

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

**IN THE MATTER OF THE
DETERMINATION OF THE RELATIVE IN
AND TO THE WATERS OF MOTT CREEK,
TAYLOR CREEK, CARY CREEK
(AKA CAREY CREEK), MONUMENT
CREEK, AND BULLS CANYON, District
Court Case No. CV0363
STUTLER CREEK (AKA STATTLER
CREEK), SHERIDAN CREEK,
GANSBERG SPRING, SHARPE SPRING,
WHEELER CREEK NO. 1,
WHEELER CREEK NO. 2, MILLER
CREEK, BEERS SPRING, LUTHER
CREEK AND VARIOUS UNNAMED
SOURCES IN CARSON VALLEY,
DOUGLAS VALLEY, NEVADA,**

**J.W. BENTLEY AND MARYANN
BENTLEY, TRUSTEES OF THE BENTLEY
FAMILY 1995 TRUST,**

**Appellants,
vs.**

**THE STATE OF NEVADA OFFICE OF THE
STATE ENGINEER; HALL
RANCHES, LLC; THOMAS J. SCYPHERS;
KATHLEEN M. SCYPHERS;
FRANK SCHARO; SHERIDAN CREEK
EQUESTRIAN CENTER, LLC;
DONALD S. FORRESTER; KRISTINA M.
FORRESTER; RONALD R.
MITCHELL; AND GINGER G. MITCHELL,**

Respondents.

Supreme Court Case No. 62620

Electronically Filed
Feb 22 2013 10:39 a.m.

**DOCKETING STATEMENT
CIVIL APPEALS**
Tara K. Mendenhall
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach requested documents, fill out the statement completely, or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d. 1217, 1220(1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Ninth Department: I
County: Douglas Judge: David R. Gamble
District Ct. Case No. 08-CV-0363-D

2. **Attorneys filing this docketing statement:**

Attorney: Michael L. Matuska Telephone: (775) 392-2318
Firm: Matuska Law Offices, Ltd.
Address: 937 Mica Drive, Suite 16-A, Carson City, NV 89705

Co-counsel: Jessica C. Prunty
Firm: Dyer, Lawrence, Flaherty, Donaldson & Prunty
Address 2805 Mountain Street, Carson City, NV 89703

Client(s): J.W. Bentley And Maryann Bentley, Trustees Of The Bentley Family
1995 Trust

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) representing respondent(s):**

Attorney: Bryan L. Stockton, Dep. Atty Gen'l Telephone (775)684-1100
Firm: Nevada Attorney General
Address: 100 N. Carson Street, Carson City, NV 89701-4717
Client(s): Office of the State Engineer

Attorney: Thomas J. Hall
Firm: Same
Address: P.O. Box 3948, Reno, NV 8905
Client(s): Hall Ranches, LLC; Thomas J. Scyphers; Kathleen M. Scyphers;
Frank Scharo; Sheridan Creek Equestrian Center, LLC; Donald S.
Forrester; Kristina M. Forrester; Ronald R. Mitchell; and Ginger
Mitchell

4. **Nature of disposition below (check all that apply):**

<input checked="" type="checkbox"/> Judgment after bench trial	Dismissal
Judgment after jury verdict	Lack of jurisdiction
Summary judgment	Failure to state a claim
Default judgment	Failure to prosecute
Grant/Denial of NRCP 60(b)	Other (specify)_____
Grant/Denial of injunction	Divorce decree:
Grant/Denial of declaratory relief	Original
Review of agency determination	Modification

Other disposition (specify): Order awarding attorney's fees

5. **Does this appeal raise issues concerning any of the following?** NO.

Child custody
Venue

Adoption

Termination of parental rights
Grant/Denial of injunction or
TRO
Juvenile matters

6. **Pending and prior proceedings in this court.** List the name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

56351 (writ proceeding) Bentley v. District Court (Forrester)

56551 (appeal) Bentley v. State Engineer

59188 (appeal) Bentley v. State Engineer

60891 (appeal) Bentley v. State Engineer

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Ninth Judicial District Court Case No. 12-CV-0141 Joy Smith et al. v. State Engineer

Ninth Judicial District Court Case NO. 12-CV-0145 Bentley v. State Engineer

8. **Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

This is a proceeding pursuant to NRS 533.090 to 533.265, inclusive, to adjudicate and determine the relative rights of claimants to the waters of the stream systems identified in the caption above. The District Court divided the proceeding into six "sub-proceedings," each of which involved a particular stream system.

Sub-proceeding D, at issue here, related to the waters of the North Branch of Sheridan Creek and its tributaries, Stutler Creek (aka Stattler Creek) and Gansberg Spring. In that sub-proceeding, appellants filed certain exceptions to the respondent State Engineer's final order of determination. Respondents Hall Ranches, LLC, et al., were allowed to intervene to contest the validity of, and appellants' compliance with, a "water diversion and use agreement" entered into in 1986 between appellants' and respondents' respective predecessors in interest.

In its judgment, the District Court generally affirmed the final order of determination. Insofar as pertinent the prior appeal 60891 and this appeal, the District Court ruled that the diversion agreement was "ineffective, invalid and unenforceable" because it had not been signed by all the parties to the agreement. The Court ruled that the appellants had in any case, violated the diversion agreement by using diverted water to fill an additional pond on their property. The District Court further ordered the State Engineer to establish a rotation schedule governing the use of waters in Sheridan Creek, during the irrigation season, whenever the flow of water in the Creek fell below a specified rate; the Court directed that the schedule be established at the beginning of the season to allow for review in one or more separate judicial review proceedings pursuant to NRS 533.450. Bentley appealed that judgment as Case No. 60891.

In that same judgment, the Court awarded respondent-intervenors their attorney's fees pursuant to NRS 18.010(2)(b), with the amount of the award to be determined after filing a motion for fees. Respondent-intervenors filed their motion for attorney's fees and costs on 25 April 2012. On 4 January 2013 the Court entered its Order awarding \$90,000 in attorney's fees and \$7,127.05 in costs. Respondents-intervenors noticed the entry of that order on 8 January 2013. This appeal followed on 4 February 2013.

