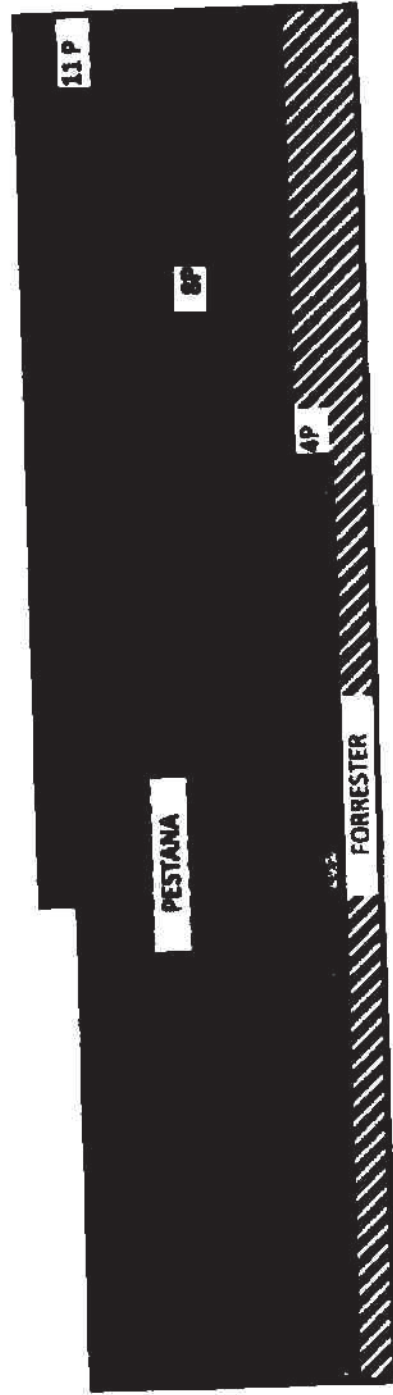


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1. Bentley, Smith & Barden may share time in rotation if desired. All parties within this group must agree to any alteration in the rotation schedule within this group.
2. Forrester, Hall, Mitchell, Sheridan Equestrian Center, Scharo and Seyphers may alter the rotation if desired if all parties agree to the change within this group.
3. Any complaints filed with the Office of the State Engineer and/or the Ninth Judicial District Court of the State of Nevada In and For Douglas County, Case No. : 08-CV-0363-D, Dept. No. 1, regarding the open and notorious exclusion of any party within these two (2) groups shall result in the strict enforcement of the rotation schedule for the remainder of the irrigation season.
4. This rotation schedule reflects the lease of the Pestana rights to Bentley for the remainder of the irrigation season. Any implementation of this schedule will occur at the beginning of a new 21-day cycle or on April 1.
5. Any excess water flowing off of any of these properties shall be considered as drain and waste water and shall be available to any downgradient water user for irrigation and stock watering purposes.

EXHIBIT 5

Consolidated Case No. 08-CV-0363-D1
Case No. 12-CV-0141
Case No. 13-CV-0121

Dept. No. I

2013 NOV 27 AM 9:33
D. GRECON
CLERK
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF 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 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 County, Nevada.

J.W. BENTLEY and MARY ANN
BENTLEY, TRUSTEES OF THE
BENTLEY FAMILY 1995 TRUST; JOY
SMITH, DANIEL BARDEN and ELAINE
BARDEN,

ORDER

Petitioners,

v.

STATE OF NEVADA, OFFICE OF
THE STATE ENGINEER,

Respondent.

THIS MATTER came before the Court on October 17, 2013, on petitions for judicial review ("Petitions") filed on April 30, 2012, and April 24, 2013. The Petitioners Joy Smith, Daniel Barden and Elaine Barden ("Smith and Barden") were represented by Jessica C. Prunty,

1 Esq., of Dyer, Lawrence, Penrose, Flaherty, Donaldson & Prunty. The Petitioners J.W.
2 Bentley and Mary Ann Bentley ("Bentleys") were represented by Michael L. Matuska, Esq., of
3 Matuska Law Offices, Ltd. The Respondent State of Nevada, Office of the State Engineer
4 ("State Engineer") was represented by Senior Deputy Attorney General Bryan L. Stockton,
5 Esq. The following individuals and entities participated in defense of the State Engineer, to
6 wit: Thomas Scyphers, Kathleen Scyphers, Frank Scharo, Sheridan Creek Equestrian Center,
7 LLC, Donald Forrester, Kristina Forrester, Ronald Mitchell, Ginger Mitchell and Hall
8 Ranches, LLC. (collectively "Intervenors") and were represented by Thomas J. Hall, Esq.
9

10 These matters have been fully briefed by the parties. The Court, having read all of the
11 pleadings, including the petitions, the opening, answering and reply briefs, all requests for
12 Judicial Notice and the previous orders entered herein. The Court, having also reviewed partial
13 transcripts of the previous trial held herein, and having heard oral arguments and rendered an
14 oral decision on October 17, 2013,
15

16 NOW THEREFORE, the Court makes the following findings, conclusions and orders
17 as follows:

18 1. On October 11, 2012, this Court ordered two previous Petitions for Judicial
19 Review, which were filed in Case Nos. 12-CV-0141 and 12-CV-0145, shall be consolidated
20 "into NJDC Case No. 08-CV-0363 and are hereby assigned the subsection designation of
21 NJDC Case No. 08-CV-0363-D-1." That Order is hereby confirmed.
22

23 2. The Motion to Consolidate filed herein on June 13, 2013, is granted and the
24 Petition for Judicial Review filed under Case No. 13-CV-0121 shall be consolidated with the
25 ongoing adjudication proceedings under Case No. 08-CV-0363-D-1.
26

27 3. The Requests for Judicial Notice filed on November 5, 2012, and November 12,
28 2012, by the Bentleys, and on March 14, 2013, by the Intervenors, are hereby granted.

1 4. The Petitions are not moot even though the rotation schedules ordered in 2012
2 and 2013 expired at the end of each irrigation season, as the issues raised by Petitioners are
3 capable of repetition, yet evading timely appellate review.

4 5. Water is a scarce and precious resource in the State of Nevada and every effort
5 should be made to conserve all available water resources.

6 6. Water is important for drinking and it is important for the rest of our lives, for
7 everything that the parties here use it for, for livestock, for agriculture, for ponds for fish and
8 for the enjoyment of life.

9 7. There is not enough water available in this part of the country for everything
10 that all of the parties want to use it for.

11 8. On August 14, 2008, the State Engineer filed his Final Order of Determination
12 which provides for the parties' water rights as follows (at page 194):

13 The diversion rates for the north and south split of Sheridan Creek are based on
14 a spring and early summer average stream flow of 3.5 c.f.s. Flow and diversion
15 rates during periods of drought and middle to late irrigation season will
16 generally be less than the rates determined in the Preliminary Order of
17 Determination. Therefore, all parties will have to share the water shortage
18 during periods of low flow. The total diversion from either the north or south
19 split can be used in its entirety in a rotation system of irrigation.

20 [Emphasis added.]

21 9. Pursuant to NRS 533.450(10), "[t]he decision of the State Engineer shall be
22 prima facie correct, and the burden of proof shall be upon the party attacking the same."

23 10. On appeal, the function of this Court is to review the evidence on which the
24 State Engineer based his decision, and ascertain whether the evidence supports the decision. If
25 so, the Court is bound to sustain the State Engineer's decision. State Engineer v. Curtis Park
26 101 Nev. 30, 32, 692 P.2d 495 (1985).
27

1 11. In the absence of an agreement of the parties pursuant to NRS 533.075, the
2 Court may by its orders fix the times when, by rotation, the whole may be used by each at
3 different times in proportion to their respective rights.

4 12. This Court entered Findings of Fact, Conclusions of Law and Judgment, on
5 April 5, 2012 ("Judgment"), ordering the State Engineer to impose a rotation schedule on the
6 water rights from the North Diversion of Sheridan Creek and tributaries subject to certain
7 conditions stated in the Judgment.

8 13. Whenever the flow in the North Diversion of Sheridan Creek and tributaries is
9 below 2.0 cubic feet per second (cfs), a rotation schedule would be needed to avoid injury to
10 the water users.

11 14. Pursuant to the Judgment entered herein by District Judge David R. Gamble
12 (Retired), on April 5, 2012, when the combined flow from the North Diversion of Sheridan
13 Creek and tributaries drops below 2.0 cfs, the State Engineer shall impose a rotation schedule.

14 15. The rotation schedule shall be in effect from the time the North Diversion of
15 Sheridan Creek flow drops below 2.0 cfs until superseded, until the flow rises to above 2.0 cfs
16 or until the schedule is stayed or modified by this Court.

17 16. The rotation schedule shall be prepared at the beginning of each irrigation
18 season to allow review by this Court, under NRS 533.450, if any party challenges the schedule.

19 17. Substantial evidence supports this Court's decision and Judgment for rotation
20 and the State Engineer's implementation of the same.

21 18. The rotation of the available water has been properly ordered by this Court and
22 properly implemented by the State Engineer.

23 19. The Court does not find that the rotation order was illegal.

1 20. It is not the function of this Court to readdress the prior decision and Judgment
2 of this Court entered April 5, 2012.

3 21. The Judgment entered by this Court on April 5, 2012, will not be amended via
4 these proceedings.

5 22. This Court has jurisdiction over the action and the parties, and has the legal
6 authority to order the State Engineer to implement rotation of water during periods of low
7 flow.
8

9 23. The Petition for Judicial Review filed in Case No. 12-CV-0141 is hereby denied
10 in all regards.

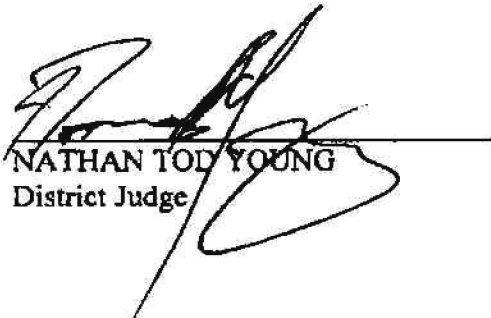
11 24. The Petition for Judicial Review filed in Case 12-CV-0145 is hereby denied in
12 all regards.

13 25. The Petition for Judicial Review filed in Case 13-CV-0121 is hereby denied in
14 all regards.
15

16 26. This Order shall apply in a continuing fashion to all future rotation schedules
17 imposed until such time as the Final Decree is entered herein.

18 IT IS SO ORDERED.

19 Dated this 27 day of November, 2013.

20
21
22 
23 NATHAN TOD YOUNG
24 District Judge

25 Originally submitted by:
26 Thomas J. Hall, Esq.
27 Law Offices of Thomas J. Hall

28 Subsequently edited by:
Nathan Tod Young
District Judge

1 Copies served by mail this 27 day of November, 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 Michael L. Matuska, Esq.
8 937 Mica Drive, #16A
9 Carson City, NV 89705

10 Thomas J. Hall, Esq.
11 P. O. Box 3948
12 Reno, NV 89505-3948

13 Jessica C. Prunty, Esq.
14 2805 Mountain Street
15 Carson City, NV 89703

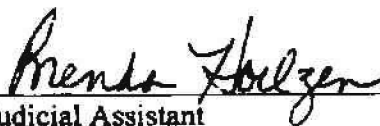

Judicial Assistant

EXHIBIT 6

1 Consolidated Case No.: 08-CV-0363-D1
2 Case No.: 12-CV-0141
3 Case No.: 13-CV-0121

4 Dept. No.: I

5 Thomas J. Hall, Esq.
6 Nevada State Bar No. 675
7 305 South Arlington Avenue
8 Post Office Box 3948
9 Reno, Nevada 89505
10 Telephone: 775-348-7011
11 Facsimile: 775-348-7211

12 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
13
14 IN AND FOR DOUGLAS COUNTY

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

NOTICE OF ENTRY
OF ORDER

19 J.W. BENTLEY and MARYANN BENTLEY,
20 Trustees of the Bentley Family 1995
21 Trust; JOY SMITH, DANIEL BARDEN,
22 and ELAINE BARDEN,

Petitioners,

vs.

23 State of Nevada, Office of the
24 State Engineer,

Respondent.

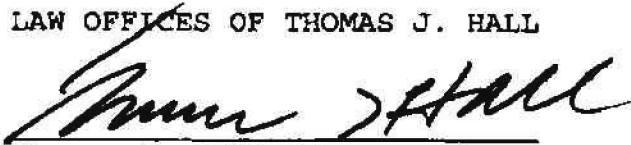
_____ /

1 PLEASE TAKE NOTICE that the on the 27th day of November,
2 2013, the Court entered its Order in the above-referenced
3 matter. A copy is attached hereto as Exhibit 1.
4

5 The undersigned does hereby affirm that the preceding
6 document does not contain the social security number of any
7 person.

8 DATED this 2nd day of December, 2013.

9 LAW OFFICES OF THOMAS J. HALL

10 
11 Thomas J. Hall, Esq.
12 Nevada State Bar No. 675
13 305 South Arlington Avenue
14 Post Office Box 3948
15 Reno, Nevada 89505
16 Telephone: 775-348-7011
17 Facsimile: 775-348-7211
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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 placed in the
U.S. Mail, postage prepaid, a true and correct copy of the
preceding document addressed to:

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

Sheridan Creek Equestrian
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

Bryan L. Stockton, Esq.
Senior Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701

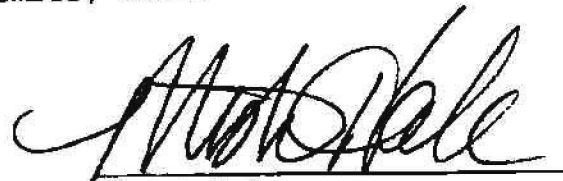
Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

Jessica C. Prunty, Esq.
Dyer, Lawrence, Penrose,
Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703

Frank Scharo
Post Office Box 1225
Minden, Nevada 89423

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

DATED this 2nd day of December, 2013.


Misti Hale

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EXHIBIT LIST

EXHIBIT 1: Order entered November 27, 2013.

EXHIBIT 1

EXHIBIT 1

Consolidated Case No. 08-CV-0363-D1
Case No. 12-CV-0141
Case No. 13-CV-0121

Dept. No. 1

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NOV 27 2013

FILED
2013 NOV 27 AM 9:33

DOUGLAS COUNTY
DISTRICT COURT

TED THOMAS
CLERK
BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF 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 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 County, Nevada.

J.W. BENTLEY and MARY ANN
BENTLEY, TRUSTEES OF THE
BENTLEY FAMILY 1995 TRUST; JOY
SMITH, DANIEL BARDEN and ELAINE
BARDEN,

ORDER

Petitioners,

v.

STATE OF NEVADA, OFFICE OF
THE STATE ENGINEER,

Respondent.

THIS MATTER came before the Court on October 17, 2013, on petitions for judicial review ("Petitions") filed on April 30, 2012, and April 24, 2013. The Petitioners Joy Smith, Daniel Barden and Elaine Barden ("Smith and Barden") were represented by Jessica C. Prunty,

1 Esq., of Dyer, Lawrence, Penrose, Flaherty, Donaldson & Prunty. The Petitioners J.W.
2 Bentley and Mary Ann Bentley ("Bentleys") were represented by Michael L. Matuska, Esq., of
3 Matuska Law Offices, Ltd. The Respondent State of Nevada, Office of the State Engineer
4 ("State Engineer") was represented by Senior Deputy Attorney General Bryan L. Stockton,
5 Esq. The following individuals and entities participated in defense of the State Engineer, to
6 wit: Thomas Scyphers, Kathleen Scyphers, Frank Scharo, Sheridan Creek Equestrian Center,
7 LLC, Donald Forrester, Kristina Forrester, Ronald Mitchell, Ginger Mitchell and Hall
8 Ranches, LLC, (collectively "Intervenors") and were represented by Thomas J. Hall, Esq.

9
10 These matters have been fully briefed by the parties. The Court, having read all of the
11 pleadings, including the petitions, the opening, answering and reply briefs, all requests for
12 Judicial Notice and the previous orders entered herein. The Court, having also reviewed partial
13 transcripts of the previous trial held herein, and having heard oral arguments and rendered an
14 oral decision on October 17, 2013,
15

16 NOW THEREFORE, the Court makes the following findings, conclusions and orders
17 as follows:

18 1. On October 11, 2012, this Court ordered two previous Petitions for Judicial
19 Review, which were filed in Case Nos. 12-CV-0141 and 12-CV-0145, shall be consolidated
20 "into NJDC Case No. 08-CV-0363 and are hereby assigned the subsection designation of
21 NJDC Case No. 08-CV-0363-D-1." That Order is hereby confirmed.

22 2. The Motion to Consolidate filed herein on June 13, 2013, is granted and the
23 Petition for Judicial Review filed under Case No. 13-CV-0121 shall be consolidated with the
24 ongoing adjudication proceedings under Case No. 08-CV-0363-D-1.
25

26 3. The Requests for Judicial Notice filed on November 5, 2012, and November 12,
27 2012, by the Bentleys, and on March 14, 2013, by the Intervenors, are hereby granted.
28

1 4. The Petitions are not moot even though the rotation schedules ordered in 2012
2 and 2013 expired at the end of each irrigation season, as the issues raised by Petitioners are
3 capable of repetition, yet evading timely appellate review.

4 5. Water is a scarce and precious resource in the State of Nevada and every effort
5 should be made to conserve all available water resources.

6 6. Water is important for drinking and it is important for the rest of our lives, for
7 everything that the parties here use it for, for livestock, for agriculture, for ponds for fish and
8 for the enjoyment of life.

9 7. There is not enough water available in this part of the country for everything
10 that all of the parties want to use it for.

