
IN THE SUPREME COURT OF THE STATE OF NEVADA

EUREKA COUNTY, a political subdivision 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,)

vs.)

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

Appellees.)

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Tracie K. Lindeman
Clerk of Supreme Court

APPEAL

FROM THE SEVENTH JUDICIAL DISTRICT COURT, EUREKA COUNTY
THE HONORABLE DAN L. PAPEZ, DISTRICT JUDGE
District Court Case Numbers: CV1108155, CV1108156,
CV1108157, CV1112164, CV1112165, CV1202170

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

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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., hereby submit their Joint Reply in Support of their Motion to Consolidate the hearing and decision in this matter with that in Nevada Supreme Court Case No. 63258.

A. Consolidation will not cause unreasonable delay.

Respondents Kobeh Valley Ranch, LLC (“KVR”) and the State Engineer filed briefs in opposition to Appellants’ Motion to Consolidate on May 23 and May 24, 2013, respectively. The primary objection in Respondents’ briefs is that consolidation will allegedly cause unreasonable delay in this case.

First, a hearing date in this case has not been set. There is absolutely no evidence that consolidation will cause any delay, let alone an unreasonable one.

Second, after Respondents filed their briefs, the Court informed the parties in Case No. 63258 that the case has not been assigned to the settlement program. Docket No. 2013-15416. Therefore, Respondents cannot claim that the settlement program will cause delay before briefing and hearing.

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Third, **Appellants are willing to file their Opening Brief in this matter within 30 days after receiving an order from this Court consolidating Case Nos. 61324 and 63258.** Currently, Appellants' Opening Brief in Case No. 63258 is due September 23, 2013. If the Court orders consolidation, Appellants will file their Opening Brief early, thereby speeding up the briefing process in Case No. 63258 and avoiding any delay that briefing could potentially cause.

Consolidating this case with Case No. 63258 will not cause unreasonable delay. Case No. 63258 is not assigned to the settlement program and Appellants are willing to submit their Opening Brief substantially early to promote fast and efficient resolution of the related questions of law and fact in this case and Case No. 63258.

B. The actions involve common questions of law and fact.

Respondents opine that Case Nos. 61324 and 63258 do not share common issues of law and fact. Those allegations are unpersuasive, as shown by the table of common issues of law and fact below: ¹

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¹ Not every common issue of law and fact is included in the table. The table provides examples only due to page limitations for replies in NRAP 27(d)(2).

Case No. 61324	Case No. 63258
Challenges the State Engineer's issuance of Ruling 6127, approving applications and issuing permits, upon finding that a non-existent Monitoring, Management, and Mitigation Plan ("3M Plan") would cure all known and predicted conflicts with existing water use rights in the future.	Challenges the State Engineer's approval of the 3M Plan that is part of Ruling 6127, and upon which Ruling 6127 completely relies.
Challenges Ruling 6127 on the basis that the State Engineer erred in relying on the 3M Plan to cure any and all conflicts because the 3M Plan did not exist and therefore was not of record and deprived Appellants of due process.	Respondents forced a second appeal in this matter by not including the 3M Plan in Ruling 6127, and by consistently asserting that Appellants would not be injured by the omission because they could seek further, costly appeal in a second proceeding.
Asks this Court to determine the scope of NRS § 533.370(2), and that Ruling 6127 violates the statute by granting applications that admittedly conflict with existing water use rights, based on a non-existent, not-of-record 3M Plan to be drafted by the applicant in the future.	Asks this Court to determine the scope of NRS § 533.370(2), and that the 3M Plan, which is part of Ruling 6127, approved by the State Engineer, violates the statute by expressly allowing conflicts with existing water use rights and failing to cure such conflicts.
Asks this Court to determine the scope of NRS § 534.110(4), and that the State Engineer erred by failing to determine whether the proposed static water level drawdown is reasonable.	Asks this Court to determine the scope of NRS § 534.110(4), and that the 3M Plan, approved by the State Engineer, fails to determine reasonable drawdown of the static water level.
Asks this Court to determine the scope of NRS § 534.110(5), and that the State Engineer erred by failing to impose express conditions in permits to ensure existing water use rights would be satisfied in total.	Asks this Court to determine the scope of NRS § 534.110(5), and that the 3M Plan, which is part of Ruling 6127, approved by the State Engineer, does not impose any express conditions in permits to ensure existing water use rights will be satisfied in total.

Case No. 61324	Case No. 63258
Requires this Court to review the record before the State Engineer when issuing Ruling 6126 to determine that Ruling 6127 contains errors of law, is arbitrary and capricious, constitutes an abuse of discretion, and is not supported by substantial evidence in the record.	Requires this Court to review the record before the State Engineer when issuing Ruling 6127 and the 3M Plan to determine that the 3M Plan contains errors of law, is arbitrary and capricious, constitutes an abuse of discretion, and is not supported by substantial evidence in the record.

The fact that Eureka County is not a party in Case No. 63258 does not change the fact that common issues of law and fact exist in both cases. Eureka County does not object to Appellants' Motion to Consolidate. Further, consolidation will not increase the burden on any party not a party to the other matter because only one hearing will be held, and the parties will not be required or permitted to argue on matters outside the case in which they are involved.

Common issues of law and fact exist in Case Nos. 61324 and 63258 and are so pervasive and central that they merit consolidation. This Court should consolidate the cases for hearing and decision to avoid unnecessary costs and dispose of related matters in an efficient manner.

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C. Consolidation will create judicial efficiency and economy, thereby reducing costs for the separate appeals.

Appellants ask this Court to consolidate Case Nos. 61324 and 63258 because a single hearing and decision will reduce costs and increase Court efficiency. Respondents do not argue otherwise.

CONCLUSION

For the reasons stated above, this Court should grant Appellants' motion for an order consolidating Case Nos. 61324 and 63258.

DATED this 30th day of May, 2013.

SCHROEDER LAW OFFICES, P.C.

/s/ Therese A. Ure

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Kenneth F. Benson*

PROOF OF SERVICE

Pursuant to NRAP 25(d), I hereby certify that on the 30th 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'S JOINT REPLY IN SUPPORT OF MOTION TO CONSOLIDATE*** to be served on the following parties as outlined below:

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Dated this 30th day of May, 2013.

/s/ Therese A. Ure

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