After this appeal was filed, on 4 February 2013, this Court entered its Order dismissing Case No. 60891.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether Respondents-Intervenors below were the prevailing parties.
2. Whether Appellant was the prevailing party.
3. Whether the lower erred in awarding attorney's fees and costs under NRS 18.010.
4. Whether Respondents-Intervenors' Motion for Attorneys' Fees was timely and/or premature under NRCP 54.
5. Whether the order awarding attorney's fees timely and/or premature.
6. Whether the amount of fees awarded was reasonable.
7. Whether the award of attorney's fees was properly apportioned to those issue upon which Respondents-Intervenors claim to be the prevailing parties.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

Appellants are not aware of any such proceedings.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130.

Not applicable.

If not, explain: _____

12. **Other issues.** Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first impression

An issue of public policy

An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

No.

If so, explain: _____

13. **Trial.** If this action proceeded to trial, how many days did the trial last?

Four (4) days.

Was it a bench or jury trial? Bench Trial.

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appeal from:** 4 January 2013. **Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which this appeal is taken.**

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: _____

16. **Date written notice of entry of judgment or order served: 8 January 2013. Attach a copy, including proof of service, for each order or judgment appealed from.**

Was service by:

Mail

17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCSP 50(b), 52(b), or 59),**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing. Not applicable.

NRCSP 50(b)	Date served _____	By delivery	or by mail	Date filing _____
NRCSP 52(b)	Date served _____	By delivery	or by mail	Date filing _____
NRCSP 59	Date served _____	By delivery	or by mail	Date filing _____

Attach copies of all post-trial tolling motions.

NOTE: Motions made pursuant to NRCSP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion: Not applicable
Attach a copy

(c) Date written notice of entry of order resolving tolling motion served: Not applicable
Attach a copy, including proof of service.

Was service by:

Delivery

Mail (specify)

18. **Date notice of appeal filed: 4 February 2013.**

(a) If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: _____

19. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other: NRAP 4(a)**

SUBSTANTIVE APPEALABILITY

20. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

NRAP 3A(b)(1)

NRS 155.190 (specify subsection) _____

NRAP 3A(b)(2) NRS 38.205 (specify subsection) _____
NRAP 3A(b)(3) NRS 703.376 _____
☒ Other (specify) NRAP 3A(b)(8) _____

Explain how each authority provides a basis for appeal from the judgment or order:

Order awarding attorney's fees entered after final judgment _____

COMPLETE THE FOLLOWING SECTION ONLY IF MORE THAN ONE CLAIM FOR RELIEF WAS PRESENTED IN THE ACTION (WHETHER AS A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM) OR IF MULTIPLE PARTIES WERE INVOLVED IN THE ACTION.

Attach separate sheets as necessary.

21. List all parties involved in the action in the district court:

The parties to Sub-proceeding D, at issue here, are: the Appellants J.W. Bentley and MaryAnn Bentley, Trustees of the Bentley Family 1995 Trust; Respondent the Nevada State Engineer, Jason King; and Respondents/Intervenors Hall Ranches, LLC; Thomas J. Scyphers; Kathleen M. Scyphers; Frank Scharo; Sheridan Creek Equestrian Center, LLC; Donald S. Forrester; Kristina M. Forrester; Ronald R. Mitchell; and Ginger Mitchell

- (a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

Not applicable. _____

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (i.e., order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.

The Respondent State Engineer filed his Final Order of Determination ("FOD") with the Clerk of the District Court pursuant to NRS 533.165; the FOD defined the rights of users and claimants relating to various stream systems, including Sheridan Creek; pursuant to NRS 533.160, the FOD "has the legal effect of a complaint in a civil action."

Appellants filed certain written “exceptions” and “amended exceptions” to the Final Order of Determination. The exceptions have the effect of an answer in a civil action. Generally, appellants’ exceptions involved technical errors in the FOD. Appellants’ Exception No. 1 referred to a recorded diversion agreement and sought to ensure that the FOD, as finally approved, and any rotation schedule implemented as an incident thereto, did not prejudice the rights of appellants under that agreement. Exception No. 4 requested that the acreage listed under Proof V-06305 (Stutler Creek) be changed to 12.93 acres to correspond with the acreage approved under Proof V-06306 (Sheridan Creek).

Respondent-intervenors Hall Ranch, LLC et al., intervened and filed a response to the appellants’ exceptions, challenging the validity of the diversion agreement and alleging that appellants had violated the agreement. Respondent-intervenors’ “response” was actually a series of affirmative defenses that are not allowed by NRS Chapter 533 or the Nevada Rules of Civil Procedure.

The Findings of Fact, Conclusions of Law, Order and Judgment entered by the District Court on April 5, 2012, corrected the FOD in accordance with certain of appellant’s exceptions, avoided a final decision on the rotation schedule, declared the diversion agreement void, and awarded attorney’s fees to the Respondents-intervenors with the amount to be determined later.

The amount of the attorney’s fees was determined by the Order of 4 January 2013. This appeal follows.

23. **Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.**
24. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below?**
- x Yes
 No
25. **If you answered “No” to question 24, complete the following:**
- (a) Specify the claims remaining pending below:

- (b) Specify the parties remaining below:

- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes

No

If "Yes", attach a copy of the certification or order, including any notice of entry and proof of service.

- (d) Did the district court make any express determination, pursuant to NRCF 54(b), that there is no just reason for delay and express direction for the entry of judgment?

Yes

No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

James W. and Mary Ann Bentley, TEE
Name of appellant

2/19/13
Date

Michael L. Motuska
Name of counsel of record

[Signature]
Signature of counsel of record

Nevada, Douglas County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 21st day of February 2013, I served a copy of this completed docketing statement upon all counsel of record:

By personally serving it upon him/her; or

By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Bryan L. Stockton
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701

Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno NV 89505-3948

Dated this 21st day of February 2013.


Signature

EXHIBIT 15

1 Case No. 08-CV-0363-D

2 Dept. No. I

FILED

2013 JAN -4 PM 2:38

RECEIVED

JAN -4 2013

TED THUAN
CLERK
P. GREGORY
BY _____ DEPUTY

3
4
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6
7 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF DOUGLAS

9 In the Matter of the Determination of the relative
10 rights in and to the Waters of Mott Creek, Taylor
11 Creek, Cary Creek (aka Carey Creek), Monument
12 Creek, and Bulls Canyon, Stutler Creek (aka Stattler
13 Creek), Sheridan Creek, Gansberg Spring, Sharpe
14 Spring, Wheeler Creek No. 1, Wheeler Creek No. 2,
15 Miller Creek, Beers Spring, Luther Creek and various
16 unnamed sources in Carson Valley, Douglas County,
17 Nevada.