11 8. On August 14, 2008, the State Engineer filed his Final Order of Determination
12 which provides for the parties' water rights as follows (at page 194):

13 The diversion rates for the north and south split of Sheridan Creek are based on
14 a spring and early summer average stream flow of 3.5 c.f.s. Flow and diversion
15 rates during periods of drought and middle to late irrigation season will
16 generally be less than the rates determined in the Preliminary Order of
17 Determination. Therefore, all parties will have to share the water shortage
18 during periods of low flow. The total diversion from either the north or south
19 split can be used in its entirety in a rotation system of irrigation.

20 [Emphasis added.]

21 9. Pursuant to NRS 533.450(10), "[t]he decision of the State Engineer shall be
22 prima facie correct, and the burden of proof shall be upon the party attacking the same."

23 10. On appeal, the function of this Court is to review the evidence on which the
24 State Engineer based his decision, and ascertain whether the evidence supports the decision. If
25 so, the Court is bound to sustain the State Engineer's decision. State Engineer v. Curtis Park,
26 101 Nev. 30, 32, 692 P.2d 495 (1985).

1 11. In the absence of an agreement of the parties pursuant to NRS 533.075, the
2 Court may by its orders fix the times when, by rotation, the whole may be used by each at
3 different times in proportion to their respective rights.

4 12. This Court entered Findings of Fact, Conclusions of Law and Judgment, on
5 April 5, 2012 ("Judgment"), ordering the State Engineer to impose a rotation schedule on the
6 water rights from the North Diversion of Sheridan Creek and tributaries subject to certain
7 conditions stated in the Judgment.

8 13. Whenever the flow in the North Diversion of Sheridan Creek and tributaries is
9 below 2.0 cubic feet per second (cfs), a rotation schedule would be needed to avoid injury to
10 the water users.

11 14. Pursuant to the Judgment entered herein by District Judge David R. Gamble
12 (Retired), on April 5, 2012, when the combined flow from the North Diversion of Sheridan
13 Creek and tributaries drops below 2.0 cfs, the State Engineer shall impose a rotation schedule.

14 15. The rotation schedule shall be in effect from the time the North Diversion of
15 Sheridan Creek flow drops below 2.0 cfs until superseded, until the flow rises to above 2.0 cfs
16 or until the schedule is stayed or modified by this Court.

17 16. The rotation schedule shall be prepared at the beginning of each irrigation
18 season to allow review by this Court, under NRS 533.450, if any party challenges the schedule.

19 17. Substantial evidence supports this Court's decision and Judgment for rotation
20 and the State Engineer's implementation of the same.

21 18. The rotation of the available water has been properly ordered by this Court and
22 properly implemented by the State Engineer.

23 19. The Court does not find that the rotation order was illegal.

1 20. It is not the function of this Court to readdress the prior decision and Judgment
2 of this Court entered April 5, 2012.

3 21. The Judgment entered by this Court on April 5, 2012, will not be amended via
4 these proceedings.

5 22. This Court has jurisdiction over the action and the parties, and has the legal
6 authority to order the State Engineer to implement rotation of water during periods of low
7 flow.
8

9 23. The Petition for Judicial Review filed in Case No. 12-CV-0141 is hereby denied
10 in all regards.

11 24. The Petition for Judicial Review filed in Case 12-CV-0145 is hereby denied in
12 all regards.

13 25. The Petition for Judicial Review filed in Case 13-CV-0121 is hereby denied in
14 all regards.
15

16 26. This Order shall apply in a continuing fashion to all future rotation schedules
17 imposed until such time as the Final Decree is entered herein.

18 IT IS SO ORDERED.

19 Dated this 27 day of November, 2013.

20
21
22 
23 NATHAN TOD YOUNG
24 District Judge

25 Originally submitted by:
26 Thomas J. Hall, Esq.
27 Law Offices of Thomas J. Hall

28 Subsequently edited by:
Nathan Tod Young
District Judge

1 Copies served by mail this 27 day of November, 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 Michael L. Matuska, Esq.
8 937 Mica Drive, #16A
9 Carson City, NV 89705

10 Thomas J. Hall, Esq.
11 P. O. Box 3948
12 Reno, NV 89505-3948

13 Jessica C. Prunty, Esq.
14 2805 Mountain Street
15 Carson City, NV 89703


Judicial Assistant

Case No. 12-CV-0141
12-CV-0145
08-CV-0363-D-1

2012 OCT 11 PM 2:23

Dept. No. 1

FILED

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

In Re: Rotation Schedule

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 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 County,
Nevada

JOY SMITH, DANIEL BARDEN and
ELAINE BARDEN,

ORDER

Petitioners.

J.W. BENTLEY AND MARY ANN
BENTLEY, TRUSTEES OF THE
BENTLEY FAMILY 1995 TRUST,

Petitioners.

STATE OF NEVADA, OFFICE OF
THE STATE ENGINEER,

Respondent.

1 THIS MATTER comes before the Court upon a Motion To Consolidate and a Motion
2 To Intervene. Having examined all relevant pleadings and papers on file herein, the Court now
3 enters the following order, good cause appearing:
4

5 THAT the Motions are GRANTED.

6 **Motion To Consolidate**

7 The State Engineer suggests consolidating two pending petitions for judicial review.
8 regarding the imposition of a rotation schedule upon a portion of water within the north branch
9 of Sheridan Creek, with the 'Mott Creek Adjudication' designated as NJDC
10 Case No. 08-CV-0363-D. Since the two petitions pertain to related issues of fact and law,
11 those petitions filed within NJDC Case Nos. 12-CV-0141 and 12-CV-0145 are hereby
12 consolidated together pursuant to NRCP 42(a). Furthermore, because those two consolidated
13 petitions pertain to waters of the existing Mott Creek adjudication before the Ninth Judicial
14 District Court, the two petitions shall also be consolidated into NJDC Case No. 08-CV-0363
15 and are hereby assigned the subsection designation of NJDC Case No. 08-CV-0363-D-1.
16
17

18 **Motion To Intervene**

19 Although Petitioners and the parties previously given leave to intervene in NJDC
20 Case No. 08-CV-0363-D disagree regarding the proper procedure to now intervene and be
21 heard in NJDC Case No. 08-CV-0363-D-1, little substantive objection, if any, is presented to
22 oppose the input of those same intervenors while the Court considers the pending petitions.
23 Since it appears that those seeking leave to intervene in this sub-matter may be affected by the
24 outcome of the petitions, leave is hereby granted to file a Notice of Intent to Defend similar to
25 the example attached as Exhibit 1 to the Reply In Support Of Motion To Intervene.
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Briefing Schedule

Briefing of the two consolidated petitions for judicial review shall now commence according to the schedule set forth within NJDCR 22. The date of entry of this Order is to be considered the date the administrative record was filed with the Court as referenced within NJDCR 22. Each counsel of record may file a separate brief on behalf of their clients, employing the applicable briefing deadline(s) based upon their clients' position, in effect, as petitioner or respondent.

IT IS SO ORDERED.

Dated this 11 day of October, 2012.



DAVID R. GAMBLE
District Judge

1 Copies served by mail this 11th day of October, 2012 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 Michael L. Matuska, Esq.
8 937 Mica Drive, #16A
9 Carson City, NV 89705

10 Thomas J. Hall, Esq.
11 P. O. Box 3948
12 Reno, NV 89505-3948

13 Jessica C. Prunty, Esq.
14 2805 Mountain Street
15 Carson City, NV 89703

16 Alling & Jillson, LTD.
17 P. O. Box 3390
18 Stateline, NV 89449

19 Frank Scharo
20 P. O. Box 1225
21 Minden, NV 89423

22 Irene Pestana & Michael Kelly
23 Pestana 1986 Family Trust
24 Attention: Francis B. Doyle, Esq.
25 1135 The Alameda 2nd Floor
26 San Jose, CA 95126

27 Office of the State Engineer
28 Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701

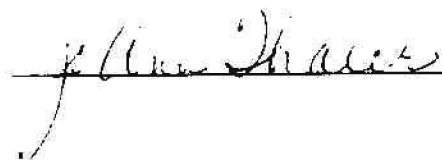


EXHIBIT 4

EXHIBIT 4

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DOUGLAS COUNTY
DISTRICT COURT CLEI

Case No.:

136V0121

Dept. No.:

I

2013 APR 25 PM 1:50

This document does not contain personal information of P. GREGORY

THE NINTH JUDICIAL DISTRICT COURT 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 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
County, Nevada.

J. W. BENTLEY AND MARYANN BENTLEY,
Trustees of the Bentley Family 1995 Trust;
JOY SMITH, DANIEL BARDEN and ELAINE
BARDEN

Petitioners.

vs.

State of Nevada, Office of the State Engineer.

Respondent.

NOTICE OF AND PETITION FOR JUDICIAL REVIEW
(Re: Proofs V-06305, V-06306, V-06307 and V-06308)

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley
Family 1995 Trust, by and through their counsel of record, Matuska Law Offices, Ltd., Michael L.
Matuska, and JOY SMITH, DANIEL BARDEN and ELAINE BARDEN, by and through their
counsel of record, Dyer Lawrence, Flaherty, Donaldson & Prunty, and hereby petition this Court
for judicial review of the State of Nevada, Office of the State Engineer's ("State Engineer")

1 issuance of the 2013 North Split of Sheridan Creek Rotation Schedule (the "Rotation Schedule")
2 on March 29, 2013, a copy of which is attached hereto as **Exhibit "1"** and incorporated herein by
3 reference. Notice of this petition is given pursuant to NRS 533.450 (3).

4 In support of this petition, petitioners allege as follows:

5 1. This Petition for Judicial Review is filed pursuant to NRS 533.450.

6 2. Jurisdiction and venue lies with this Court as this Court entered its Findings of
7 Fact, Conclusions of Law, Order and Judgment adjudicating the waters of the North Branch of
8 Sheridan Creek in Case No. 08-CV-0363-D ("Judgment"). NRS 533.450(1). This Court also
9 specifically reserved jurisdiction to allow for review pursuant to NRS 533.450 of any rotation
10 schedule issued by the State Engineer. Judgment at 15.

11 3. The Bentley Petitioners are the owners of vested water rights, Proofs V-06305, V-
12 06306, V-6307 and V-06308, to the waters of the North Diversion of Sheridan Creek and the
13 commingled waters of Stutler Creek (collectively "North Sheridan Creek"):

14 4 The Smith and Barden Petitioners are the owners of vested water rights, Proofs V-
15 06346 and V-06347, also to the commingled waters of North Sheridan Creek.

16 5. Petitioners also have an interest in permit 7595, Certificate 1760, to the waters of
17 Gansberg Springs, which are also commingled with the waters of the North Sheridan Creek.

18 6. On March 29, 2013, the State Engineer issued the Rotation Schedule requiring
19 petitioners to rotate their use of water under their jointly held vested water rights, and their interest
20 in Permit 7595, Certificate 1760.

21 7. Petitioners received notice of the Rotation Schedule through an e-mail sent by the
22 State Engineer on or about that same day (**Exhibit "1"**).

23 8. Petitioners do not agree with or consent to the Rotation Schedule.

24 9. The State Engineer imposed the Rotation Schedule in violation of NRS533.075.

25 10. Petitioners are aggrieved by the Rotation Schedule, and the interests of petitioners
26 have been injured because the Rotation Schedule impairs their vested and certificated water rights.

27 11. Petitioners are aggrieved by the Rotation Schedule as it is (a) in violation of
28 constitutional or statutory provisions, (b) is in excess of the statutory authority of the State
Engineer to impose, (c) is affected by other errors of law, (d) is not supported by substantial
evidence, and/or is arbitrary or capricious or characterized by abuse of discretion.

WHEREFORE, Petitioners pray for judgment as follows:

1. For an order setting aside the Rotation Schedule;
2. For an award of attorneys' fees and costs incurred by petitioners in this proceeding;
and
3. For such other and further relief as the Court deems just and proper.

Dated this 24th day of April 2013.

MATUSKA LAW OFFICES, LTD.

By: 

MICHAEL L. MATUSKA, SBN 5711
937 Mica Drive Suite 16A
Attorneys for J.W. BENTLEY
and MARYANN BENTLEY, Trustees of
the Bentley Family 1995 Trust

Dated this 2 day of April 2013.

DYER LAWRENCE FLAHERTY
DONALDSON & PRUNTY.

By: 

JESSICA C. PRUNTY, SBN 6906
DYER LAWRENCE LAW FIRM
2805 Mountain Street
Carson City, NV 89703
Attorneys for JOY SMITH,
DANIEL BARDEN and ELAINE BARDEN

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd., and that on the 21st day of April 2013, I caused to be mailed, via certified mail postage prepaid, through the United States Postal Service, a true and correct copy of the preceding document entitled **NOTICE OF AND PETITION FOR JUDICIAL REVIEW** addressed to:

Office of the State Engineer
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City NV 89701

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

Thomas J. Seyphers
Kathleen M. Seyphers
1304 Aylesbury Court
Gardnerville NV 89460

Ronald R. Mitchell
Ginger G. Mitchell
P.O. Box 5607
Stateline NV 89449

Sheridan Creek Equestrian Center
c/o Alling & Jillson, LTD.
~~376 Kingsbury Grade, Suite 2000~~
Stateline NV 89449 - **3310**

Hall Ranches, LLC
c/o Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno NV 89505-3948

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville NV 89460

Frank Scharo
P. O. Box 1225
Minden NV 89423

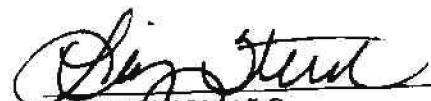
James W. Bentley
Mary Ann Bentley
853 Sheridan Lane
Gardnerville NV 89460

Joy S. Smith
c/o Jessica Prunty, Esq.
DYER LAWRENCE, et al.
2805 Mountain Street
Carson City NV 89703

Irene Pestana
Pestana 1986 Family Trust
1431 Atteberry Lane
San Jose CA 95131

Irene Pestana & Michael Kelly
Pestana 1986 Family Trust
c/o Francis B. Doyle, Esq.
1135 The Alameda, 2nd Floor
San Jose CA 95126

Daniel P. Barden
Elaine V. Barden
c/o Jessica Prunty, Esq.
DYER LAWRENCE, et al.
2805 Mountain Street
Carson City NV 89703


LIZ STERN, ALS

MATUSKA LAW OFFICES, LTD.
907 Silver Drive, Suite 105
Carson City NV 89705
(775) 292-2312

EXHIBIT 1

EXHIBIT 1

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO BROZHOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5280

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

March 29, 2013

Honorable Todd Young
Case No. 08-CV-0363-D, Dept. No. 1
Ninth Judicial District Court
Post Office Box 218
Minden, NV 89423

Jim Bentley
853 Sheridan Lane
Gardnerville, NV 89460
Via Email

Thomas J. Scyphers
Kathleen M. Scyphers
1304 Aylesbury Court
Gardnerville, NV 89460
Via Email

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

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, NV 89460
Via Email

Joy S. Smith
957 Sheridan Lane
Gardnerville, NV 89460
Via Email

Irene Pestana
Pestana 1986 Family Trust
1431 Attaberry Lane
San Jose, CA 95131

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, NV 89460
Via Email

Frank Schero
Post Office Box 1225
Minden, NV 89423
Via Email

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

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

Michael L. Mataska, Esq.
937 Mica Drive, Suite 16A
Carson City, NV 89705
Via Email

Daniel P. Barden
Elaine V. Barden
P.O. Box 6310
Gardnerville, NV 89460
Via Email

Attn. Michael Stanka PE
Stanka Consulting Ltd.
3032 Silver Sage Dr. - Suite 101
Carson City, NV 89701
Via Email

Re: Carson Valley Adjudication (Case No.: 08-CV-0363-D) - Rotation Schedule.

Ladies and Gentlemen:

Attached is the 2013 rotation schedule for the upcoming irrigation season. The rotation will begin at 9:00 A.M. on Monday, April 1, 2012 and conclude at midnight on Tuesday, October 15, 2013. Please note that the rotation schedule is preliminary and could be subject to modification by the court.

The order of the rotation schedule has been altered from the 2012 schedule beginning with Schero and ending with Mitchell to more accurately represent the actual practice in the field.

Streamflow measurements were conducted on Sheridan Creek beginning at 9:47 A.M. on March 27, 2013. Flow in the main channel of the stream upstream of the north and south split was measured at 1.48 cfs using a Pygmy current meter. Flow in the north split was measured using the same method at 1.04 cfs. Flow was adjusted to 0.9 cfs in the north split and 0.6 cfs in the south split at the conclusion of the measurements at approximately 10:30 A.M. of the same day. Based on the lower flow in Sheridan Creek there will be insufficient water to meet the 2 cfs criteria for continuous flow through the Bentley ponds during the first rotation of the 2013 irrigation season.

Periodic measurements of streamflow will be conducted throughout the 2013 irrigation season to determine if any adjustments of the split and flow routing may be necessary.

Temporary permits have been issued under Application Nos. 82587-T, Stutler Creek; 82588-T, Sheridan Creek; and 82589-T, Gansberg Spring; that strip the water off of the Pestana parcel for temporary use throughout the irrigation season on the Bentley parcel. Therefore, the rotation schedule will reflect the Bentley use of the Pestana water rights from April 1st through October 15th of 2013. Copies of these permits can be viewed on our website that is listed at the base of the heading of this letter.

You can contact me at (775) 684-2820 if you have any further questions regarding this matter.

