

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3 EUREKA COUNTY, A POLITICAL )  
4 SUBDIVISION OF THE STATE OF; )  
5 NEVADA; KENNETH F. BENSON, )  
6 INDIVIDUALLY; DIAMOND CATTLE )  
7 COMPANY, LLC, A NEVADA LIMITED )  
8 LIABILITY COMPANY; MICHEL AND )  
9 MARGARET ANN ETCHEVERRY FAMILY, )  
10 LP, A NEVADA REGISTERED FOREIGN )  
11 LIMITED PARTNERSHIP, )

12 Appellants,

13 v.

14 THE STATE OF NEVADA State Engineer;  
15 THE STATE OF NEVADA DIVISION OF  
16 WATER RESOURCES; AND KOBEH  
17 VALLEY RANCH, LLC, A NEVADA  
18 LIMITED LIABILITY COMPANY,  
19 )

20 Respondents.  
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22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

No. 61324

District Court Case No. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165 and CV1202-170  
Electronically Filed  
Feb 13 2013 04:56 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

ON APPEAL FROM THE SEVENTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA

**MOTION FOR LEAVE TO FILE**

BRIEF OF *AMICUS CURIAE* NV ENERGY

IN SUPPORT OF THE NEVADA STATE ENGINEER  
REQUESTING AFFIRMANCE OF THE DISTRICT COURT

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1                                    **MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

2            COME NOW, NEVADA POWER COMPANY and SIERRA PACIFIC POWER  
3 COMPANY, doing business as NV ENERGY,<sup>1</sup> by and through counsel, and respectfully move this  
4 Court for leave to file a brief as *amicus curiae* in support of Respondent State of Nevada, State  
5 Engineer (State Engineer) and requesting affirmance of the decision of the District Court. This  
6 motion is based on NRAP 29 and is supported by the following discussion and the accompanying  
7 Brief of *Amicus Curiae*.

8            An *amicus curiae* brief may be filed if all parties to the action consent or by leave of the  
9 Court. NRAP 29. A motion seeking leave to file an *amicus curiae* brief must (1) identify the  
10 movant's interest and (2) state the reasons why an *amicus curiae* brief is "desirable." *Id.* The  
11 *amicus curiae*'s participation is generally limited to filing a brief supporting the position of one party  
12 to the action; the brief may be conditionally filed along with the motion for leave to file the brief.  
13 *Id.*

14            NV Energy is a public utility company regulated by the Public Utilities Commission and  
15 supplies energy services and products to over 2.4 million Nevadans. NV Energy holds an extensive  
16 portfolio of water resources rights throughout the State that are used to supply water to its existing  
17 power generation facilities, including permitted, certificated, and vested water rights.

18            In order to continue to meet the electricity needs of current and future Nevada residents, NV  
19 Energy engages in long range planning for construction of future power generation facilities and the  
20 expansion of existing facilities. This long range planning necessarily includes ensuring that the  
21 contemplated expanded facilities and future facilities will have the requisite water resources for their  
22 construction and operation. Accordingly, to secure water supplies for those facilities, NV Energy  
23 has filed, or otherwise acquired, applications for new appropriations of water with the State  
24 Engineer.

25            NV Energy requests leave to file an *amicus curiae* brief because it has an interest in this  
26 litigation flowing from the potential impact this Court's decision may have upon its pending and  
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28            <sup>1</sup> For purposes of this motion and the proposed Brief of *Amicus Curiae*, these two entities  
are together referred to as NV Energy.

1 future applications for water rights and its planned future development of water resources. If leave  
2 is granted, NV Energy's *amicus curiae* brief will present arguments in support of the State Engineer  
3 limited to the issue of the State Engineer's authority under Nevada's water law to condition issuance  
4 of permits upon development, approval and implementation of monitoring, management and  
5 mitigation plans to alleviate any potential impacts the beneficial use of water under the newly  
6 permitted water right may have upon existing water rights. An *amicus curiae* brief from NV Energy  
7 on this issue is desirable because it provides this Court with the perspective of Nevada's primary  
8 electric utility, which relies on its substantial portfolio of water rights and water rights applications  
9 in the State of Nevada to plan for and provide electricity to 2.4 million Nevadans.

10 NV Energy has fulfilled the requirements of NRAP 29 to file an *amicus curiae* brief, and this  
11 Court should grant leave to NV Energy to participate as *amicus curiae*. Accordingly, NV Energy  
12 respectfully requests that it be allowed to file the accompanying *amicus curiae* brief.

13 RESPECTFULLY SUBMITTED this 13 day of February, 2013.

14 DYER, LAWRENCE, FLAHERTY,  
15 DONALDSON & PRUNTY

16  
17 By

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22 Attorneys for Amicus Curiae NV Energy  
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## CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Nevada Rules of Appellate Procedure, I hereby certify that I am an employee of the law firm DYER, LAWRENCE, FLAHERTY, DONALDSON & PRUNTY and that on this 13<sup>th</sup> day of February, 2013, I caused a true and correct copy of the foregoing MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* NV ENERGY to be served on all parties to this action by:

- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada
- ☐ Hand-delivered - via Reno/Carson Messenger Service
- ☐ Facsimile
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures

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