ORDER

18
19 THIS MATTER comes before the Court upon a Motion For Attorney's Fees and a
20 Memorandum of Costs filed by Donald S. Forrester and Kristina M. Forrester, Hall Ranches,
21 LLC, a Nevada Limited Liability Company, Thomas J. Scyphers and Kathleen M. Scyphers,
22 Frank Scharo, Sheridan Creek Equestrian Center, LLC, a Nevada Limited Liability Company,
23 and Ronald R. Mitchell and Ginger G. Mitchell (hereinafter referred to collectively as
24 "Intervenors"). J.W. Bentley and MaryAnn Bentley, Trustees of the Bentley Family Trust 1995
25 Trust (hereinafter referred to as the "Bentleys") have opposed the motion while filing their own
26 Motion To Retax Costs. The Bentleys have also filed a Motion For Leave To File Sur-Reply
27 regarding the Motion for Attorney's Fees, which is opposed by Intervenors.

28 Having now examined all relevant pleadings and papers on file herein, the Court enters
the following order, good cause appearing:

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Motion For Attorney's Fees

On April 5, 2012, the Court entered written Findings of Fact, Conclusions of Law, Order and Judgment following a contested trial during which the Bentleys and the Intervenor were in opposition. That pleading includes the following excerpts, among others not specifically recounted herein:

FINDINGS OF FACT

F. Attorney Fees:

44. Mr. Bentley, through intimidation and threat, attempted to bully the Intervenor, acting in a manner to harass and financially exhaust the Intervenor.

45. Bentleys brought and maintained their Exception No. 1 relating to the Diversion Agreement without reasonable grounds.

46. The Diversion Agreement contains a clause that allows attorney fees to the prevailing party in the event a lawsuit is brought to enforce or interpret the Agreement.

47. Bentleys asserted that the Agreement dated August 5, 1986, and the letter recorded August 6, 1986, granted an additional right to divert the flow of Sheridan Creek through the ponds. (Exhibit 7.) However, those documents did not grant any additional rights and are invalid.

48. The Bentleys proceeded in this matter under an erroneous theory and under an erroneous thought process, and therefore, their action was maintained by them without reasonable grounds.

CONCLUSIONS OF LAW

19. The Intervenor are the prevailing parties and are entitled to their costs and a reasonable attorney fees.

20. The Intervenor are adjudged to be the prevailing parties for the purposes of an award of attorney fees to be supported by a separate motion or memorandum for the same pursuant to NRCP 54(d) and NRS 18.010.

21. The Intervenor shall prepare and file a Memorandum of Fees and Costs, to include evidence sufficient for the Bentleys to examine the Memorandum for content without invading the attorney/client privilege. The Court will make a separate determination on the amount of costs and attorney fees after the Bentleys have had an opportunity to respond to the Memorandum.

ORDER AND JUDGMENT

It is hereby ordered the final decree in this matter shall include the following:

1
2 11. The Intervenor are awarded their costs and a reasonable attorney fee.

3 Nevada Revised Statute 18.010 provides the following, among other things:

4 2. In addition to the cases where an allowance is authorized by specific statute, the court may
5 make an allowance of attorney's fees to a prevailing party:

6 (a) When the prevailing party has not recovered more than \$20,000; or

7 (b) Without regard to the recovery sought, when the court finds that the claim,
8 counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought
9 or maintained without reasonable ground or to harass the prevailing party. The court shall
10 liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all
11 appropriate situations. It is the intent of the Legislature that the court award attorney's fees
12 pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of
13 Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims
14 and defenses because such claims and defenses overburden limited judicial resources, hinder the
15 timely resolution of meritorious claims and increase the costs of engaging in business and
16 providing professional services to the public.

17 3. In awarding attorney's fees, the court may pronounce its decision on the fees at the
18 conclusion of the trial or special proceeding without written motion and with or without
19 presentation of additional evidence.

20 4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or
21 agreement which entitles the prevailing party to an award of reasonable attorney's fees.

22 Having already pronounced its decision on fees at the conclusion of trial, the only
23 remaining issue is to set the amount of the award. The Intervenor's post-hearing pleading in
24 reply concludes by requesting attorney's fees in the amount of \$171,814.00.¹

25 Considering the factors provided within *Brunzell v. Golden Gate Nat'l Bank*,
26 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), the Court determines that the amount requested is
27 reasonable based upon the following findings:

28 1. Professional Qualities: As reflected within the resumes attached to Intervenor's
motion, Thomas Hall, Esq. is a Martindale-Hubbell AV-rated lawyer practicing regularly in the
following areas of law for decades: real estate, water rights and litigation. Work billed by an

Intervenor's original award request was listed as \$165,049.00. That amount increased
to \$171,814.00 within their reply pleading. Because that amount increased without the
Bentleys having an opportunity to comment, the Bentleys' motion for leave to file a
sur-reply is hereby granted, allowing the Court to receive and consider the Bentleys'
position regarding the increased amount.

1 associate attorney and paralegal, both of whom are educated and experienced, has been
2 performed under Mr. Hall's supervision, constituting a savings to the client. The professional
3 qualities of Mr. Hall and his legal staff are satisfactory and reasonable.

4
5 2. Character Of Work To Be Done: The written judgment referenced within this Order
6 reflects the substance of the dispute between the parties. The nature and importance of
7 contested exceptions to the State Engineer's order of determination regarding the relative rights
8 in and to the water sources at issue herein speaks for itself. The legal work necessary included
9 conducting, defending and participating in contested litigation, which in turn required legal
10 research, analysis and writing in preparation for, and specific to, this matter.

11
12 3. The Work Actually Performed: Based upon a review of the billing statements
13 attached to the Motion for Attorney's Fees, and having previously ruled upon the pleadings
14 received in this sub-matter, and having further presided over the trial herein, during all of
15 which the Court observed the work of the appearing attorneys, the Court finds the work of the
16 Intervenor's legal team to have been satisfactory and reasonable.

17
18 4. The Result Obtained: As reflected within the written judgment entered on April 5,
19 2012, the result of trial was determined to be in favor of the Intervenor's.