Sincerely,



Steve Walmaley

Supervisor III, Water Resource Specialist

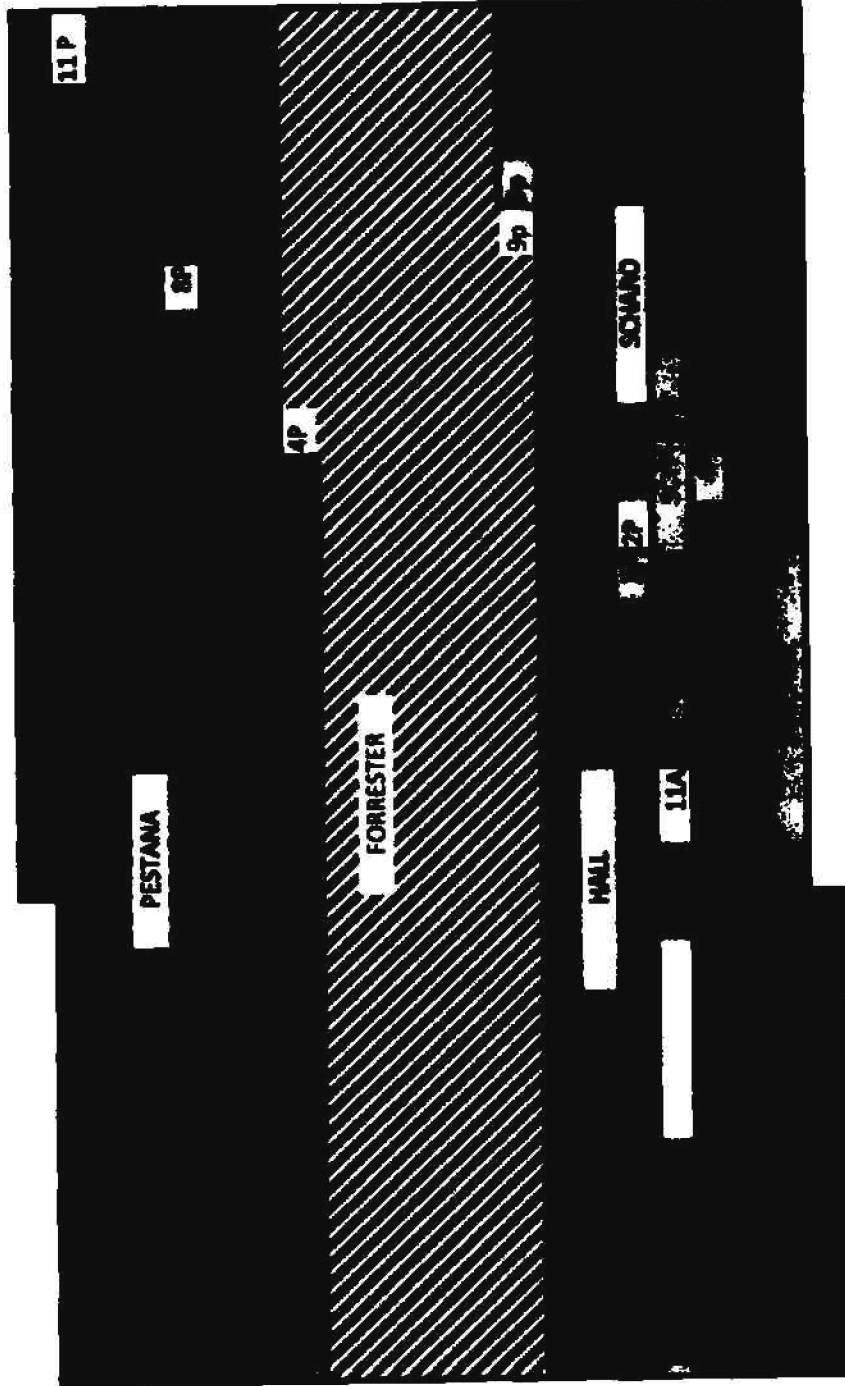
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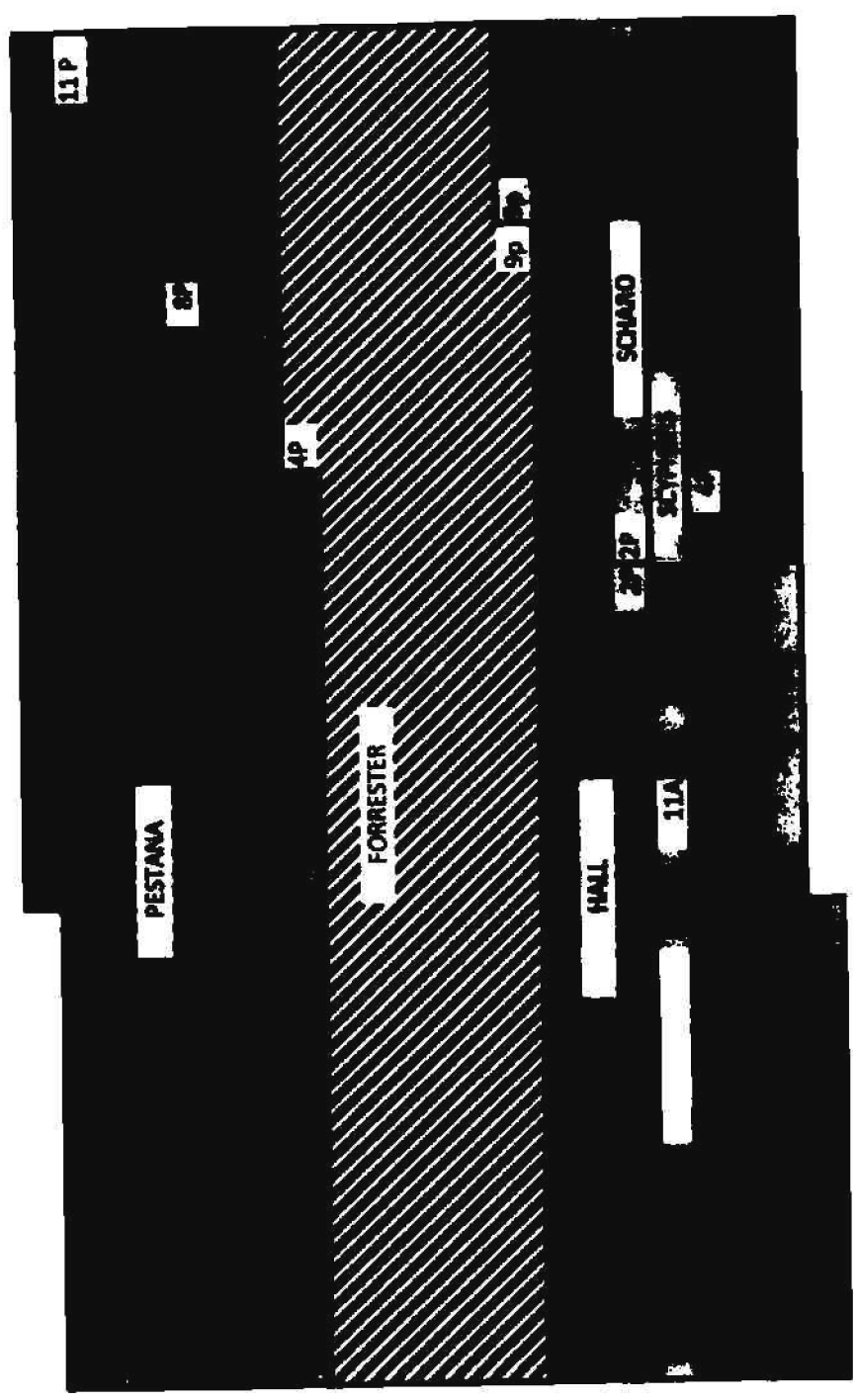
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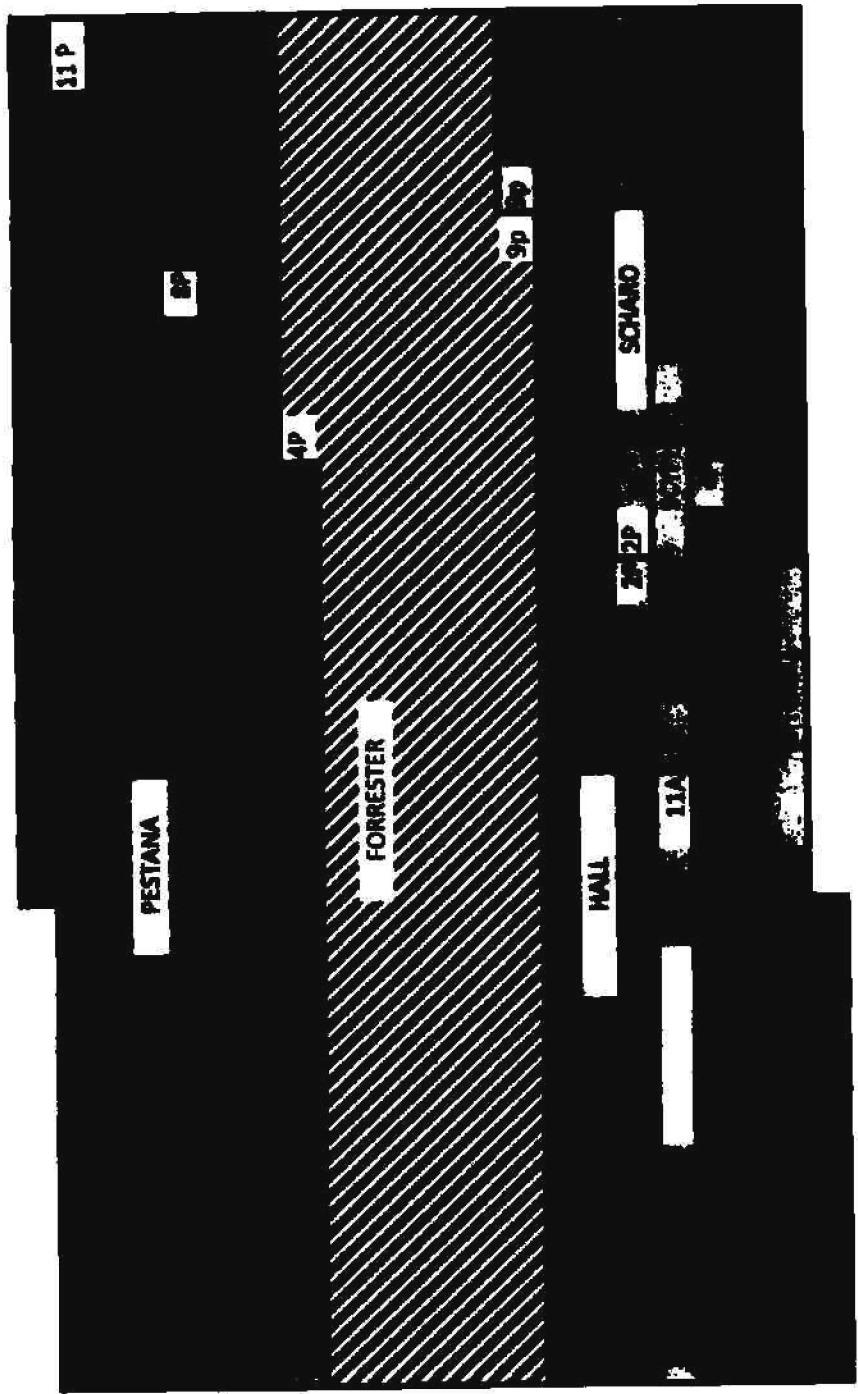
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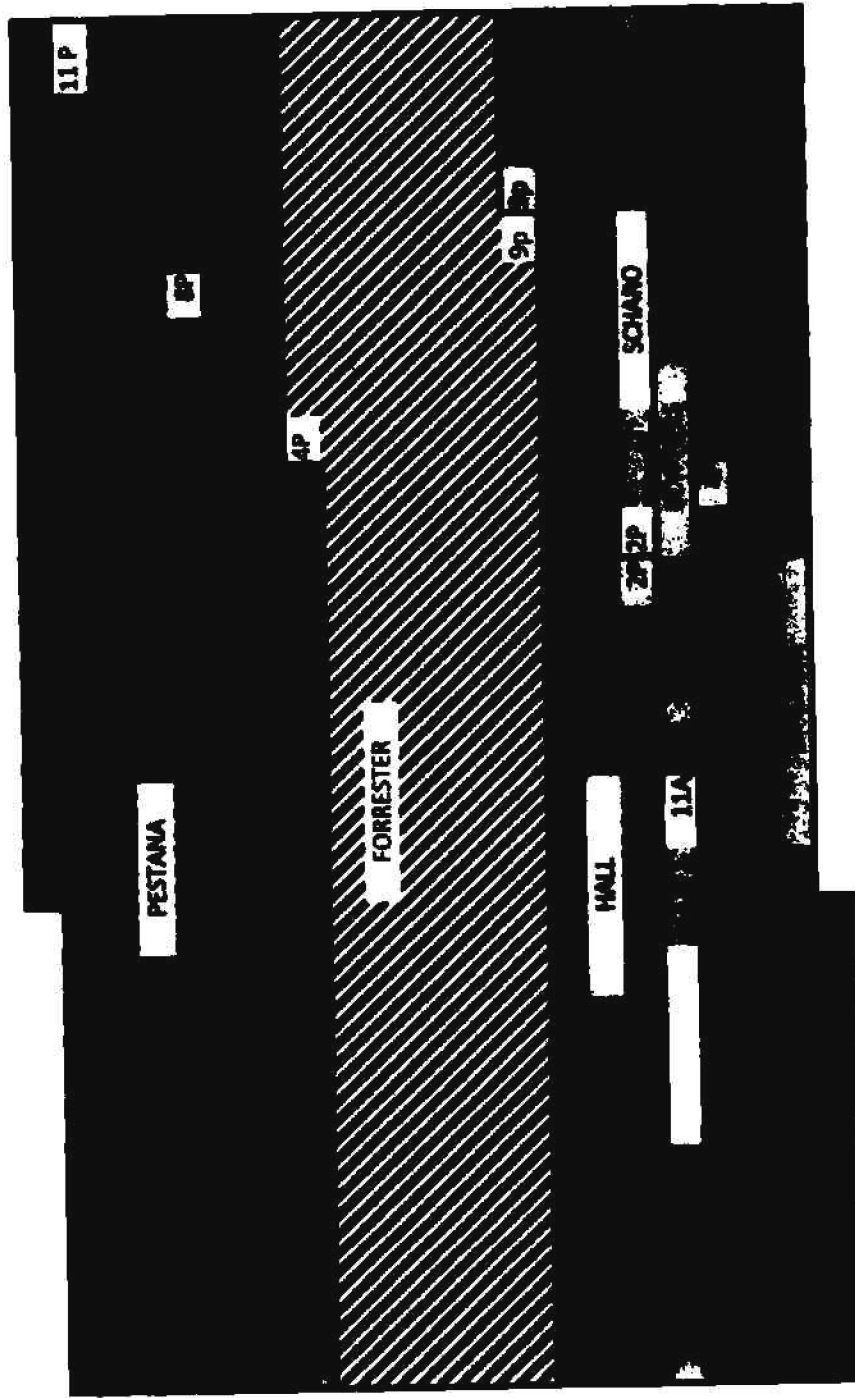
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DATE: TIME OF DAY

