, to avoid an increase in the amount of water actually consumed by the water right, the State Engineer is allowed to limit the proposed new use to the consumptive use amount of the existing right.[179] The permits also state that KVR may divert more water if it shows the State Engineer that the additional diversion is non-consumptive, but this language does not allow KVR to divert more than the consumptive use amount.[180] Therefore, because the permit terms limit KVR to the consumptive duty of the existing irrigation water rights, the Court concludes that Benson-Etcheverry's contention is incorrect.

Benson-Etcheverry argue that the State Engineer erred by not expressly stating in the permits that the 3M Plan must be prepared with input from Eureka County as set forth in the Ruling. The Court concludes that Benson-Etcheverry do not have the

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[177] *See e.g.*, ROA SE at 273-82, 430-661.

[178] *See e.g.*, ROA SE at 453.

[179] R. at 3603; NRS 533.3703.

[180] *See e.g.*, ROA SE at 453.

standing to raise this issue because it affects Eureka County only. Further, even if Benson-Etcheverry had standing, the Court concludes that the permits remain subject to the terms of the Ruling, and therefore, the failure to include this term in the permits is not an error.

III. Conley-Morrison Assignment Of Error.

A. Whether The State Engineer Violated The Provisions Of NRS 533.325 By Acting On Change Applications Pending New Appropriations.

This issue was addressed by the Court supra in Section II (J) pp. 46-50 of the Court's Findings, Conclusions and Order. The conclusions and/or findings made therein are hereby affirmed and adopted as though fully set forth here. For the reasons stated therein, the Court concludes that the State Engineer did not exceed his authority by accepting, noticing, reviewing, and acting on the applications in sequence in the same proceeding.

IV. Benson-Etcheverry Assignment Of Error.

A. Whether Ruling #6127 Was Arbitrary, Capricious, Not Supported By Substantial Evidence, Contrary To Law, And Made Without Due Process of Law.

Benson-Etcheverry assigns error to issues previously discussed in this Order as follows: (1) KVR's applications conflict with existing rights; (2) State Engineer's reliance on non-existent 3M Plan; (3) reliance on non-existent 3M Plan denies due process rights; (4) applications fail to adequately describe points of diversion and place of use; (5) interbasin transfer not environmentally sound; (6) determination that water withdrawal from Kobeh Valley would not impact Diamond Valley rights; (7) reliance on KVR's model; (8) place of use exceeds State Engineer's authority; (9) applications delayed pending USGS Interbasin Water Flow Study.

With the exception of USGS Water Flow Study Issue, each of Benson-Etcheverry's claimed errors have been discussed, analyzed and ruled upon in the Eureka County segment of this Order. The Court therefore affirms and adopts those findings as though fully set forth here.

B. Whether the State Engineer Should Have Delayed Consideration Of KVR's Applications Pending Completion Of A USGS Interbasin Water Flow Study.

Benson-Etcheverry argue that the State Engineer should delay approval of KVR's application until after completion of a USGS study regarding interbasin flows. They allege that this study is currently scheduled to be published some time in 2013.[181] The Court concludes that the State Engineer's decision to act on KVR's application is supported by substantial evidence and nothing requires the State Engineer to postpone action on KVR's applications in this case. The record shows that numerous USGS reports from the 1940s to 2007 were submitted along with extensive testimony about the findings made in those reports.[182] Further, KVR testified that it would incorporate any future USGS or other data into the 3M Plan.[183]

Public policy also weighs in favor of the State Engineer's decision to act on KVR's applications instead of postponing action while awaiting a future USGS study. The USGS is continuously studying water resources in Nevada's hydrographic basins. The record shows that in 1983 this same issue was raised by citizens of Diamond Valley as a reason for postponing applications to appropriate in Kobeh Valley for the same

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[181] Benson-Etcheverry Opening Br. at 32.

[182] 2009 R. Vol. IV at 872:10-22, 874:1-25, 875:1-16, 657-1115, R at 175:4-11, 192:19-24, 215:17-20, 239:22-25, 319:12-18, 365:8-11, 384:11-13, 398:3-6.