20 However, although the amount of attorney's fees requested is reasonable and justified
21 as reflected above, considering the purpose of the award as stated within NRS 18.010(2)(b), the
22 Court hereby determines that an award of \$90,000.00 is appropriate to accomplish the statutory
23 purpose as stated therein.

24
25 THEREFORE, Intervenor's are hereby awarded \$90,000.00 in attorney's fees, to be paid
26 by the Bentleys.

27 **Motion To Retax Costs**

28 Intervenor's Memorandum of Costs presents costs expended in this sub-matter of

1 \$13,072.85. The Bentleys' Motion to Retax Costs seeks to reduce that amount by \$9,350.91 to
2 a retaxed amount of \$3,721.94. In opposition to the Motion to Retax Costs, Intervenor's cite
3 NRS 18.110(4), arguing that the Bentleys did not timely file their motion within the statutory
4 time allotted. No reply to the opposition has been received.

5
6 A review of the record indicates that the Motion to Retax Costs should have been filed
7 certainly no later than May 1, 2012. On May 2nd, a stipulation was filed extending the time in
8 which the Bentleys could file an opposition to the Motion for Attorney's Fees. That stipulation
9 did not specifically include an extension to the statutory time limit regarding a Motion to Retax
10 Costs. The Court adopted the stipulation within its Order dated May 10, 2012. That Order
11 likewise did not extend the time to seek the retax of costs.


12
13 Regardless, NRS 18.005, which defines costs that may be recovered by the prevailing
14 party, consistently references reasonable costs. Therefore, reviewing the Intervenor's
15 Memorandum of Costs, the Court hereby reduces the amounts requested by the following:

Item	Reduction
23,272 of black and white copies at a cost of \$0.10 in lieu of \$0.25:	(\$3,445.80)
Postage:	(\$500.00)
Legal research:	(\$2,000.00)
Total Reduction:	(\$5,945.80)

21 THEREFORE, the Court finds that Intervenor's are hereby entitled to recover, as the
22 party prevailing in a special proceeding pursuant to the judgment entered on April 5, 2012, and
23 NRS 18.020(4), total costs of \$7,127.05 from the Bentleys.

24 IT IS SO ORDERED.

25 Dated this 4 day of January, 2013.

26
27
28 
DAVID R. GAMBLE
District Judge

1 Copies served by mail this 4th day of January, 2013, to:

2 Bryan L. Stockton, Esq.
3 Deputy Attorney General
4 State of Nevada
5 100 North Carson Street
6 Carson City, NV 89701

7 Thomas J. Hall, Esq.
8 P. O. Box 3948
9 Reno, NV 89505

10 Michael L. Matuska, Esq.
11 937 Mica Drive, #16A
12 Carson City, NV 89705

John Haier

EXHIBIT 16

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.

4 Nevada State Bar No. 675

5 305 South Arlington Avenue

6 Post Office Box 3948

7 Reno, Nevada 89505

8 Telephone: 775-348-7011

9 Facsimile: 775-348-7211

10 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR DOUGLAS COUNTY**

12
13 In the Matter of the Determination of
14 the Relative Rights in and to the
15 Waters of Mott Creek, Taylor Creek,
16 Cary Creek (aka Carey Creek), Monument
17 Creek, and Bulls Canyon, Stutler Creek
18 (aka Stattler Creek), Sheridan Creek,
19 Gansberg Spring, Sharpe Spring,
20 Wheeler Creek No., 1 Wheeler Creek
21 No. 2, Miller Creek, Beers Spring,
22 Luther Creek and Various Unnamed
23 Sources in Carson Valley, Douglas
24 Valley, Nevada.

25 **NOTICE OF ENTRY OF ORDER**

26 **TO: Bryan L. Stockton, Esq., Deputy Attorney General, State of**
27 **Nevada, 100 North Carson Street, Carson City, Nevada 89701;**


28 **TO: Michael L. Matuska, Esq., Matuska Law Offices, 937 Mica**
Drive, Suite 16A, Carson City, Nevada 89705.

PLEASE TAKE NOTICE that an Order was entered in the above-
entitled matter on January 4, 2013, a copy of said Order is
attached hereto.

1 The undersigned does hereby affirm that the preceding
2 document does not contain the social security number of any
3 person.

4 DATED this 8th day of January, 2013.
5
6

7 LAW OFFICES OF THOMAS J. HALL

8
9 
10 Thomas J. Hall, Esq.
11 Nevada State Bar No. 675
12 305 South Arlington Avenue
13 Post Office Box 3948
14 Reno, Nevada 89505

15 Attorney for Intervenor/
16 Cross-Petitioners
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1 Case No. 08-CV-0363-D

2 Dept. No. I

FILED

RECEIVED

JAN - 4 2013

2013 JAN -4 PM 2: 38 DOUGLAS COUNTY
DISTRICT COURT CLERK

TED THUAN
CLERK

P. GREGORY
BY _____ DEPUTY

7 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF DOUGLAS

9 In the Matter of the Determination of the relative
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ORDER

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16 Memorandum of Costs filed by Donald S. Forrester and Kristina M. Forrester, Hall Ranches,
17 LLC, a Nevada Limited Liability Company, Thomas J. Scyphers and Kathleen M. Scyphers,
18 Frank Scharo, Sheridan Creek Equestrian Center, LLC, a Nevada Limited Liability Company,
19 and Ronald R. Mitchell and Ginger G. Mitchell (hereinafter referred to collectively as
20 "Intervenors"). J.W. Bentley and MaryAnn Bentley, Trustees of the Bentley Family Trust 1995
21 Trust (hereinafter referred to as the "Bentleys") have opposed the motion while filing their own
22 Motion To Retax Costs. The Bentleys have also filed a Motion For Leave To File Sur-Reply
23 regarding the Motion for Attorney's Fees, which is opposed by Intervenors.

25 Having now examined all relevant pleadings and papers on file herein, the Court enters
26 the following order, good cause appearing:
27
28

1 **Motion For Attorney's Fees**

2 On April 5, 2012, the Court entered written Findings of Fact, Conclusions of Law,
3 Order and Judgment following a contested trial during which the Bentleys and the Intervenor
4 were in opposition. That pleading includes the following excerpts, among others not
5 specifically recounted herein:
6

7 **FINDINGS OF FACT**

8
9 F. Attorney Fees:

10 44. Mr. Bentley, through intimidation and threat, attempted to bully the Intervenor,
acting in a manner to harass and financially exhaust the Intervenor.