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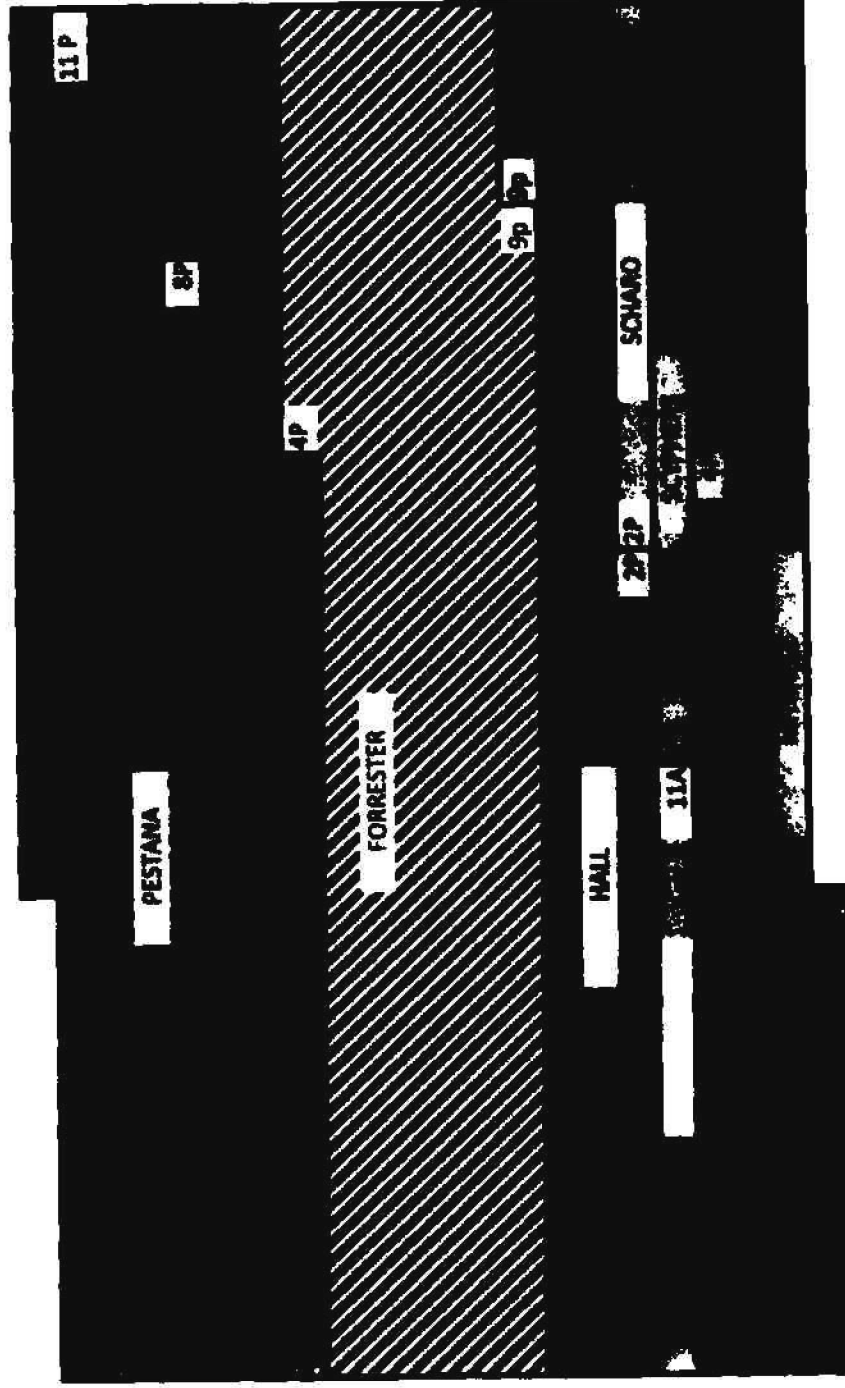
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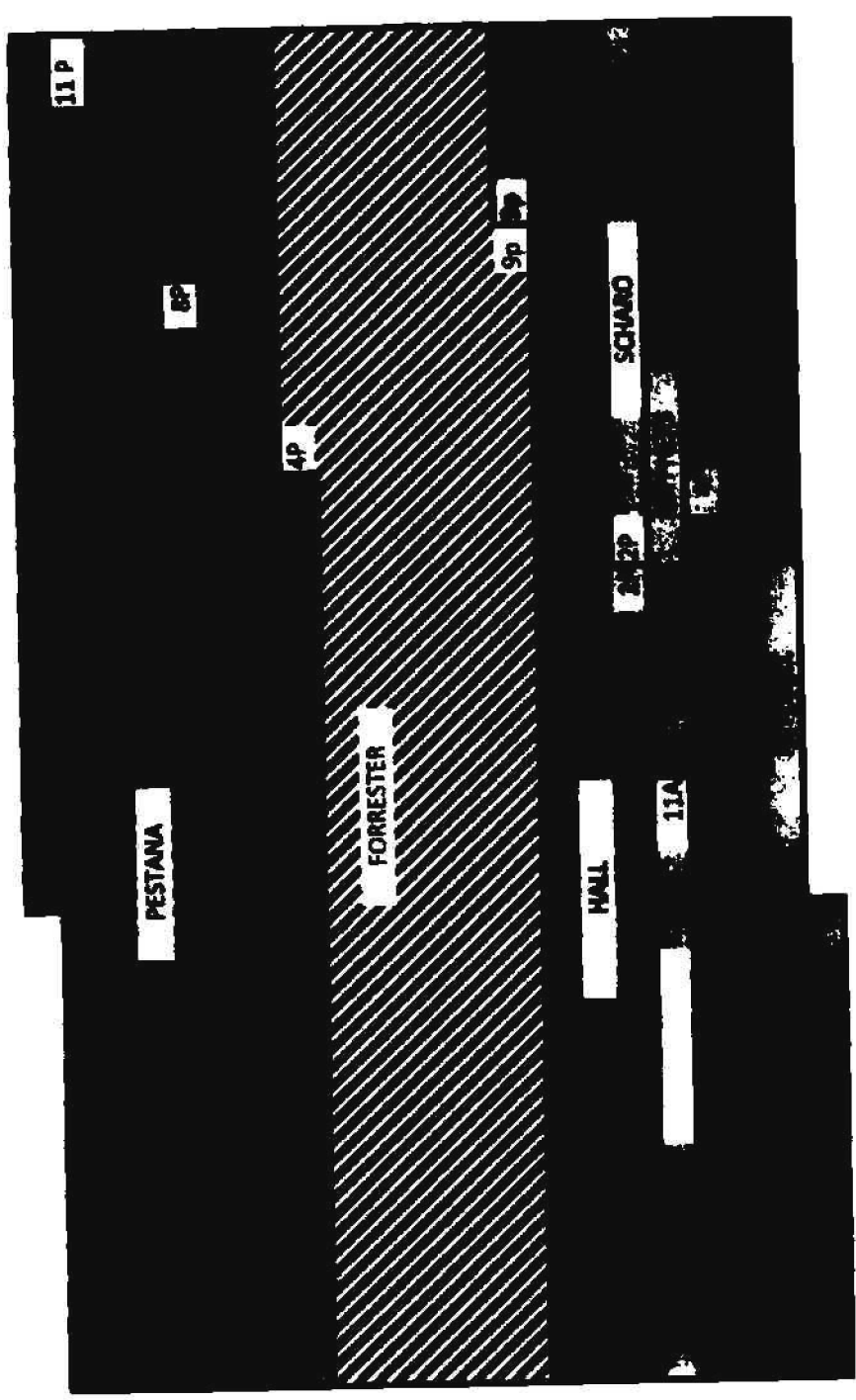
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DATE: TIME OF DAY

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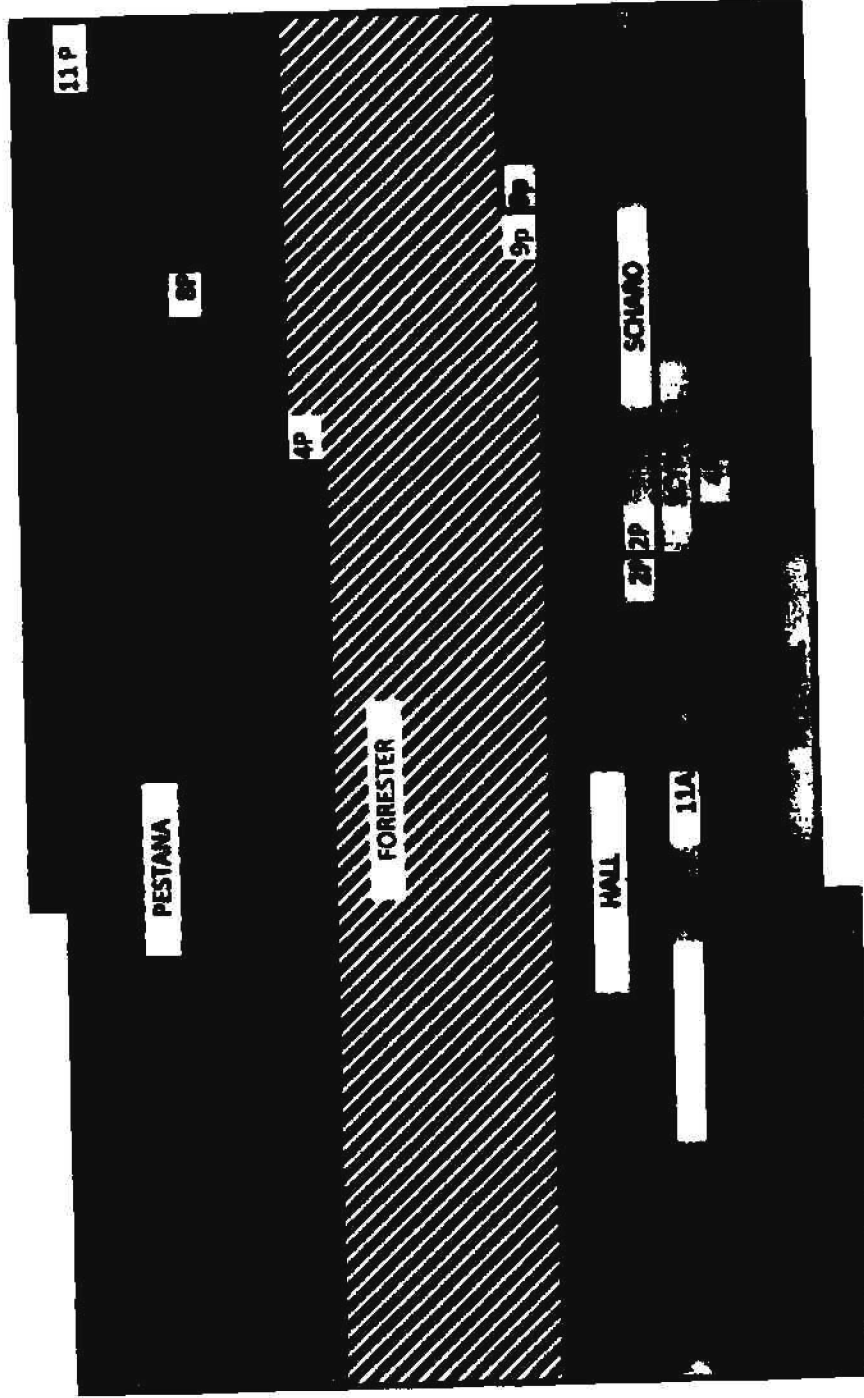
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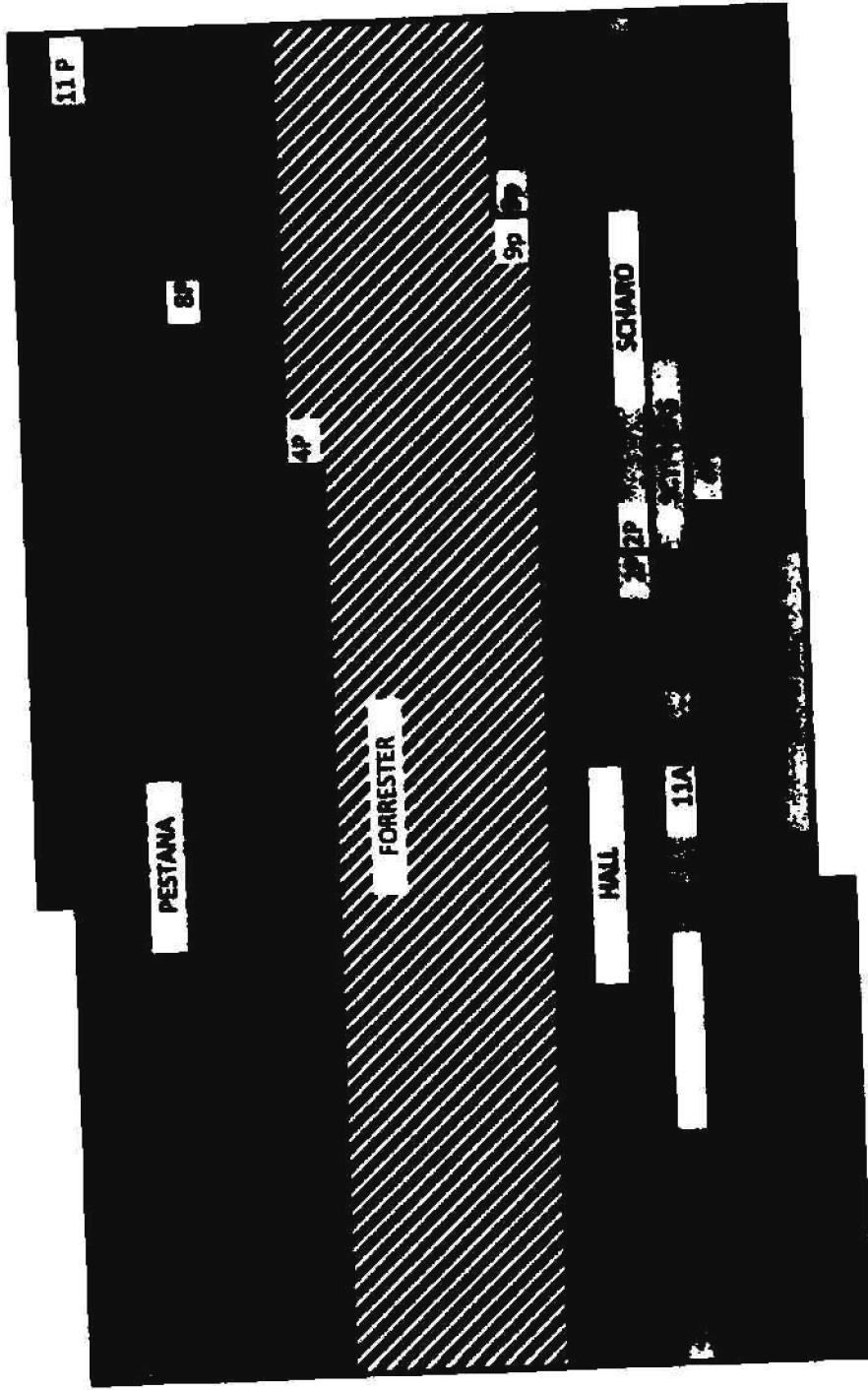


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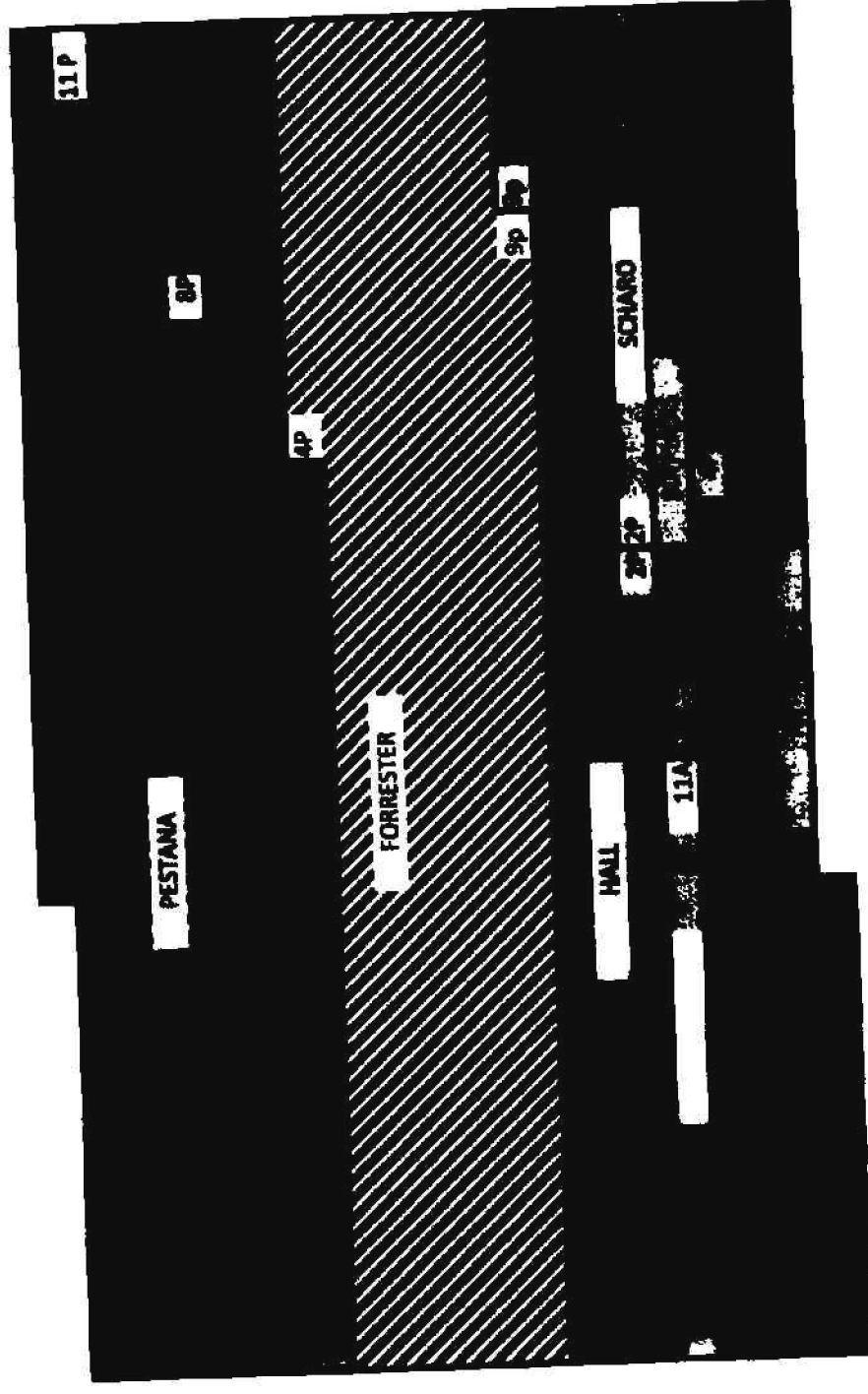
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Case No. 12-CV-0145

Dept. No. I

RECEIVED

MAY - 3 2012

DOUGLAS COUNTY
DISTRICT COURT CLERK

2012 MAY -3 PM 3:02

This document does not contain personal information of any person.

THE NINTH JUDICIAL DISTRICT COURT 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
County, Nevada.

J. W. Bentley and Mary Ann Bentley, Trustees of
the Bentley Family 1995 Trust

Petitioners,

vs.

State of Nevada, Office of the State Engineer,

Respondent.

NOTICE OF AND PETITION FOR JUDICIAL REVIEW
(Re: Proofs V-06305, V-06306, V-06307 and V-06308)

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley
Family 1995 Trust, by and through their undersigned counsel, and hereby petition this Court for
judicial review of the State of Nevada, Office of the State Engineer's ("State Engineer") issuance
of the 2012 North Split of Sheridan Creek Rotation Schedule (the "Rotation Schedule") on March
30, 2012, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference.
Notice of this petition is given pursuant to NRS 533.350 (3).

1 In support of this petition, petitioners allege as follows:

2 1 This Petition for Judicial Review is filed pursuant to NRS 533.450.