[183] R. at 141:15-21, 143:2-10.

mine.[184] The State Engineer at that time acknowledged the citizens' concerns about the need for more hydrogeologic studies, but recognized that such studies are expensive and time-consuming and would lead to delay of pending applications in every basin in the State.[185] Accordingly, the Court concludes that the State Engineer was not required to postpone action on KVR's applications and finds that his decision not to postpone action in this case is supported by substantial evidence.

The Court having considered, analyzed, discussed and issued its findings and conclusions as to the issues raised in the respective Petitions For Judicial Review; and

Good cause appearing;

IT IS HEREBY ORDERED that Petitioner's respective Petitions For Judicial Review are **HEREBY DENIED**.

DATED this 13th day of June, 2012.

Dan L. Papez

DISTRICT JUDGE

SEVENTH JUDICIAL DISTRICT COURT
DAN L. PAPEZ
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA

[184] R. at 3030:2-13.

[185] R. at 3057:5-24.

SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR COUNTY OF EUREKA, STATE OF NEVADA } SS

I, the Undersigned COUNTY CLERK and Ex-Officio CLERK of the SEVENTH JUDICIAL DISTRICT COURT do hereby CERTIFY that the foregoing is a full, true and correct copy of the original on file in my office and that I have carefully compared the same with the original.

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WITNESS, My Hand and Seal of said DISTRICT COURT, this 14th day of July 20 12

County Clerk and Ex-Officio Court Clerk

Deanna Cantrell Deputy Clerk

NO.

FILED

JUN 18 2012

Eureka County Clerk

By

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IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

EUREKA COUNTY, a political subdivision of the State of Nevada, Petitioner, vs THE STATE OF NEVADA, EX. REL., STATE ENGINEER, DIVISION OF WATER RESOURCES, Respondent.	Case No. CV1108-155 Dept. No. 2
CONLEY LAND & LIVESTOCK LLC, a Nevada limited liability company; LLOYD MORRISON, an individual, Petitioners, vs THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, JASON KING, STATE ENGINEER, KOBEH VALLEY RANCH, LLC, REAL PARTY-IN-INTEREST Respondents.	Case No. CV1108-156 Dept. No. 2

KENNETH F. BENSON, an individual; DIAMOND CATTLE COMPANY, LLC, a Nevada limited liability company; MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP, a Nevada registered foreign limited partnership, Petitioners, vs STATE ENGINEER OF NEVADA, OFFICE OF THE STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, Respondent.	Case No. CV1108-157 Dept. No. 2
EUREKA COUNTY, a political subdivision of the State of Nevada, Petitioner, vs THE STATE OF NEVADA, EX. REL., STATE ENGINEER, DIVISION OF WATER RESOURCES, Respondent.	Case No. CV1112-164 Dept. No. 2
KENNETH F. BENSON, an individual; DIAMOND CATTLE COMPANY, LLC, a Nevada limited liability company; and MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP, a Nevada registered foreign limited partnership, Petitioners, vs STATE ENGINEER OF NEVADA, OFFICE OF THE STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES Respondents.	Case No. CV1112-165 Dept. No. 2

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING PETITIONS FOR JUDICIAL REVIEW

TO: ALL PARTIES IN INTEREST

YOU AND EACH OF YOU are hereby notified that on June 13, 2012, the Honorable Dan L. Papez entered a Findings of Fact, Conclusions of Law, and Order Denying Petitions for

Judicial Review. A copy of the Findings of Fact, Conclusions of Law, and Order Denying Petitions for Judicial Review is attached hereto.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned hereby affirms that this document does not contain the Personal Information, as defined by NRS 603A.040, of any person.

Dated: June 14, 2012

PARSONS BEHLE & LATIMER

By: Ross E. de Lipkau

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Attorneys for Respondent
Kobeh Valley Ranch, LLC

SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR COUNTY OF EUREKA, STATE OF NEVADA } SS

I, the Undersigned COUNTY CLERK and Ex-Officio CLERK of the SEVENTH JUDICIAL DISTRICT COURT do hereby CERTIFY that the foregoing is a full, true and correct copy of the original on file in my office and that I have carefully compared the same with the original.