11 45. Bentleys brought and maintained their Exception No. 1 relating to the Diversion
12 Agreement without reasonable grounds.

13 46. The Diversion Agreement contains a clause that allows attorney fees to the
prevailing party in the event a lawsuit is brought to enforce or interpret the Agreement.

14 47. Bentleys asserted that the Agreement dated August 5, 1986, and the letter recorded
15 August 6, 1986, granted an additional right to divert the flow of Sheridan Creek through the
ponds. (Exhibit 7.) However, those documents did not grant any additional rights and are
16 invalid.

17 48. The Bentleys proceeded in this matter under an erroneous theory and under an
erroneous thought process, and therefore, their action was maintained by them without
18 reasonable grounds.

19 **CONCLUSIONS OF LAW**

20 19. The Intervenor is the prevailing party and is entitled to their costs and a
21 reasonable attorney fee.

22 20. The Intervenor is adjudged to be the prevailing party for the purposes of an
award of attorney fees to be supported by a separate motion or memorandum for the same
23 pursuant to NRC 54(d) and NRS 18.010.

24 21. The Intervenor shall prepare and file a Memorandum of Fees and Costs, to
include evidence sufficient for the Bentleys to examine the Memorandum for content without
25 invading the attorney/client privilege. The Court will make a separate determination on the
amount of costs and attorney fees after the Bentleys have had an opportunity to respond to the
26 Memorandum.

27 **ORDER AND JUDGMENT**

28 It is hereby ordered the final decree in this matter shall include the following:

11. The Intervenor's are awarded their costs and a reasonable attorney fee.

Nevada Revised Statute 18.010 provides the following, among other things:

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

(a) When the prevailing party has not recovered more than \$20,000; or

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.

4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

Having already pronounced its decision on fees at the conclusion of trial, the only remaining issue is to set the amount of the award. The Intervenor's post-hearing pleading in reply concludes by requesting attorney's fees in the amount of \$171,814.00.¹

Considering the factors provided within *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), the Court determines that the amount requested is reasonable based upon the following findings:

1. Professional Qualities: As reflected within the resumes attached to Intervenor's motion, Thomas Hall, Esq. is a Martindale-Hubbell AV-rated lawyer practicing regularly in the following areas of law for decades: real estate, water rights and litigation. Work billed by an

Intervenor's original award request was listed as \$165,049.00. That amount increased to \$171,814.00 within their reply pleading. Because that amount increased without the Bentleys having an opportunity to comment, the Bentleys' motion for leave to file a sur-reply is hereby granted, allowing the Court to receive and consider the Bentleys' position regarding the increased amount.

1 associate attorney and paralegal, both of whom are educated and experienced, has been
2 performed under Mr. Hall's supervision, constituting a savings to the client. The professional
3 qualities of Mr. Hall and his legal staff are satisfactory and reasonable.

4 2. Character Of Work To Be Done: The written judgment referenced within this Order
5 reflects the substance of the dispute between the parties. The nature and importance of
6 contested exceptions to the State Engineer's order of determination regarding the relative rights
7 in and to the water sources at issue herein speaks for itself. The legal work necessary included
8 conducting, defending and participating in contested litigation, which in turn required legal
9 research, analysis and writing in preparation for, and specific to, this matter.
10

11 3. The Work Actually Performed: Based upon a review of the billing statements
12 attached to the Motion for Attorney's Fees, and having previously ruled upon the pleadings
13 received in this sub-matter, and having further presided over the trial herein, during all of
14 which the Court observed the work of the appearing attorneys, the Court finds the work of the
15 Intervenor's legal team to have been satisfactory and reasonable.
16

17 4. The Result Obtained: As reflected within the written judgment entered on April 5,
18 2012, the result of trial was determined to be in favor of the Intervenor's.
19

20 However, although the amount of attorney's fees requested is reasonable and justified
21 as reflected above, considering the purpose of the award as stated within NRS 18.010(2)(b), the
22 Court hereby determines that an award of \$90,000.00 is appropriate to accomplish the statutory
23 purpose as stated therein.

24 THEREFORE, Intervenor's are hereby awarded \$90,000.00 in attorney's fees, to be paid
25 by the Bentleys.
26

27 Motion To Retax Costs

28 Intervenor's Memorandum of Costs presents costs expended in this sub-matter of

1 \$13,072.85. The Bentleys' Motion to Retax Costs seeks to reduce that amount by \$9,350.91 to
2 a retaxed amount of \$3,721.94. In opposition to the Motion to Retax Costs, Intervenor cite
3 NRS 18.110(4), arguing that the Bentleys did not timely file their motion within the statutory
4 time allotted. No reply to the opposition has been received.

5
6 A review of the record indicates that the Motion to Retax Costs should have been filed
7 certainly no later than May 1, 2012. On May 2nd, a stipulation was filed extending the time in
8 which the Bentleys could file an opposition to the Motion for Attorney's Fees. That stipulation
9 did not specifically include an extension to the statutory time limit regarding a Motion to Retax
10 Costs. The Court adopted the stipulation within its Order dated May 10, 2012. That Order
11 likewise did not extend the time to seek the retax of costs.


12
13 Regardless, NRS 18.005, which defines costs that may be recovered by the prevailing
14 party, consistently references reasonable costs. Therefore, reviewing the Intervenor's
15 Memorandum of Costs, the Court hereby reduces the amounts requested by the following:

Item	Reduction
23,272 of black and white copies at a cost of \$0.10 in lieu of \$0.25:	(\$3,445.80)
Postage:	(\$500.00)
Legal research:	(\$2,000.00)
Total Reduction:	(\$5,945.80)

16
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20
21 THEREFORE, the Court finds that Intervenor are hereby entitled to recover, as the
22 party prevailing in a special proceeding pursuant to the judgment entered on April 5, 2012, and
23 NRS 18.020(4), total costs of \$7,127.05 from the Bentleys.