3 2 Jurisdiction and venue lies with this Court as this Court entered its Findings of
4 Fact, Conclusions of Law, Order and Judgment adjudicating the waters of the North Branch of
5 Sheridan Creek in Case No. 08-CV-0363-D ("Judgment"). NRS 533.450(1). This Court also
6 specifically reserved jurisdiction to allow for review pursuant to NRS 533.450 of any rotation
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11 4 Petitioners have an interest in permit 7595, Certificate 1760, to the waters of
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13 5 On March 30, 2012, the State Engineer issued the Rotation Schedule requiring
14 petitioners to rotate their use of water under their jointly held vested water rights, and their interest
15 in Permit 7595, Certificate 1760.

16 6 Petitioners received notice of the Rotation Schedule through an e-mail sent by the
17 State Engineer on March 30, 2012. Ex. 1.

18 7 Petitioners do not agree with or consent to the Rotation Schedule.

19 8 The State Engineer imposed the Rotation Schedule in violation of NRS533.075.

20 9 Petitioners are aggrieved by the Rotation Schedule, and the interest of petitioners
21 have been injured because the Rotation Schedule impairs their vested and certificated water rights.

22 10 Petitioners are aggrieved by the Rotation Schedule as it is (a) in violation of
23 constitutional or statutory provisions, (b) is in excess of the statutory authority of the State
24 Engineer to impose, (c) is affected by other error of law, (d) is not supported by substantial
25 evidence, and/or (e) is arbitrary or capricious or characterized by abuse of discretion.

MATUSKA LAW OFFICES, LTD.
937 Mica Drive, Suite 16A
Carlson City, NV 89704
(775) 492-2114

WHEREFORE, petitioners pray for judgment as follows:

- 1 For an order setting aside the Rotation Schedule;
- 2 For an award of attorneys' fees and costs incurred by petitioners in this proceeding;
- 3 and
- 4 For such other and further relief as the Court deems just and proper.

Dated this 11th day of May 2012

MATUSKA LAW OFFICES, LTD.

By: 

MICHAEL E. MATUSKA, SBN 5711
937 Mica Drive Suite 16A
Attorneys for J.W. BENTLEY
and MARYANN BENTLEY, Trustees of
the Bentley Family 1995 Trust

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd., and that on the 22nd day of May 2012, I served a true and correct copy of the preceding document entitled **NOTICE OF AND PETITION FOR JUDICIAL REVIEW** addressed to:

Office of the State Engineer
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, Nevada 89701
Certified No. 7011 1570 0002 7006 6979

Bryan L. Stockton
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701
Certified No. 7011 1570 0002 7006 6986

Thomas J. Seyphers
Kathleen M. Seyphers
1304 Aylesbury Court
Gardnerville, Nevada 89460
Certified No. 7011 1570 0002 7006 6993

Ronald R. Mitchell
Ginger G. Mitchell
P.O. Box 5607
Stateline, Nevada 89449
Certified No. 7011 1570 0002 7006 7006

Sheridan Creek Equestrian Center
c/o Alling & Jillson, LLC
276 Kingsbury Grade, Ste 2000
Stateline, NV 89449
Certified No. 7011 1570 0002 7006 7013

Hall Ranches, LLC
c/o Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno NV 89505-3948
Certified No. 7011 1570 0002 7006 7020

Donald S. Lorrester
Kristina M. Lorrester
913 Sheridan Lane
Gardnerville, Nevada 89460
Certified No. 7011 1570 0002 7006 7037

Frank Seharo
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Minden, NV 89423
Certified No. 7011 1570 0002 7006 7044

James Bentley
Mary Ann Bentley
853 Sheridan Lane
Gardnerville, Nevada 89460
Certified No. 7011 1570 0002 7006 7051

Joy S. Smith
c/o Jessica Prunty and
James W. Penrose, Esq.
DYER LAWRENCE
2805 Mountain Street
Carson City NV 89703
Certified No. 7011 1570 0002 7006 7082

Continued on next page

MATUSKA LAW OFFICES, LTD.
901 South Stewart Street, Suite 2002
Carson City, NV 89701
(702) 697-1011

EXHIBIT 1

EXHIBIT 1

Michael Matuska

From: Steve Walmsley <swalmsley@water.nv.gov>
Sent: Friday, March 30, 2012 12:00 PM
To: Bryan Stockton; dbarden; citadel@mindspring.com; 'dduckracing@gmail.com'; Frank Scharo; Glenn Roberson; Joy Smith ('tjhiker113@yahoo.com'); Michael Matuska; Mitchell; rodbentley@gmail.com; Stanka Consulting; 'tjhlaw@eschelon.com'; Tom Schyphers; kmscyph@verizon.net;
Cc: Kevin Hickenbottom; Dan Taylor; Jason King; Tracy Taylor
Subject: 2012 North Split Sheridan Creek Rotation Schedule - Carson Valley
Attachments: NSHERIDAN.2012.PDF; 2012 Rotation Schedule ALL USERS.pdf

AmicusFileId: 5
AmicusFileName: Bentley - Water Rights - Rotation
AmicusId: 1/43
AmicusStatus: Saved

Ladies and Gentlemen:

Attached is the cover letter and the 2012 North Split of Sheridan Creek Rotation Schedule for 2112.

Steve Walmsley
Supervisor III, Water Resource Specialist
Adjudication Section
Nevada Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

swalmsley@water.nv.gov
(775) 684-2820
(775) 684-2811 FAX

BRIAN SANDOVAL
Governor

STATE OF NEVADA

LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

March 30, 2012

Honorable David R. Gamble
Ninth Judicial District Court
Post Office Box 218
Minden, NV 89423

Irene Pestana
Pestana 1986 Family Trust
1431 Anteberry Lane
San Jose, CA 95131

Jim Bentley
853 Sheridan Lane
Gardnerville, NV 89460
Via Email

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, NV 89460
Via Email

Thomas J. Scyphers
Kathleen M. Scyphers
1304 Aylesbury Court
Gardnerville, NV 89460
Via Email

Frank Scharo
Post Office Box 1225
Minden, NV 89423
Via Email

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

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

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, NV 89460
Via Email

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

Joy S. Smith
957 Sheridan Lane
Gardnerville, NV 89460
Via Email

Michael L. Matuska, Esq.
937 Mica Drive, Suite 16A
Carson City, NV 89705
Via Email

Daniel P. Barden
Elaine V. Barden
P O Box 6310
Gardnerville, NV 89460
Via Email

Re Carson Valley Adjudication (Case No. 08-CV-0363-D) - Rotation Schedule.

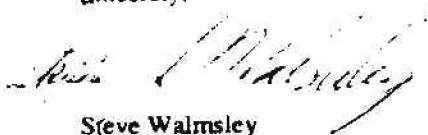
Ladies and Gentlemen:

Attached is the 2012 rotation schedule for the upcoming irrigation season. The rotation will begin at 9:00 A.M. on Sunday, April 1, 2012. The rotation schedule will also be attached to the motion titled "OPPOSITION TO THIRD MOTION FOR DIVISION OF WATER AND FOR CLARIFICATION OF PRIOR ORDER" to be filed with the Ninth Judicial District Court of the State of Nevada In and For the County of Douglas. Please note that the rotation schedule is preliminary and could be subject to modification by the court.

Temporary permits have been issued under Application Nos. 81687-T, Stutler Creek; 81688-T, Sheridan Creek; and 81689-T, Gansberg Spring; that strip the water off of the Pestana parcel for temporary use throughout the irrigation season on the Bentley parcel. Therefore, the rotation schedule will reflect the Bentley use of the Pestana water rights from April 1st through October 15th of 2012. Copies of these permits can be viewed on our website that is listed at the base of the heading of this letter.

You can contact me at (775) 684-2820 if you have any further questions regarding this matter.

Sincerely,



Steve Walmsley

Supervisor III, Water Resource Specialist

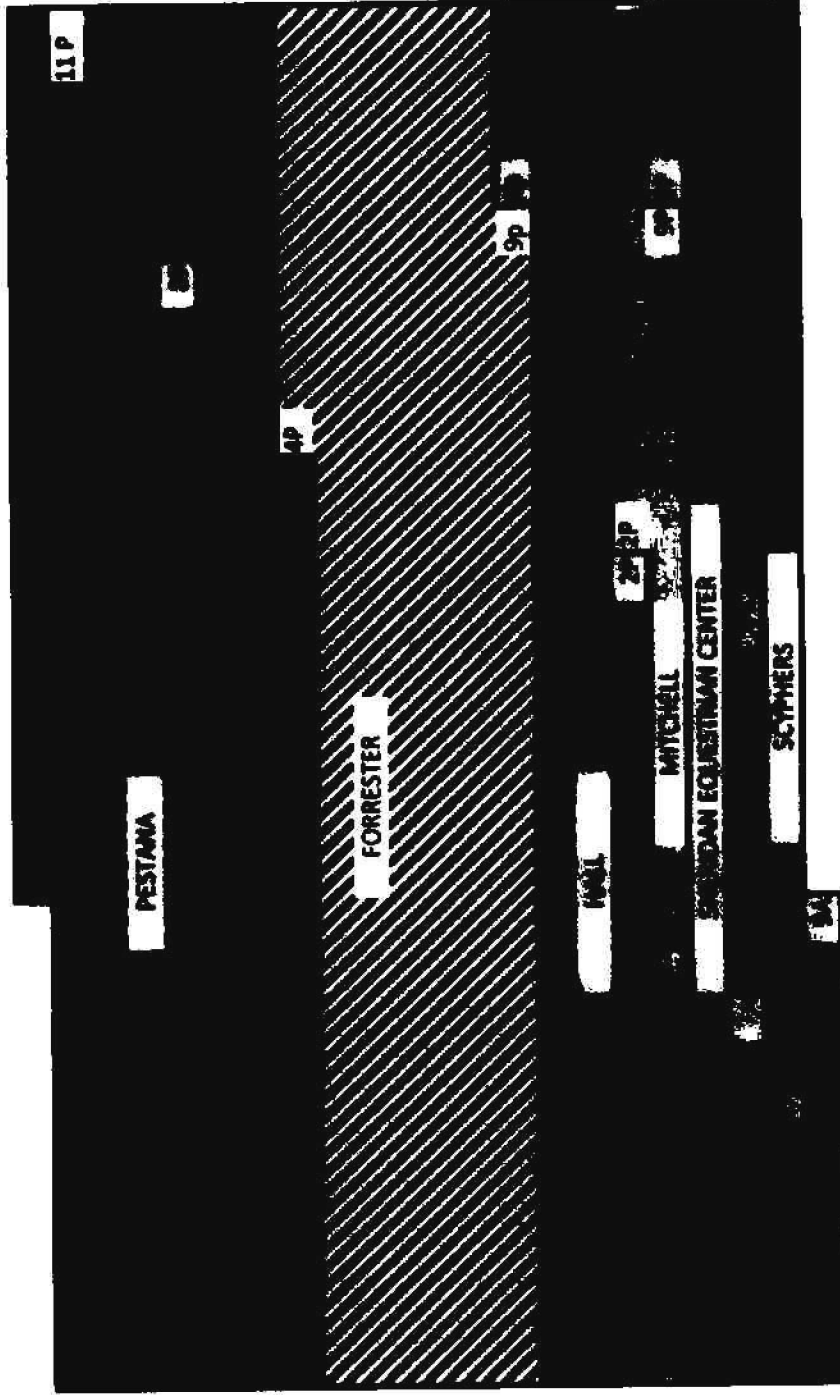
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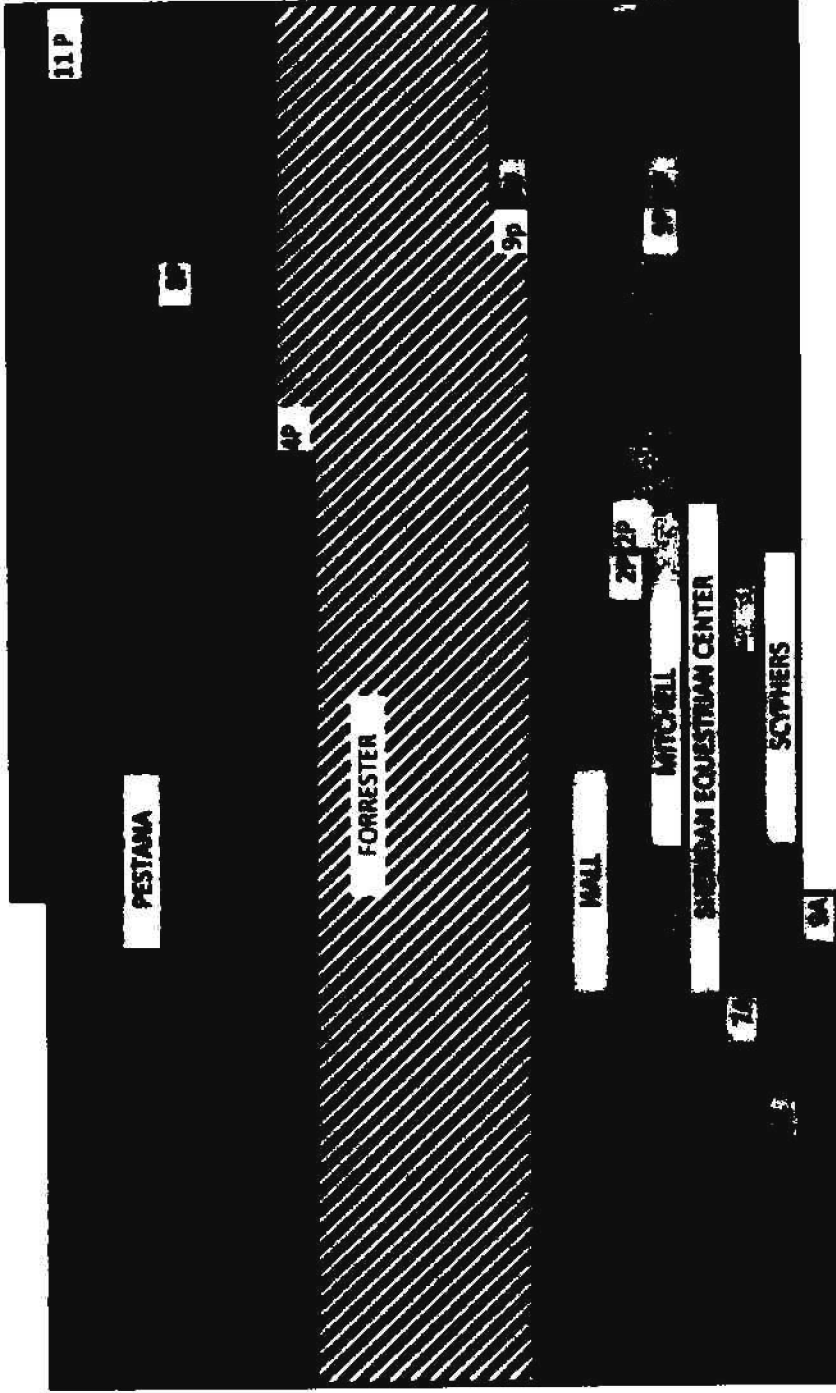


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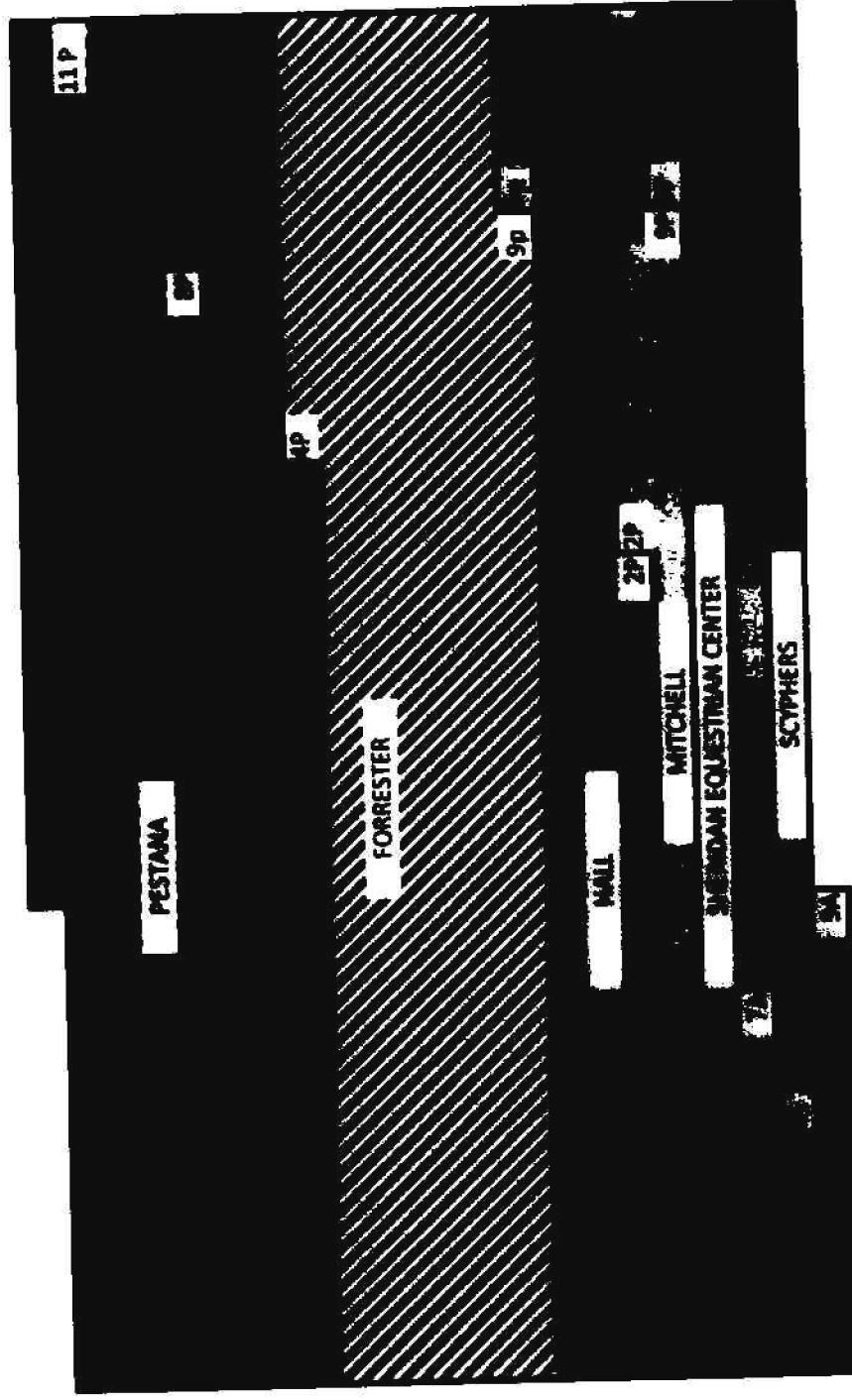


