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Tracie K. Lindeman  
Clerk of Supreme Court

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

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

Appellants,

v.

THE STATE OF NEVADA STATE  
ENGINEER; THE STATE OF NEVADA  
DIVISION OF WATER RESOURCES; and  
KOBEN VALLEY RANCH, LLC, a Nevada  
limited liability company,

Appellees.

**Case No. 61324**

**APPELLANTS KENNETH F.  
BENSON, DIAMOND  
CATTLE COMPANY, LLC,  
AND MICHEL AND  
MARGARET ANN  
ETCHEVERRY FAMILY,  
LP,'S MOTION TO  
CONSOLIDATE**

**MOTION**

Appellants KENNETH F. BENSON, DIAMOND CATTLE COMPANY, LLC, and, MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP, by and through their attorneys of record, Laura A. Schroeder, Therese A. Ure and SCHROEDER LAW OFFICES, P.C., respectfully move the Court for an order consolidating Nevada Supreme Court Case 61324 with the case involving the

Notice of Appeal filed on the Seventh Judicial District Court for the County of Eureka, Case Number CV1207-178, and currently pending assignment of a Nevada Supreme Court case number. This motion is supported by the Points and Authorities below and the Affidavit of Therese A. Ure, filed concurrently herewith.<sup>1</sup>

### **POINTS AND AUTHORITIES**

The Nevada Supreme Court has the inherent authority to manage its docket and schedule hearings for efficient resolution of pending matters.

A Notice of Appeal was filed with the Seventh Judicial District Court for Eureka County on May 21, 2013. *See* attachment to the Affidavit of Therese A. Ure. The issues in the case before Eureka County's Seventh Judicial District Court are substantially similar to the matters in the instant case. Given the instant case has been briefed before the Nevada Supreme Court, time is of the essence to consolidate these matters. Such consolidation is not done for the purposes of delay. Thus Appellants are moving the Court to issue an order consolidating these matters in an effort for efficient resolution.

Nev. R. App. P. 3(b)(2) provides for consolidation by the Nevada Supreme Court of separate appeals from a judgment below. Since no other appellate rule

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<sup>1</sup> Appellants are simultaneously filing a copy of this motion with Seventh Judicial District Court for the County of Eureka, in Case No. CV1207-178.

addresses consolidation of appeals from separate, though related cases, the rules of civil procedure are persuasive on this point.

Nev. R. Civ. P. 42(a) provides:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Here, Nevada Supreme Court Case No. 61324 and the Eureka County Case No. CV1207-178, share common questions of law and fact, and both are pending before this Court. Appellants move to consolidate these cases for hearing and judgment to conserve judicial resources, promote judicial efficiency, and avoid unnecessary costs and delay.

Case No. 61324 and CV1207-178 arise from the same facts, namely the State Engineer's issuance of Ruling No. 6127, his findings of fact and conclusions of law made therein, and his approval of the 3M Plan. Moreover, Case Nos. 61324 and CV1207-178 ask this court to resolve the same issues of law, including: 1) Whether the State Engineer violated NRS § 533.370(2) by granting applications which admittedly will conflict with existing water use rights, and failing to cure such conflicts in the 3M Plan; and 2) Whether the State Engineer violated NRS § 534.110 by failing to determine the proposed static water level drawdown is

reasonable, failing to impose express conditions in permits, and failing to include express conditions in the 3M Plan to ensure existing rights will be satisfied.

### **CONCLUSION**

For the reasons stated above, Appellants respectfully move this Court for an order consolidating Case Nos. 61324 and CV1207-178 .

DATED this 21st day of May, 2013.

SCHROEDER LAW OFFICES, P.C.



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Kenneth F. Benson*

**PROOF OF SERVICE**

Pursuant to NRAP 25(d), I hereby certify that on the 21<sup>st</sup> day of May, 2013, I caused a copy of the foregoing ***APPELLANTS KENNETH F. BENSON, DIAMOND CATTLE COMPANY, LLC, AND MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP, MOTION TO CONSOLIDATE*** to be served on the following parties as outlined below:

***VIA COURT'S EFLEX ELECTRONIC FILING SYSTEM:***

Francis Wikstrom  
Jessica Prunty  
Dana Walsh  
Gary Kvistad  
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Francis Flaherty  
Paul Taggart  
Gregory Walch  
James Erbeck  
Jennifer Mahe  
Dawn Ellerbrock  
Neil Rombardo  
Ross de Lipkau

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***VIA US MAIL, POSTAGE PRE-PAID  
ADDRESSED AS FOLLOWS:***

Michael Smiley Rowe, Esq.  
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William E. Nork, Settlement Judge  
825 W. 12<sup>th</sup> Street  
Reno, NV 89503

Dated this 21<sup>st</sup> day of May, 2013.

/s/ Therese A. Ure

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THERESE A. URE, NSB# 10255

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