24 IT IS SO ORDERED.

25 Dated this 4 day of January, 2013.

26
27 
28 DAVID R. GAMBLE
District Judge

1 Copies served by mail this 4th day of January, 2013, to:

2 Bryan L. Stockton, Esq.
3 Deputy Attorney General
4 State of Nevada
5 100 North Carson Street
6 Carson City, NV 89701

7 Thomas J. Hall, Esq.
8 P. O. Box 3948
9 Reno, NV 89505

10 Michael L. Matuska, Esq.
11 937 Mica Drive, #16A
12 Carson City, NV 89705

Johanna Shaler

13
14
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CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCP 5(b), I deposited in the United States mail at Reno, Nevada, a true copy of the **Notice of Entry of Order**, addressed to:

Frank Scharo
Post Office Box 1225
Minden, NV 89423

Glenn Roberson
Sheridan Creek
Equestrian Center
551 Centerville Ln.
Gardnerville, NV 89460

Donald S. Forrester
Kristina Forrester
913 Sheridan Ln.
Gardnerville, NV 89460

Ronald R. Mitchell
Ginger G. Mitchell
Post Office Box 5607
Stateline, NV 89449

Thomas J. Scyphers
Kathleen M. Scyphers
1304 W. Aylesbury Ct.
Gardnerville, NV 89460

State of Nevada
Dept. of Conservation &
Natural Resources
Div. of Water Resources
901 S. Stewart St.
Suite 2002
Carson City, NV 89701

Michael L. Matuska, Esq.
Matuska Law Offices, Ltd.
937 Mica Dr., Suite 16A
Carson City, NV 89705

Bryan L. Stockton, Esq.
Deputy Attorney General
100 North Carson St.
Carson City, NV 89701

DATED this 8th day of January, 2013.



Sharon M. Knudson

EXHIBIT 23

FILED

RECEIVED

MAR 25 2009

DOUGLAS COUNTY
DISTRICT COURT CLERK

Case No.: 08-CV-0363

2009 MAR 25 PM 4: 28

Dept. No.: I

TED THRAH

CLERK
D GREGORY

This document does not contain personal information of any person.

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the
Relative Rights in and to the Waters of Mott
Creek, Taylor Creek, Cary Creek (aka Carey
Creek), Monument Creek, and Bulls Canyon,
Stutler Creek (aka Statler Creek), Sheridan
Creek, Gansberg Spring, Sharpe Spring,
Wheeler Creek No. 1, Wheeler Creek No. 2,
Miller Creek, Beers Spring, Luther Creek and
Various Unnamed Sources in Carson Valley,
Douglas Valley, Nevada.

AMENDED NOTICE OF EXCEPTIONS
AND EXCEPTIONS TO FINAL ORDER
OF DETERMINATION

(Re: Proofs V-06305, V-06306, V-06307
and V-06308)

Hearing Date: April 1, 2009
Time: 9:00 a.m.

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley
Family Trust 1995 Trust ("Bentley"), by and through their counsel of record, Michael L. Matuska,
Brooke · Shaw · Zumpft, and for exceptions to the *Final Order of Determination*, do hereby state
as follows:

I.

BACKGROUND

On 5 May 2006, Bentley purchased a parcel of land located in Douglas County, Nevada,
from Theodore Weber and Katherine Weber. A copy of the deed is provided herewith as
Exhibit 1. Said parcel contains 12.93 +/- acres of land and is identified alternatively as
APN 1219-14-001-013 and Adjusted Parcel 1 as shown on the Record of Survey to Accompany a
Boundary Line Adjustment that was filed in the Official Records of Douglas County, Nevada, on
4 January 1986, at Book 196, Page 787, Document No. 378278. A copy of the Record of Survey

///

///

BROOKE · SHAW · ZUMPF
POST OFFICE BOX 2860
MINDEN, NEVADA 89423
(775) 782-7171

1 is provided herewith as *Exhibit 2*. As demonstrated by the Record of Survey, the Bentley parcel
2 straddles the quarter section line between the NW ¼ of Sec. 14 and SW ¼ of Sec. 14 in T. 12 N.,
3 R. 19 E.

4 On 16 March 1994, prior to Bentley's purchase of the above-identified parcel, the Webers
5 filed the following Proof(s) of Appropriation:

6 Proof of Appropriation of Water for Irrigation V-06305 to irrigate 10.36 acres of land in
7 the NW ¼ of Sec. 14, T. 12N, R. 19 E from Stutler Creek (*Exhibit 3*).

8 Proof of Appropriation of Water for Irrigation V-06306 to irrigate 12.93 acres of land from
9 Sheridan Creek. This included the same 10.83 acres in the NW ¼ of Sec. 14 T. 12N, R. 19 E
10 identified in Proof V-06305 in the NW ¼ of Sec. 14, as well as the remaining 2.57 acres located in
11 the SW ¼ of Sec. 14, T. 12 N, R. 19 E (*Exhibit 4*).

12 Proof of Appropriation of Water for Stock Watering or Wildlife Purposes V-06307. This
13 Proof explains that the purpose is to divert stockwater from Sheridan Creek through ponds located
14 on the property for stockwater purposes as agreed in a series of diversion agreements referenced in
15 the Proof (*Exhibit 5*).

16 Proof of Appropriation of Water for Stock Watering or Wildlife Purposes V-06308. This
17 Proof explains that the purpose is to divert stockwater from Stutler Creek through ponds located
18 on the property for stockwater purposes as agreed in a series of diversion agreements referenced in
19 the Proof (*Exhibit 6*).

20 The records on file the Office of the Nevada State Engineer have all been updated to show
21 the Bentleys as the owners of the above-identified Proofs. The Bentley parcel also benefits from
22 additional water rights to Gansberg Springs according to Permit No. 7595/Cert. No. C-1760.
23 Records of ownership will be updated to reflect Bentley's ownership in these water rights.

24 II.

25 EXCEPTION NO. 1 – DIVERSION SCHEDULE (PROOFS V-06307 and V-06308)

26 Bentley is informed and believes that the Office of the State Engineer is likely to impose a
27 diversion schedule/rotation for the waters from Sheridan Creek, Stutler Creek and Gansberg
28 Springs that is not contained in the *Final Order of Determination*. The rotation would presumably

1 relate to the Proofs and acreages identified in Tables 5 and 6 at pages 192 and 193. In fact,
2 Bentley's diversion rights under Proofs V-06307 and V-06308 for Appropriation of Water for
3 Stock or Wildlife Purposes should not be subject to a rotation. Rather, Bentley's diversion rights
4 are set forth in a series of diversion agreements between Bentley's predecessor(s)-in-interest and
5 the predecessor(s)-in-interest to the owners of other properties identified in Tables 5 and 6. Those
6 diversion agreements are specifically identified in Proofs V-06307 and V-06308. The most recent
7 and presumably final diversion agreement is also provided herewith as *Exhibit 7*.