WITNESS, My Hand and Seal of said DISTRICT COURT, this 16th day of June 2012

County Clerk and Ex-Officio Court Clerk
Deanna M Caviness Deputy Clerk

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Parsons Behle & Latimer, and that on this 14 day of June, 2012, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING PETITIONS FOR JUDICIAL REVIEW** via U.S. Mail, at Reno, Nevada, in a sealed envelope, with first-class postage fully prepaid and addressed as follows:

Theodore Beutel, Esq.
EUREKA COUNTY DISTRICT ATTORNEY
701 S. Main Street
PO Box 190
Eureka, NV 89316
Email: tbeutel.ecda@eurekanv.org

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Attorneys for Eureka County

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NEVADA ATTORNEY GENERAL'S OFFICE
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Attorneys for Conley Land & Livestock, and Morrison

Employee of Parsons Behle & Latimer

PETITIONERS EXHIBITS

CASE No. CV 1108-155 & CV 1112-164

EUREKA COUNTY, a political subdivision of The State of Nevada,

Petitioner,

vs.

THE STATE OF NEVADA, EX, REL., STATE ENGINEER, DIVISION OF WATER RESOURCES, AND KOBEH VALLEY RANCH, LLC, a Nevada limited liability company,

Respondents.

Exhibit List

Exhibit 1: Ruling # 6127;

Exhibit A: Petition for Judicial Review;

Exhibit A: Certified Mail receipts;

Exhibit B: USPS.com Track and Confirm.

RESPONDENTS EXHIBITS

CASE No. CV 1108-155 & CV 1112-164

EUREKA COUNTY, a political subdivision of The State of Nevada,

Petitioner,

vs.

THE STATE OF NEVADA, EX, REL., STATE ENGINEER, DIVISION OF WATER RESOURCES, AND KOBEH VALLEY RANCH, LLC, a Nevada limited liability company,

Respondents.

Exhibit List

Exhibit 1: **Ruling #6127**

Exhibit #1: **Affidavit Of Bryan L. Stockton;**

Exhibit 1: **List of Permits Issued 12/01/11;**

Exhibit 2: **List of Permits Issued 12/13/11;**

Exhibit 3: **List of Permits Issued 12/14/12.**

Office of
Eureka County Clerk & Treasurer
Beverly Conley, Clerk & Treasurer

Eureka County Courthouse
10 South Main Street
P.O. Box 677
Eureka, Nevada 89316

Phone: (775)237-5262
Fax: (775)237-6015
www.co.eureka.nv.us

July 16, 2011

To: Clerk of the Supreme Court
Capitol Complex
201 South Carson Street
Carson City, NV 89710

Re: EUREKA COUNTY, a political Subdivision of the State of Nevada
Petitioner,

-vs-

THE STATE OF NEVADA, EX. REL., STATE ENGINEER, DIVISION OF WATER RESOURCES and KOBEH VALLEY RANCH, LLC, a Nevada Limited liability company,

Case No. CV 1108-155, CV 1112-164

Enclosed are the following documents in the matter referred to above, on an Appeal to the Supreme Court from District Court.
Certified copies of the requested transcripts will be mailed as soon as they are completed, filed and entered into our records.

Three certified copies of each of the following:

1. Notice of Appeal;
2. Case Appeal Statement;
3. Transcripts;
4. District Court Docket Entries;
5. Order Allowing Intervention of Kobeh Valley Ranch, LLC, As A Party Respondent:
6. Order Directing The Consolidation of Action CV1108-156, And Action NO.CV1108-157 With Action CV1108-155;
7. Order Setting Briefing Schedule;
8. Stipulation For Extension Of Time And Order;
9. Order Admitting to Practice;
10. Order Granting Extension;

11. Order Allowing Intervention Of Kobeh Valley Ranch, LLC As A Party Respondent, And Consolidating CV 1202-170 With Case Nos. CV1108-155, CV 1108-156, CV 1108-157, CV1112-164 And CV1112-165;
12. Finding Of Fact, Conclusions Of Law, And Order Denying Petitions For Judicial Review;
13. Notice Of Entry Of Finding Of Fact, Conclusions Of Law And Order Denying Petitions For Judicial Review;
14. Petitioners Exhibit list;
15. Respondents Exhibit List.

The $250.00 Supreme Court filing fee was not paid.

Sincerely,

Leanna M. Cantrell

Leanna M. Cantrell
Eureka County Deputy Court Clerk