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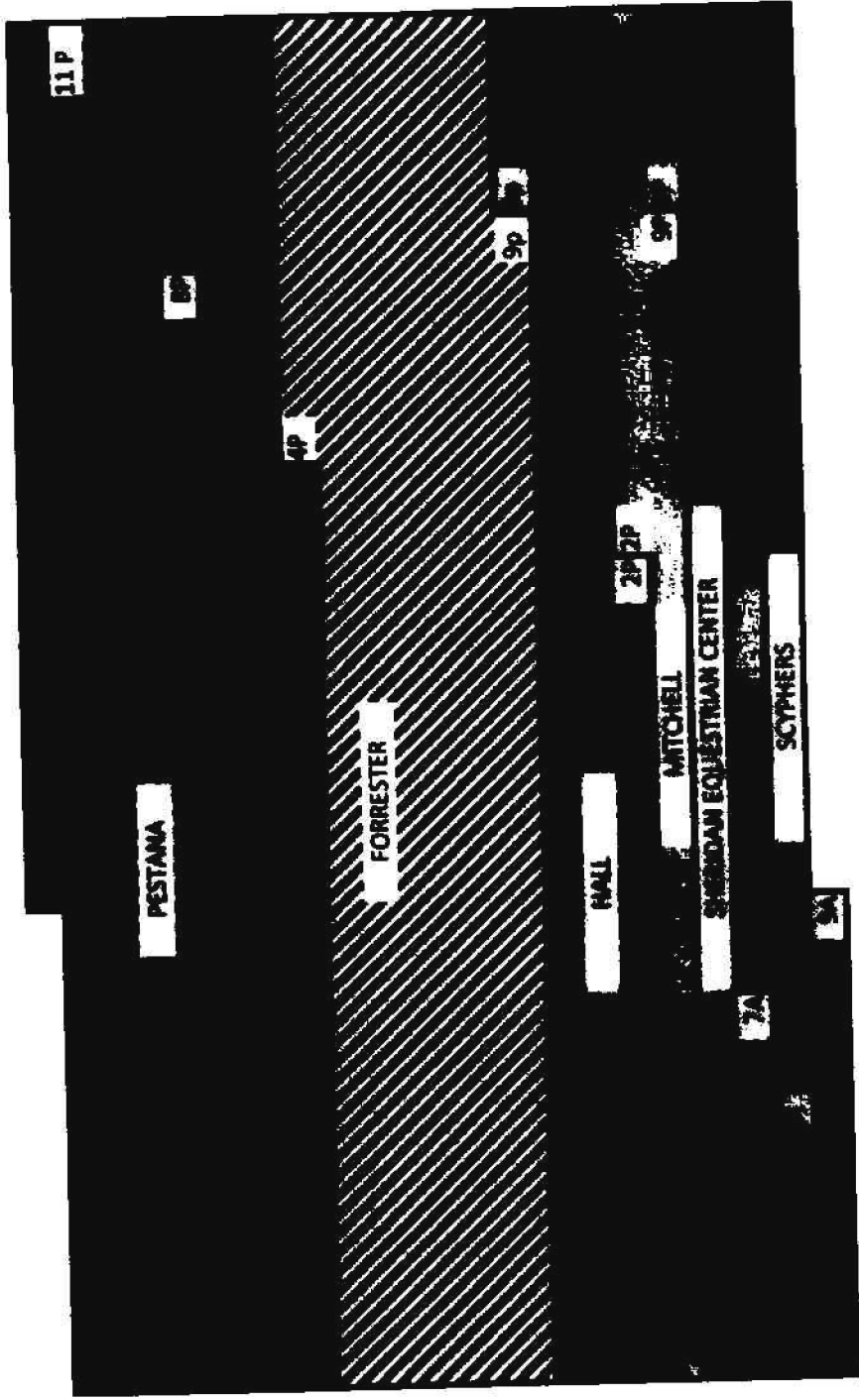
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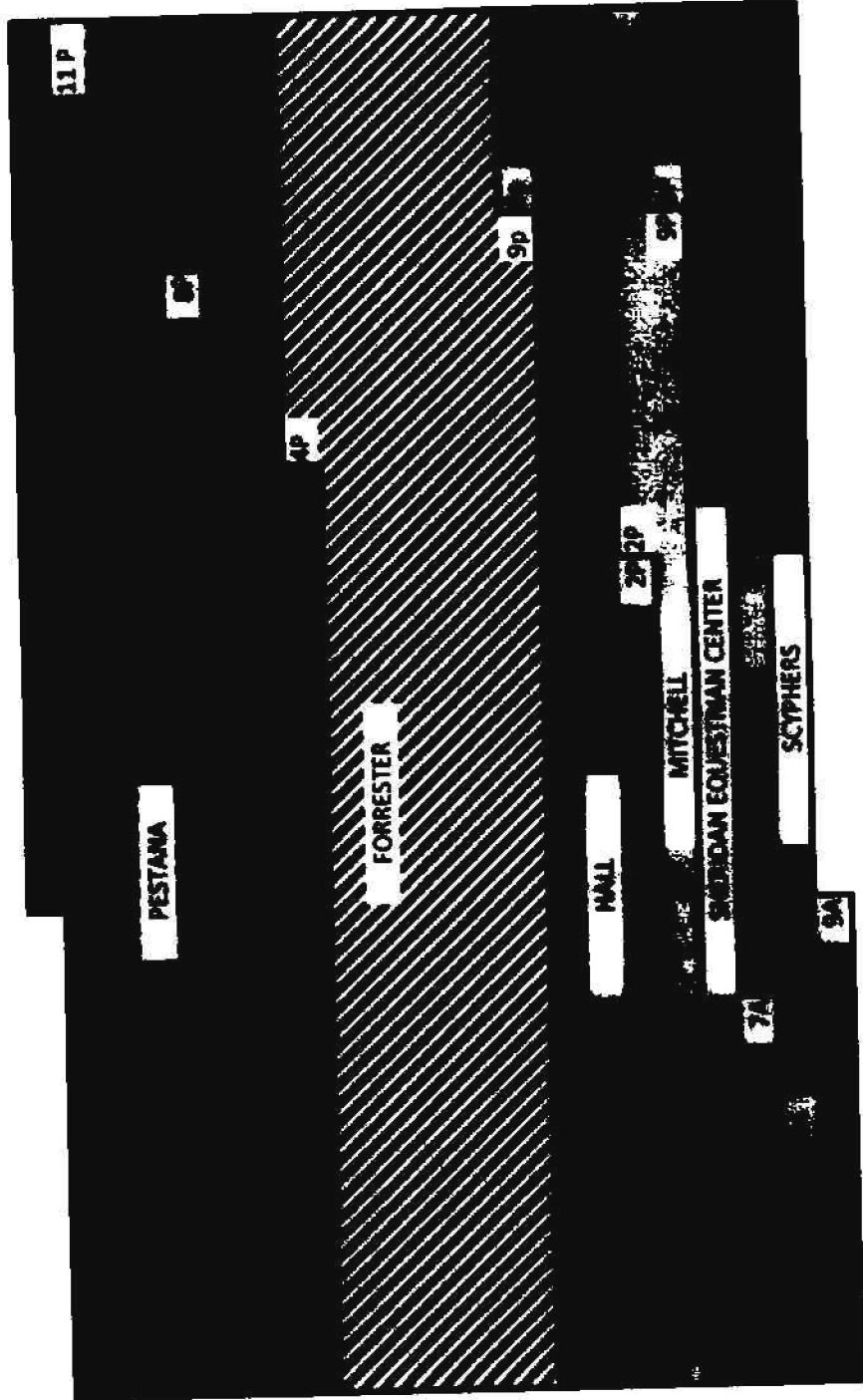
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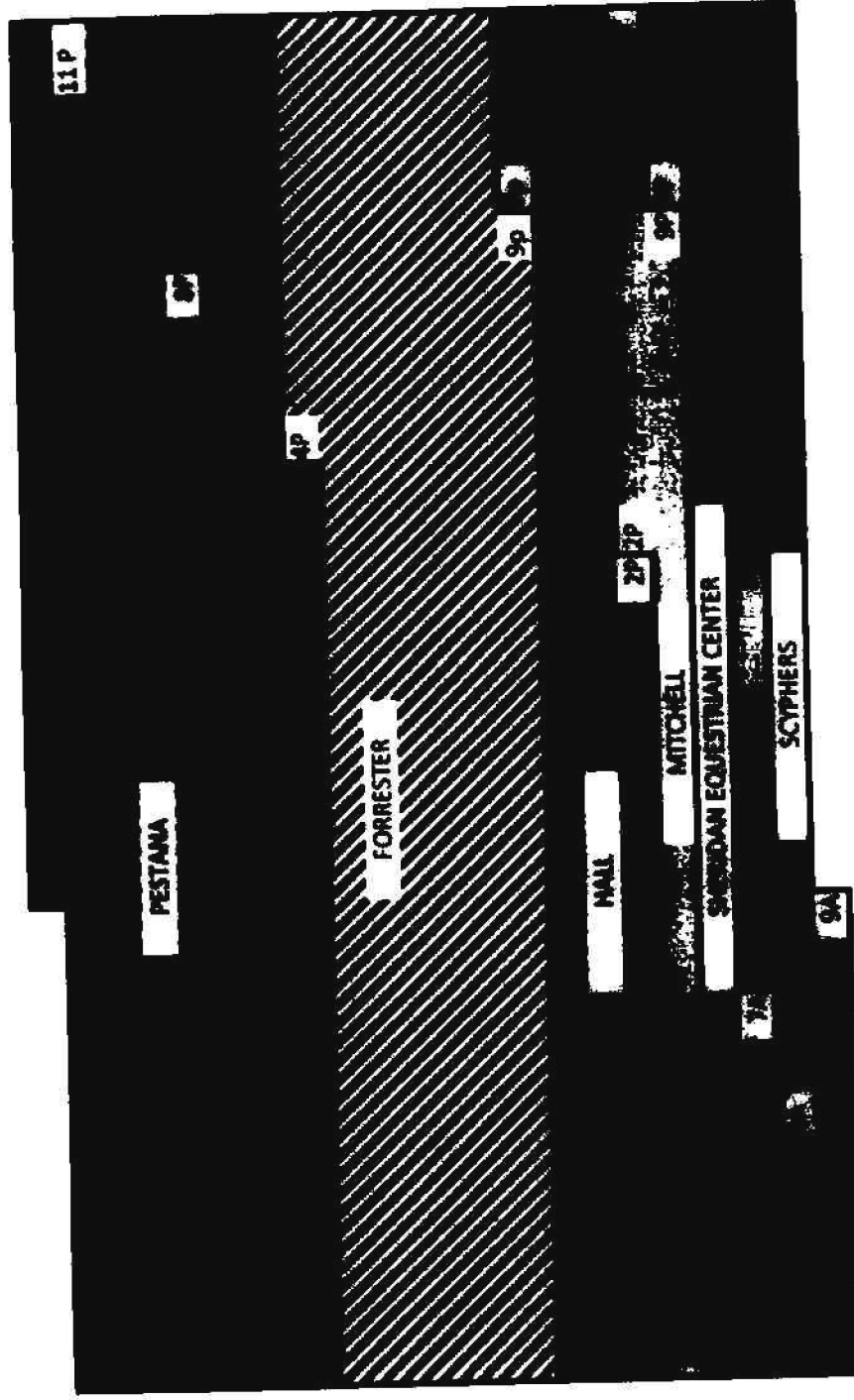
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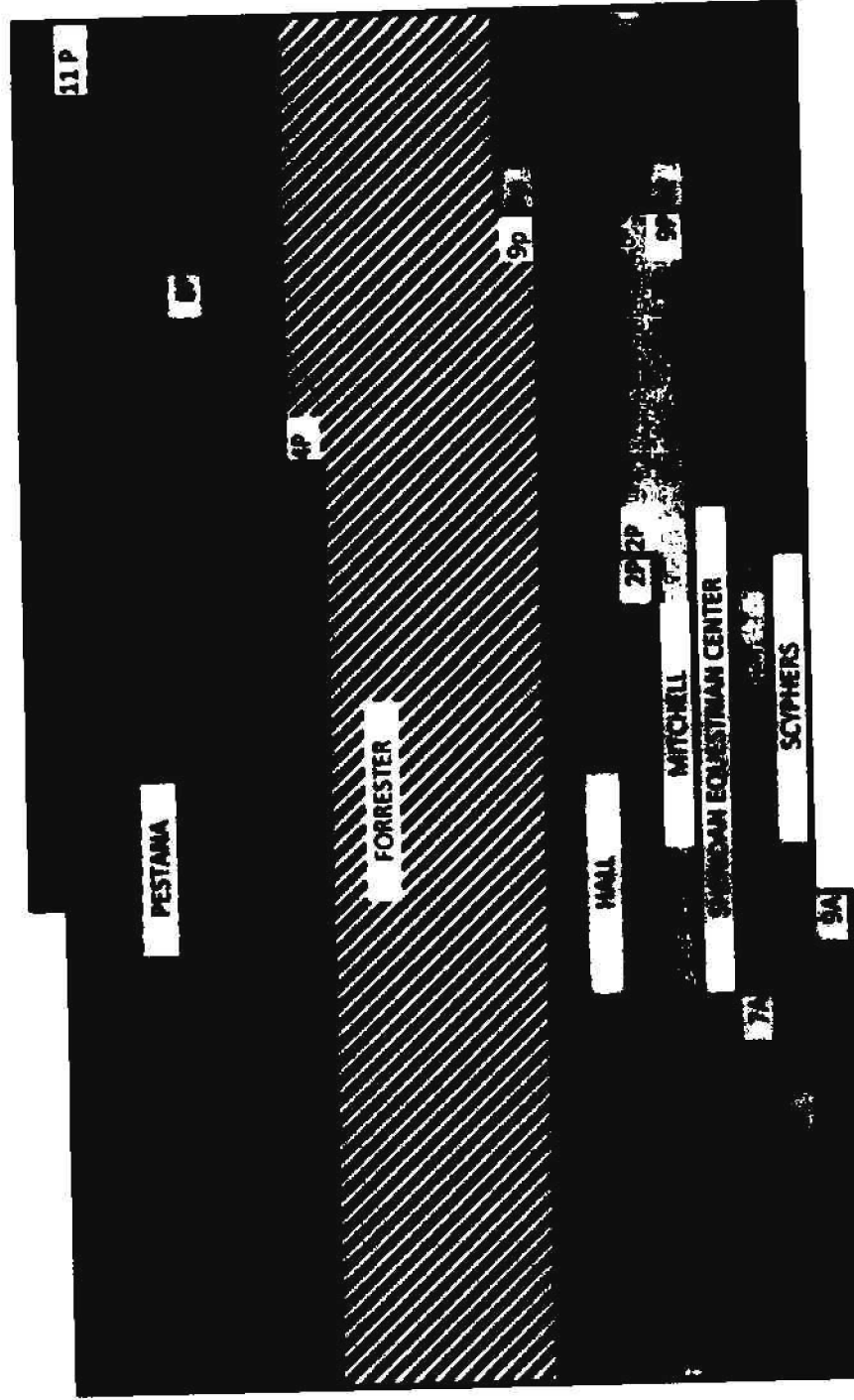
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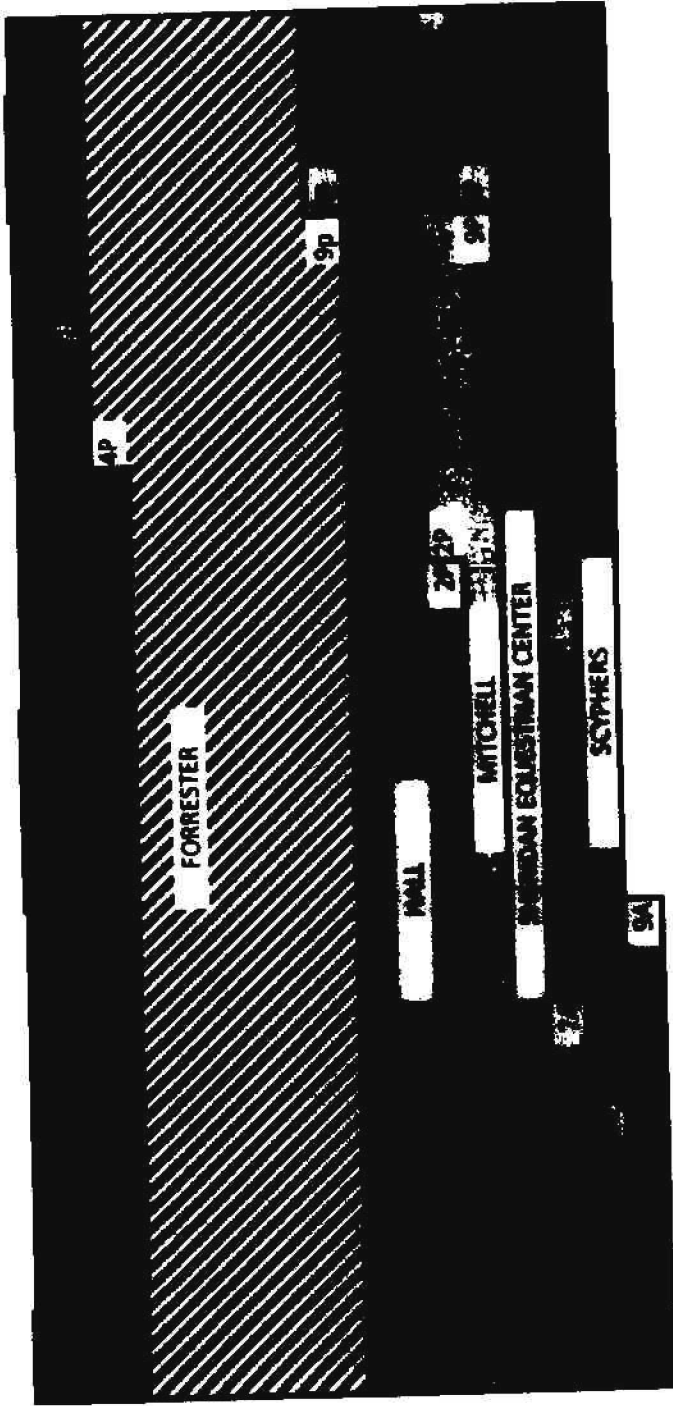
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- 1 Bentley, Smith & Barden may share time in rotation if desired. All parties within this group must agree to any alteration in the rotation schedule within this group
- 2 Forrester, Hall, Mitchell, Sheridan Equestrian Center, Scharo and Scyphers may alter the rotation if desired if all parties agree to the change within this group.
- 3 Any complaints filed with the Office of the State Engineer and/or the Ninth Judicial District Court of the State of Nevada in and for Douglas County, Case No. 08 CV 0363 D, Dept No. 1, regarding the open and notorious exclusion of any party within these two (2) groups shall result in the strict enforcement of the rotation schedule for the remainder of the irrigation season
- 4 This rotation schedule reflects the lease of the Pestana rights to Bentley for the irrigation season. Any implementation of this schedule will occur at the beginning of a new 21 day cycle
- 5 Any excess water flowing off of any of these properties shall be considered as drain and waste water and shall be available to any downstream water user for irrigation and stock watering purposes