8 Accordingly, Tables 5 and 6, and Part VIII "Proofs Determined to Be Valid" should be
9 amended to note that all diversion rights from the North Branch of Sheridan Creek (as well as
10 Stutler Creek and Gansberg Springs (to the extent those sources are also diverted through the
11 North Branch of Sheridan Creek) are subject to this diversion agreement and the Bentley property
12 should be exempt from the rotation to the extent of diverting water through the ponds for stock
13 watering and/or wildlife purposes, all of which is described as a non-consumptive use and returned
14 to the irrigation ditches.

15 III.

16 EXCEPTION NO. 2 – Add all Proofs to Adjudication Map

17 The Adjudication Map to support the *Final Order of Determination* only identifies Proofs
18 V-06305 and V-06306 appurtenant to the Bentley parcel. The map should further identify Proofs
19 V-06307 and V-06308, especially in light of the fact that those Proofs provide rights to a
20 continuous flow for Bentley's stock/wildlife ponds under diversion agreements that are exempt
21 from the forthcoming diversion schedule.

22 IV.

23 EXCEPTION NO. 3 – Correct Typographical Error

24 P. 51, pertaining to Proof V-04594 (which has been superseded in part by the Proofs
25 discussed herein) contains a reference to Proof V-06505. In fact, Proof V-06505 pertains to
26 diversions from the Humboldt River Basin and should likely be viewed as a typographical error.
27 The correct reference should presumably be Proof V-06305 (Stutler Creek) (*Exhibit 3*).

28 ///

///

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MINDEN, NEVADA 89423
(775) 782-7171

V.

EXCEPTION NO. 4 – Correct Acreage

P. 53 pertaining to Proof V-06305 (Stutler Creek) was submitted for 10.36 acres of land, but approved for only 9.61 acres. This is also reflected in the Table of Relative Rights to Appropriators, p. 107. However, this conflicts with Part XX, Table 5 (Stutler Creek – Commingled with the North Diversion of Sheridan Creek) which shows 10.36 approved acres. In fact, because the waters of Stutler Creek are diverted through the North Branch of Sheridan Creek, and there is no discernible way to distinguish the Stutler Creek waters from the Sheridan Creek waters, the acreage approved under Proof V-06305 (Stutler Creek) should be the same as the acreage approved under Proof V-06306 (Sheridan Creek) – 12.93.

VI.

EXCEPTION NO. 5 – Install Diversion Device

The waters of Stutler Creek and Gansberg Springs are channeled into Sheridan Creek, which in turn splits into two (2) branches. Bentley's diversion rights are obtained from the North Branch of Sheridan Creek, which also delivers the commingled waters of Stutler Creek and Gansberg Springs. At this time, only crude, natural devices (i.e., rocks) are employed to direct the waters to the North and South Branches of Sheridan Creek. Bentley requests that the Office of the State Engineer commission the installation of a device sufficient to measure and deliver accurate diversions between the North and South Branches of Sheridan Creek, and to ensure that waters of Gansberg Springs and Stutler Creek are not diverted down the South Branch of Sheridan Creek.

Respectfully submitted.

DATED this 25th day of March 2009.

BROOKE · SHAW · ZUMPFT

By: 

Michael L. Matuska
State Bar No. 5711
BROOKE · SHAW · ZUMPFT
1590 4th Street/P.O. Box 2860
Minden NV 89423
(775) 782-7171
(775) 782-3081 (Fax)

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPF
and that on the 25th day of March 2009, I served a true and correct copy of the preceding
document entitled **AMENDED NOTICE OF EXCEPTIONS AND EXCEPTIONS TO FINAL
ORDER OF DETERMINATION** addressed to:

STATE OF NEVADA
Department of Conservation and Natural Resources
Division of Water Resources
Office of the State Engineer
901 South Stewart Street, Suite 2002
Carson City NV 89701

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with
postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada,
in the ordinary course of business.

☐ **BY MESSENGER SERVICE:** I delivered the above-identified document to
Reno-Carson Messenger Service for delivery to the offices of the addressee.

☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw
· Zumpft the above-identified document in the ordinary course of business to the individual and
facsimile numbers indicated.

☐ **BY EMAIL:** I transmitted via internet from the offices of Brooke · Shaw · Zumpft
the above-identified document in the ordinary course of business to the individuals and email
addresses indicated.

☐ **BY HAND DELIVERY:** I hand delivered an envelope containing the above-
identified document to the addressee stated above, in the ordinary course of business.

☐ **BY FEDERAL EXPRESS OVERNIGHT DELIVERY.**


LIZ WILSON, ALS

EXHIBIT 1

DOC # 0674437
05/08/2006 03:26 PM Deputy: KJW

OFFICIAL RECORD

Requested By:
MARQUIS TITLE & ESCROW

Recording Requested By
Marquis Title & Escrow Inc.
A.P. NO. 1219-14-001-013
Escrow No. 260163-VM
R.P.T.T. \$5,070.00

Douglas County - NV
Werner Christen - Recorder
Page: 1 of 2 Fee: 15.00
BK-0506 PG- 3496 RPTT: 5070.00

WHEN RECORDED MAIL TO:
Mr. & Mrs. J.W. Bentley
26482 Valpariso
Mission Viejo, CA 92691

MAIL TAX STATEMENT TO:
Same as Above



GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

THEADORE WEBER and KATHERINE A. WEBER, husband and wife as joint tenants

do(es) hereby GRANT, BARGAIN and SELL to

J.W. BENTLEY AND MARYANN BENTLEY, Trustees of the BENTLEY FAMILY TRUST 1995 TRUST,

the real property situate in the County of Douglas, State of Nevada, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR LEGAL DESCRIPTION AND WATER RIGHTS DESCRIPTION

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dated: 05/05/06

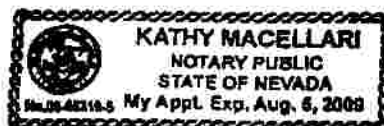
Theadore Weber
THEADORE WEBER

Katherine A. Weber
KATHERINE A. WEBER

STATE OF Nevada
COUNTY OF Douglas

This instrument was acknowledged before me on May 5, 2006 by THEADORE WEBER and KATHERINE A. WEBER.

