

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

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,
LP, A NEVADA REGISTERED FOREIGN
LIMITED PARTNERSHIP,

10 Appellants,

11 v.

12 THE STATE OF NEVADA State Engineer;
13 THE STATE OF NEVADA DIVISION OF
14 WATER RESOURCES; AND KOBEH
15 VALLEY RANCH, LLC, A NEVADA
LIMITED LIABILITY COMPANY,

16 Respondents.

17
18 **OPPOSITION TO APPELLANTS KENNETH F. BENSON, DIAMOND**
19 **CATTLE COMPANY, LLC, AND MICHEL AND MARGARET ANN**
ETCHEVERRY FAMILY, LP'S MOTION TO CONSOLIDATE

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May 23 2013 04:14 p.m.
Tracie K. Lindeman
Clerk of Supreme Court
District Court Case Nos.
CV1108155; CV108156;
CV1108157; CV1112164;
CV1112165; CV1202170

1 Respondent, Kobeh Valley Ranch, LLC, ("KVR") hereby opposes the
2 Motion to Consolidate filed by Appellants, Kenneth F. Benson, Diamond Cattle
3 Company, LLC, and Michel and Margaret Ann Etcheverry Family, LP, ("Benson-
4 Etcheverry") on May 22, 2013. The new appeal recently filed by Benson-
5 Etcheverry should not be consolidated with this appeal because the cases involve
6 two separate judgments by two different district court judges on related, but
7 distinctly different issues. Although this Court has inherent authority to control its
8 docket, NRAP 3(b)(2) applies only to separate appeals from a single judgment.
9 Further, NRCP 42(a) offers no guidance because the two appeals involve different
10 issues and different facts.
11

12 In this appeal, Appellants seek review of the June 13, 2012 judgment entered
13 by District Court Judge Dan L. Papez denying their petitions for judicial review of
14 State Engineer Ruling 6127 and the permits granted thereunder. The issues in this
15 appeal are:
16

- 17 1. Did the District Court and the State Engineer correctly
18 determine that there are no conflicts with existing water rights if
19 potential impacts can be avoided by means of conditional
20 approval of the applications?
21
- 22 2. Does the State Engineer have authority to grant groundwater
23 permits conditioned on mitigation requirements to prevent
24 potential impacts from conflicting with existing water rights?
25
- 26 3. Does the State Engineer have authority to conditionally approve
27 groundwater permits subject to his future approval of a
28

1 monitoring, management, and mitigation plan ("3M Plan")
2 which must occur before any water may be developed under the
3 permits?

4 4. Did the State Engineer appropriately consider whether
5 transferring groundwater from Kobeh Valley for use in
6 Diamond Valley was "environmentally sound" for Kobeh
7 Valley?

8 5. Were the place of use and the uses of the water properly
9 described and approved by the State Engineer?

10 6. Did the State Engineer err by not including all restrictions from
11 the Ruling in the permits themselves?

12 The voluminous record for this appeal includes evidence from two hearings before
13 the State Engineer in 2008, 2010, and 2011.

14 In Benson-Etcheverry's newly-filed appeal, they seek to reverse the May 15,
15 2013 judgment of Senior District Court Judge J. Charles Thompson denying their
16 petition for judicial review of the State Engineer's separate approval of the 3M
17 Plan. The issues in Benson-Etcheverry's appeal have not yet been docketed but,
18 based on briefing and arguments in the District Court, they will involve the
19 following:
20

21 1. Whether the 3M Plan approved by the State Engineer for
22 KVR's water rights complies with NRS 533.370(2) and Ruling
23 6127?

24 2. Whether the State Engineer's approval of the 3M Plan is a
25 delegation of authority?

26 3. Whether the State Engineer's approval of the 3M Plan is
27 rulemaking?
28

1 4. Whether the 3M Plan contains express conditions under NRS
2 534.110?

3 5. Whether the 3M Plan approved by the State Engineer is vague,
4 ambiguous, arbitrary, capricious, or an abuse of discretion?

5 Although the 3M Plan is related to the underlying Ruling 6127 and permits, the
6 issues are decidedly different and the critical record on appeal will be the discrete
7 facts relating to the submission and approval of the 3M Plan.
8

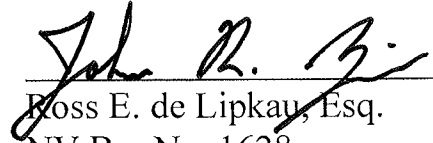
9 Moreover, there is no identity of parties in the two appeals because Eureka
10 County, a party to this appeal, did not appeal the 3M Plan. And this appeal
11 includes eleven amici curiae who have filed two amicus briefs.
12

13 This appeal has been fully briefed and is ready for review by the Court. No
14 judicial economy will result from putting this appeal on hold while the parties
15 participate in the settlement conference program and brief the new appeal. This
16 appeal involves important issues and resolution should not be delayed to await
17 Benson-Etcheverry's new appeal. Accordingly, the motion to consolidate should
18 be denied.
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1 DATED: May 23, 2013.

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20 Attorneys for Respondent

21 Kobeh Valley Ranch, LLC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(d), I hereby certify that I am an employee of Parsons
3 Behle & Latimer, and that on this 23 day of May, 2013, I served a true and
4 correct copy of the foregoing document, **OPPOSITION TO APPELLANTS**
5 **KENNETH F. BENSON, DIAMOND CATTLE COMPANY, LLC, AND**
6 **MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP'S**
7 **MOTION TO CONSOLIDATE**, to be served on the following parties as outlined
8 below:
9

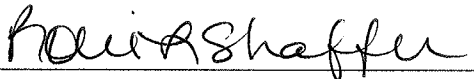
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