CERTIFICATE OF SERVICE

Pursuant to NRC P 5(b), I certify that I am an employee of the law office of Matuska Law Offices, Ltd. that on the ^{4th} day of May 2012, I served a true and correct copy of the preceding document entitled **NOTICE OF AND PETITION FOR JUDICIAL REVIEW** as follows:

Office of the State Engineer
Nevada Division of Water Resources
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(s) at Minden, Nevada, in the ordinary course of business.

☒ **BY PERSONAL SERVICE:** I personally delivered the above-identified document(s) by hand delivery to the office(s) of the person(s) named above.

☐ **BY FACSIMILE:**

☐ **BY FEDERAL EXPRESS ONE-DAY DELIVERY.**

☐ **BY MESSENGER SERVICE:** I delivered the above-identified document(s) to Reno-Carson Messenger Service for delivery.


NANCY CLARK

BROOKE SHAW ZAMPEL
POST OFFICE BOX 2000
MINDEN, NEVADA 89423
(775) 782-7171

EXHIBIT 3

INDEX OF DOCUMENTS

NO.	DATE	DOCUMENT
1	04/30/12	Notice of and Petition for Judicial Review Ninth Judicial District Court Case No. 12-CV-0141 (Smith/Barden)
2	05/03/12	Notice of and Petition for Judicial Review Ninth Judicial District Court Case No. 12-CV-0145 (Bentley)
3	10/11/12	Order Granting Motion to Consolidate and Motion to Intervene Ninth Judicial District Court Case No. 08-CV-0363-D-1
4	04/25/13	Notice of and Petition for Judicial Review Ninth Judicial District Court Case No. 13-CV-0121 (Bentley)
5	11/27/13	Order Denying Petitions
6	12/02/13	Notice of Entry of Order Denying Petitions

EXHIBIT 1

RECEIVED

Case No.: 12 CV 01411

APR 30 2012

Dept. No.: I

DOUGLAS COUNTY
DISTRICT COURT CLERK

FILED

This document does not contain the personal information of any person.

2012 APR 30 PM 4:31

CLERK

M. BIAGGINI, CLERK

IN THE NINTH JUDICIAL DISTRICT COURT 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 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
County, Nevada.

Joy Smith, Daniel Barden and Elaine Barden,

Petitioners,

vs.

State of Nevada, Office of the State Engineer,

Respondent.

NOTICE OF AND PETITION FOR JUDICIAL REVIEW

COME NOW petitioners, Joy Smith, Daniel Barden and Elaine Barden, by and through their undersigned counsel, and hereby petition this Court for judicial review of the State of Nevada, Office of the State Engineer's ("State Engineer") issuance of the 2012 North Split of Sheridan Creek Rotation Schedule (the "Rotation Schedule") on March 30, 2012, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference. Notice of this petition is given pursuant to NRS 533.450 (3).

///

1 In support of this petition, petitioners allege as follows:

2 1. This Petition for Judicial Review is filed pursuant to NRS 533.450.

3 2. Jurisdiction and venue lies with this Court as this Court entered its Findings of Fact,
4 Conclusions of Law, Order and Judgment adjudicating the waters of the North Branch of Sheridan
5 Creek in Case No. 08-CV-0363-D ("Judgment"). NRS 533.450(1). This Court also specifically
6 reserved jurisdiction to allow for review pursuant to NRS 533.450 of any rotation schedule issued
7 by the State Engineer. Judgment at 15.

8 3. Petitioners are the joint owners of vested water rights, Proofs V-06346 and V-06347, to
9 the waters of the North Diversion of Sheridan Creek and the commingled waters of Stutler Creek.
10 Petitioners have an interest in Permit 7595, Certificate 1760, to the waters of Gansberg Springs,
11 which are also commingled with the waters of the North Sheridan Creek. These waters are
12 collectively referred to hereinafter as "North Sheridan Creek."

13 4. On March 30, 2012, the State Engineer issued the Rotation Schedule requiring petitioners
14 to rotate their use of North Sheridan Creek water.

15 5. Petitioners received notice of the Rotation Schedule through an e-mail sent by the State
16 Engineer on March 30, 2012. Ex. 1.

17 6. Petitioners do not agree with or consent to the Rotation Schedule.

18 7. The State Engineer imposed the Rotation Schedule in violation of NRS 533.075.

19 8. Petitioners are aggrieved by the Rotation Schedule, and the interests of petitioners have
20 been injured because the Rotation Schedule impairs their vested and certificated water rights.

21 9. Petitioners are aggrieved by the Rotation Schedule as it is (a) in violation of constitutional
22 or statutory provisions, (b) is in excess of the statutory authority of the State Engineer to impose, (c)
23 is affected by other error of law, (d) is not supported by substantial evidence, and/or (e) is arbitrary
24 or capricious or characterized by abuse of discretion.

25 10. Petitioners request that the Court receive written memoranda of points and authorities,
26 and thereafter conduct its review of the Rotation Schedule.

27 ///

28 ///

1 WHEREFORE, petitioners pray for judgment as follows:

- 2 1. For an order setting aside the Rotation Schedule;
- 3 2. For an award of attorneys' fees and costs incurred by petitioners in this proceeding; and
- 4 3. For such other and further relief as the Court deems just and proper.

5 Dated this 30 day of April, 2012.

6 DYER, LAWRENCE, PENROSE
7 FLAHERTY, DONALDSON & PRUNTY

8 By 
9

10 James W. Penrose, Bar No. 2083

11 Jessica C. Prunty, Bar No. 6926

12 Attorneys for Petitioners
13
14
15
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Dyer, Lawrence, Penrose, Flaherty, Donaldson & Prunty and that on the 3rd day of April, 2012, I caused to be mailed, Via Certified Mail postage prepaid, through the United States Postal Service, a true and correct copy of the within NOTICE AND PETITION FOR JUDICIAL REVIEW addressed to:

Office of the State Engineer
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, Nevada 89701
Certified No. 7007 1490 0003 9029 1475

Mr. Bryan L. Stockton, Esq.
General Deputy Attorney
100 North Carson Street
Carson City, Nevada 89701
Certified No. 7007 1490 0003 9029 1451

Thomas J. Scyphers
Kathleen M. Scyphers
1304 Aylesbury Court
Gardnerville, Nevada 89460
Certified No. 7007 1490 0003 9029 1376

Ronald R. Mitchell
Ginger G. Mitchell
Post Office Box 5607
Stateline, Nevada 89449
Certified No. 7007 1490 0003 9029 1383

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460
Certified No. 7007 1490 0003 9029 1390

Mr. Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno, Nevada 89505
Certified No. 7007 1490 0003 9029 1406

Donald S. Forrester
Kristina M. Forrester
913 Sheridane Lane
Gardnerville, Nevada 89460
Certified No. 7007 1490 0003 9029 1437

Frank Scharo
Post Office Box 1225
Minden, Nevada 89423
Certified No. 7007 1490 0003 9029 1444

James Bentley
MaryAnn Bentley
853 Sheridan Lane
Gardnerville, Nevada 89460
Certified No. 7007 1490 0003 9029 1369

Michael L. Matuska, Esq.
937 Mica Drive, Suite 16A
Carson City, Nevada 89705
Certified No. 7007 1490 0003 9029 1468

Irene Pestana
Pestana 1986 Family Trust
1431 Atteberry Lane
San Jose, California 95131
Certified No. 7007 1490 0003 9029 1420

Attn: Francis B. Doyle, Esq.
Irene Pestana & Michael Kelly
Pestana 1986 Family Trust
1135 The Alameda 2nd Floor
San Jose, California 95126
Certified No. 7007 1490 0003 9029 1413


Debora McEachin

From: Steve Walmsley [<mailto:swalmsley@water.nv.gov>]
Sent: Friday, March 30, 2012 12:00 PM
To: Bryan Stockton; 'dbarden_citadel@mindspring.com'; 'dduckracing@gmail.com'; Frank Scharo; Glenn Roberson; Joy Smith ('tjhiker113@yahoo.com'); Michael Matuska; Mitchell; 'oldbentley@gmail.com'; Stanka Consulting; 'tjhlaw@eschelon.com'; Tom Schyphers (kmscyph@verizon.net)
Cc: Kelvin Hickenbottom; Dan Taylor; Jason King; Tracy Taylor
Subject: 2012 North Split Sheridan Creek Rotation Schedule - Carson Valley.

Ladies and Gentlemen:

Attached is the cover letter and the 2012 North Split of Sheridan Creek Rotation Schedule for 2112.

Steve Walmsley
Supervisor III, Water Resource Specialist
Adjudication Section
Nevada Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

[swalmsley@water.nv.gov/](mailto:swalmsley@water.nv.gov)
(775) 684-2820
(775) 684-2811 FAX

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

March 30, 2012

Honorable David R. Gamble
Ninth Judicial District Court
Post Office Box 218
Minden, NV 89423

Jim Bentley
853 Sheridan Lane
Gardnerville, NV 89460
Via Email

Thomas J. Scyphers
Kathleen M. Scyphers
1304 Aylesbury Court
Gardnerville, NV 89460
Via Email

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

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, NV 89460
Via Email

Joy S. Smith
957 Sheridan Lane
Gardnerville, NV 89460
Via Email

Irene Pestana
Pestana 1986 Family Trust
1431 Arteberry Lane
San Jose, CA 95131

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, NV 89460
Via Email

Frank Scharo
Post Office Box 1225
Minden, NV 89423
Via Email

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

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

Michael L. Matuska, Esq.
937 Mica Drive, Suite 16A
Carson City, NV 89705
Via Email

Daniel P. Barden
Elaine V. Barden
P.O. Box 6310
Gardnerville, NV 89460
Via Email

Re: Carson Valley Adjudication (Case No.: 08-CV-0363-D) – Rotation Schedule.

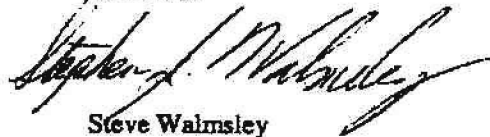
Ladies and Gentlemen:

Attached is the 2012 rotation schedule for the upcoming irrigation season. The rotation will begin at 9:00 A.M. on Sunday, April 1, 2012. The rotation schedule will also be attached to the motion titled "OPPOSITION TO THIRD MOTION FOR DIVISION OF WATER AND FOR CLARIFICATION OF PRIOR ORDER" to be filed with the Ninth Judicial District Court of the State of Nevada In and For the County of Douglas. Please note that the rotation schedule is preliminary and could be subject to modification by the court.

Temporary permits have been issued under Application Nos. 81687-T, Stutler Creek; 81688-T, Sheridan Creek; and 81689-T, Gansberg Spring; that strip the water off of the Pestana parcel for temporary use throughout the irrigation season on the Bentley parcel. Therefore, the rotation schedule will reflect the Bentley use of the Pestana water rights from April 1st through October 15th of 2012. Copies of these permits can be viewed on our website that is listed at the base of the heading of this letter.

You can contact me at (775) 684-2820 if you have any further questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Walmsley", written over a horizontal line.

Steve Walmsley

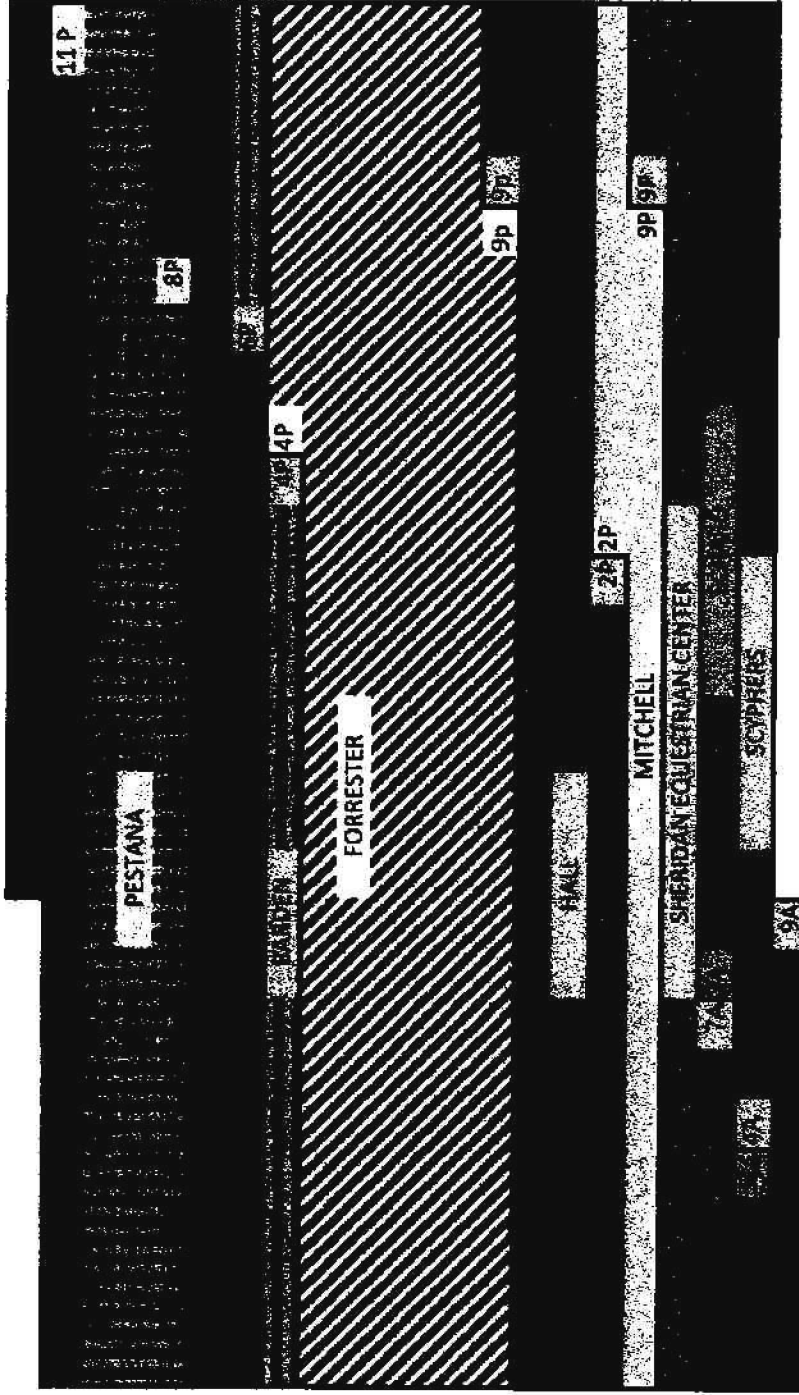
Supervisor III, Water Resource Specialist