Kathy Macellari
Notary Public



35

EXHIBIT "A"

All that certain lot, piece, parcel or portion of land situate, lying and being within the West ½ of Section 14, Township 12 North, Range 19 East, M.D.M., Douglas County, Nevada, more particularly described as follows:

All that portion of Parcels 1, 2 and 3, as shown on the Parcel Map filed for record in Book 687, at Page 3496, as Document No. 157268, Official Records of Douglas County, Nevada, described as follows:

COMMENCING at the Southwest corner of Parcel 3, as shown on the aforesaid map;

Thence along the Southwesterly line of Parcels 2 and 3 of said map, North 24°47'53" West, a distance of 335.33 feet to the Southwest corner of aforesaid Parcel 1, which point is the TRUE POINT OF BEGINNING;

Thence continuing along the Southwesterly line of said parcel North 25°53'28" West, a distance

of 495.70 feet to the Northwestern corner of said parcel;

Thence along the Northwestern line of said parcel North 64°05'08" East, a distance of 1,120.70

feet to the Northeast corner of said parcel;

Thence along the Northeast line of said Parcels 1 and 3 South 25°05'38" East, a distance of

519.63 feet;

Thence leaving said line South 78°28'21" West, a distance of 424.88 feet;

Thence South 00°00'00" West, a distance of 167.20 feet;

Thence South 70°19'13" West, a distance of 632.57 feet to the TRUE POINT OF BEGINNING.

The Basis of Bearing of this description is the Southeasterly line of Parcel 3, which bears North 70°37'51" East, as shown on the Parcel Map filed for record in Book 687, at Page 3496, as Document No. 157268, Official Records of Douglas County, Nevada.

APN: 1219-14-001-013

Per NRS 111.312, this legal description was previously recorded January 4, 1996, in Book 196, Page 793, as Document No. 378281, Official Records.

WATER RIGHTS

Being old assessor's parcel number 19-200-09 specifically described as 12.96 acres of land T 12N R19E 514 PCL1. Along with property goes the following water rights.

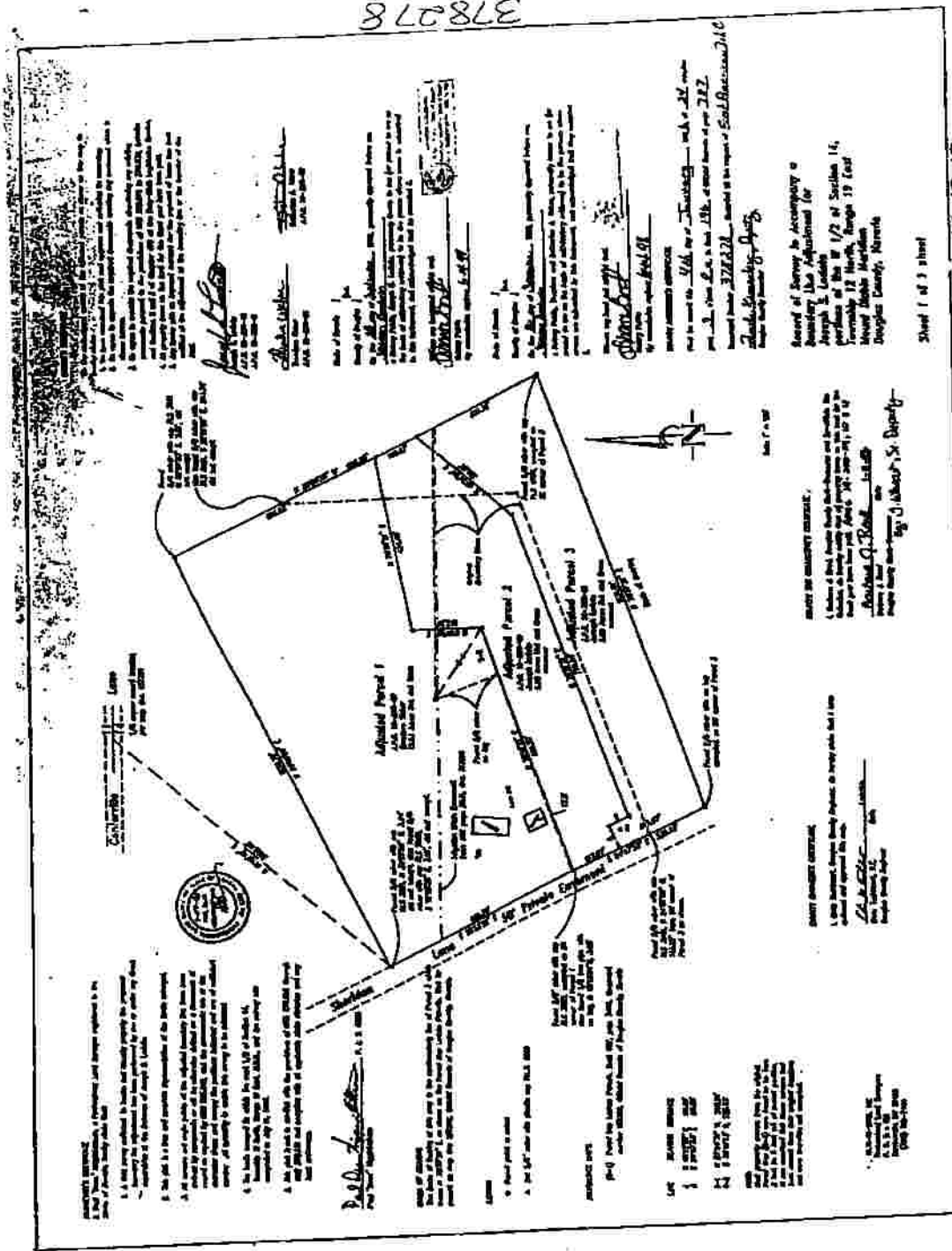
9 acres in the SW 1/4 of NW 1/4 of Sec. 14, T. 12, R. 19E

2 acres in the SW 1/4 of NW 1/4 of Sec. 14, T. 12, R. 19E

as shown on the attached map and filed for under proof of Vested Right #04594.

EXHIBIT 2

378278



Sheet 1 of 3 sheets

14-12-19

EXHIBIT 3