SW

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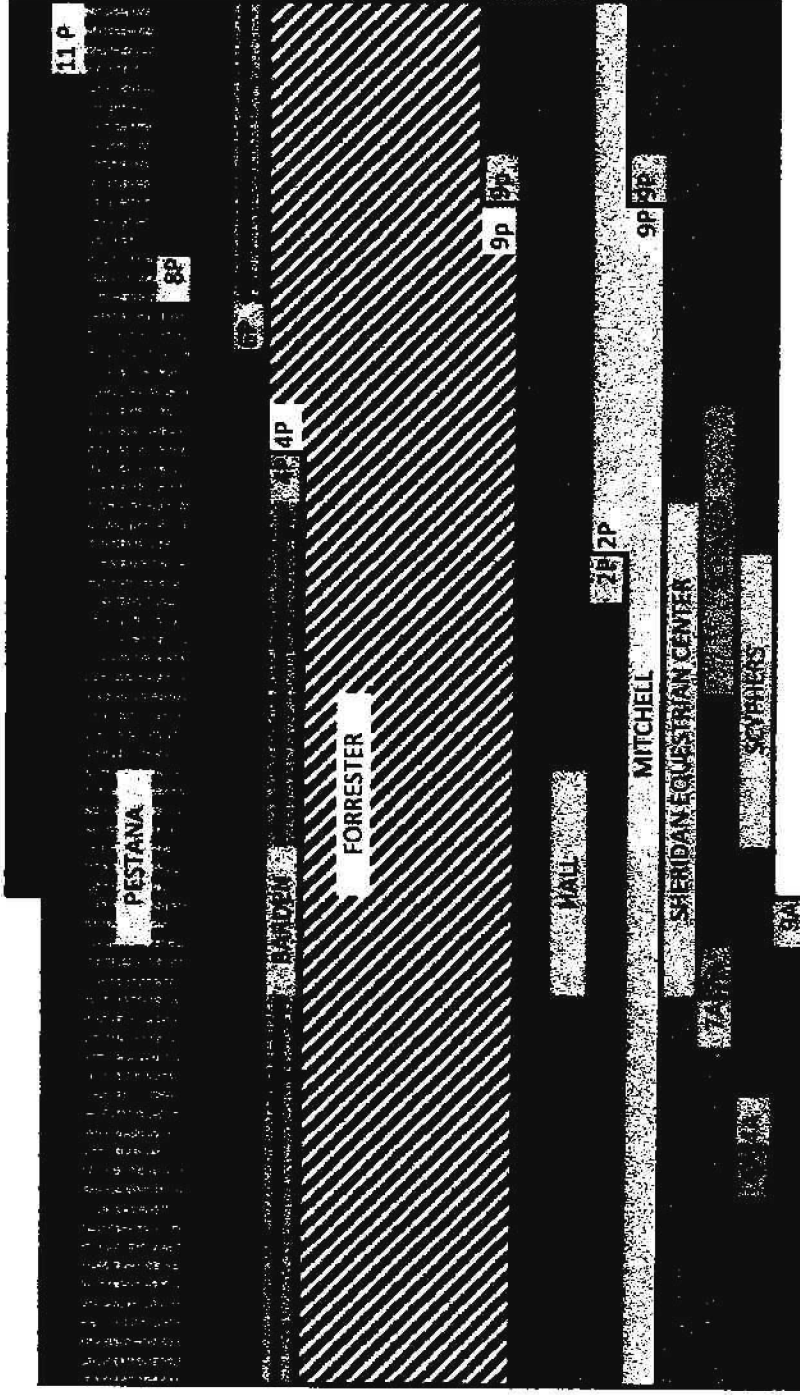


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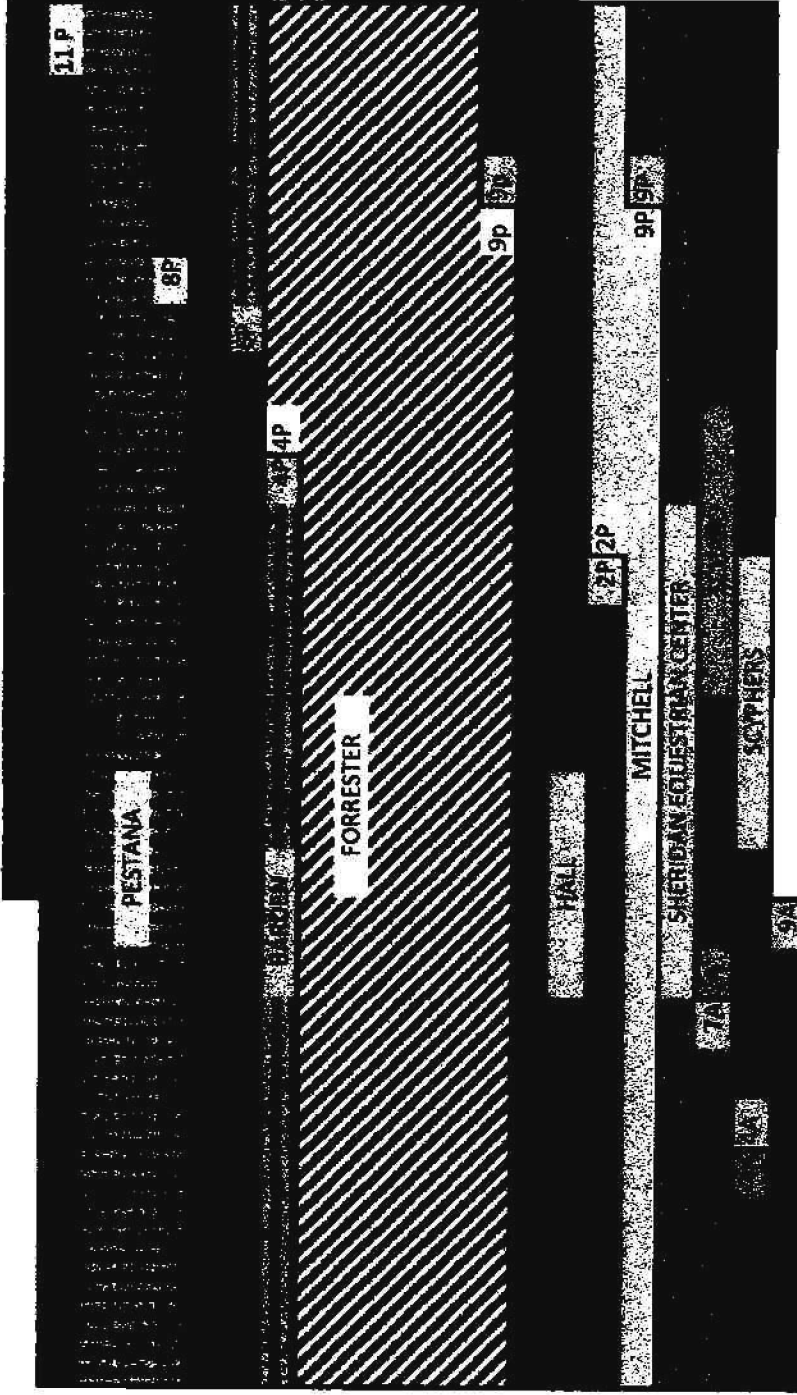


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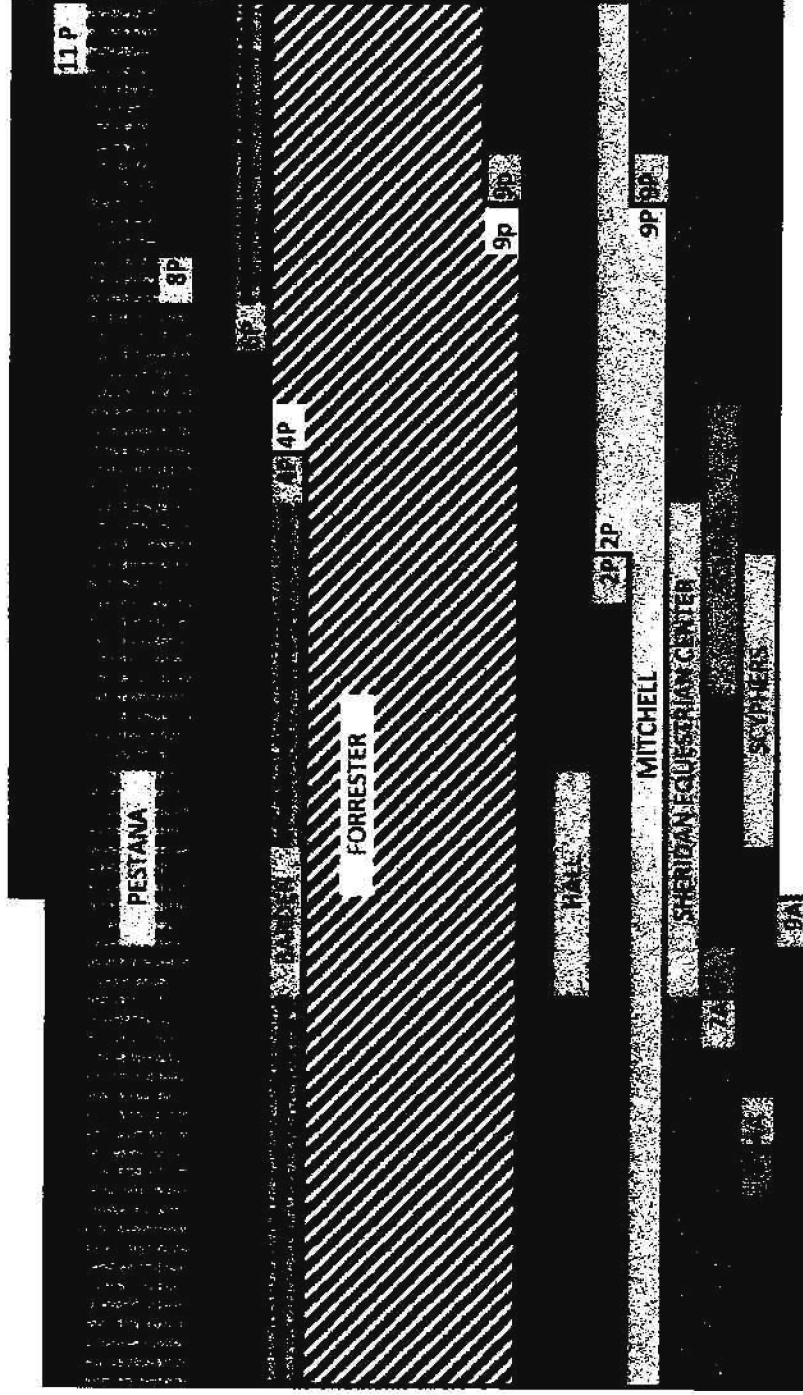


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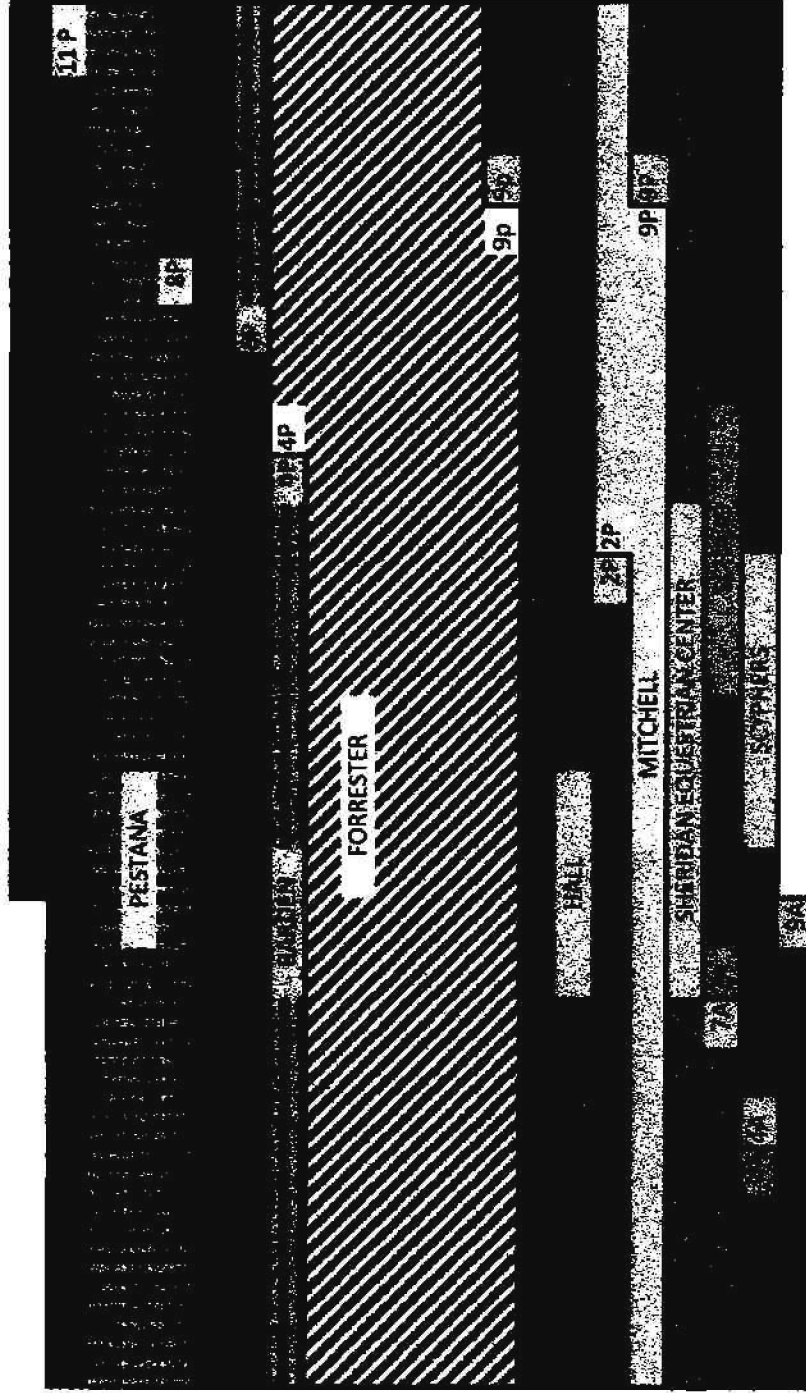


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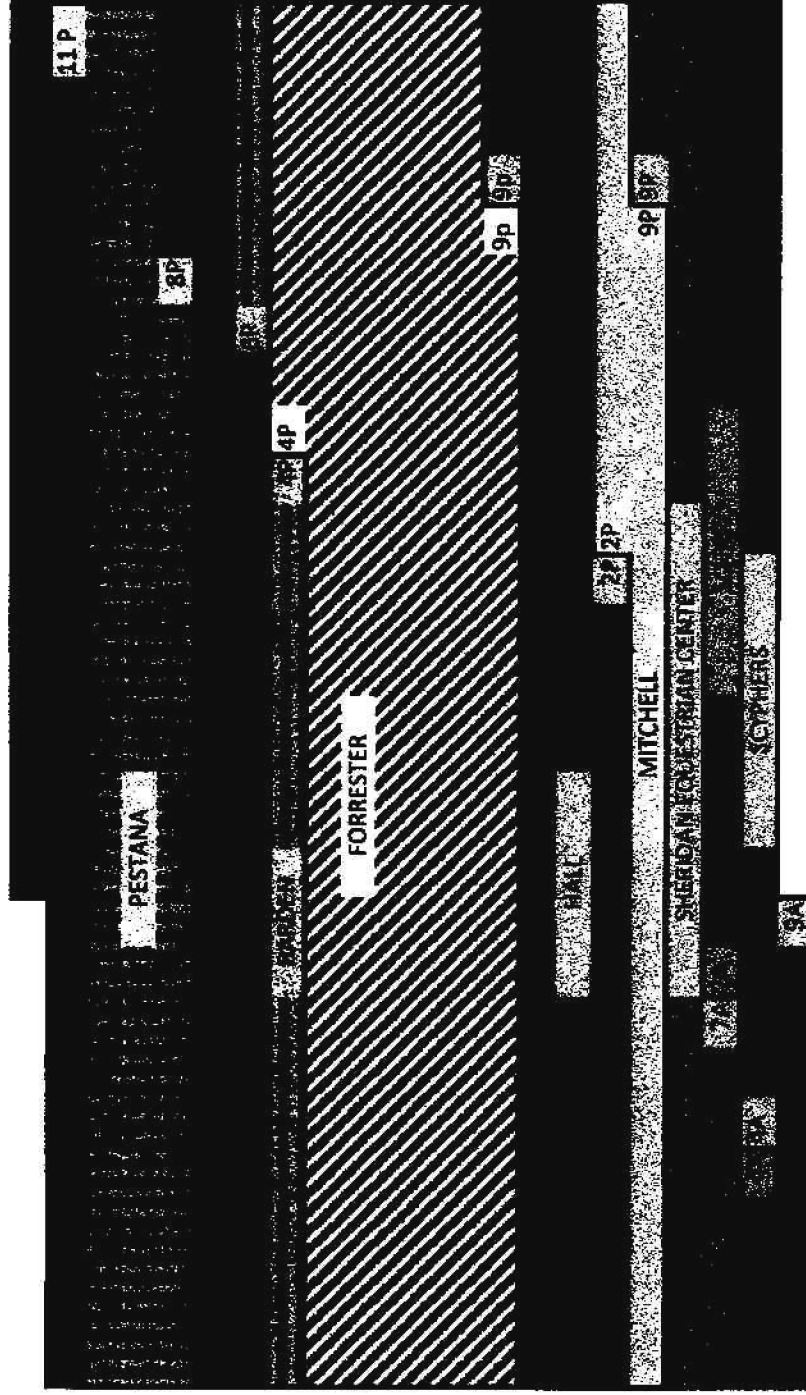


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TIME OF DAY

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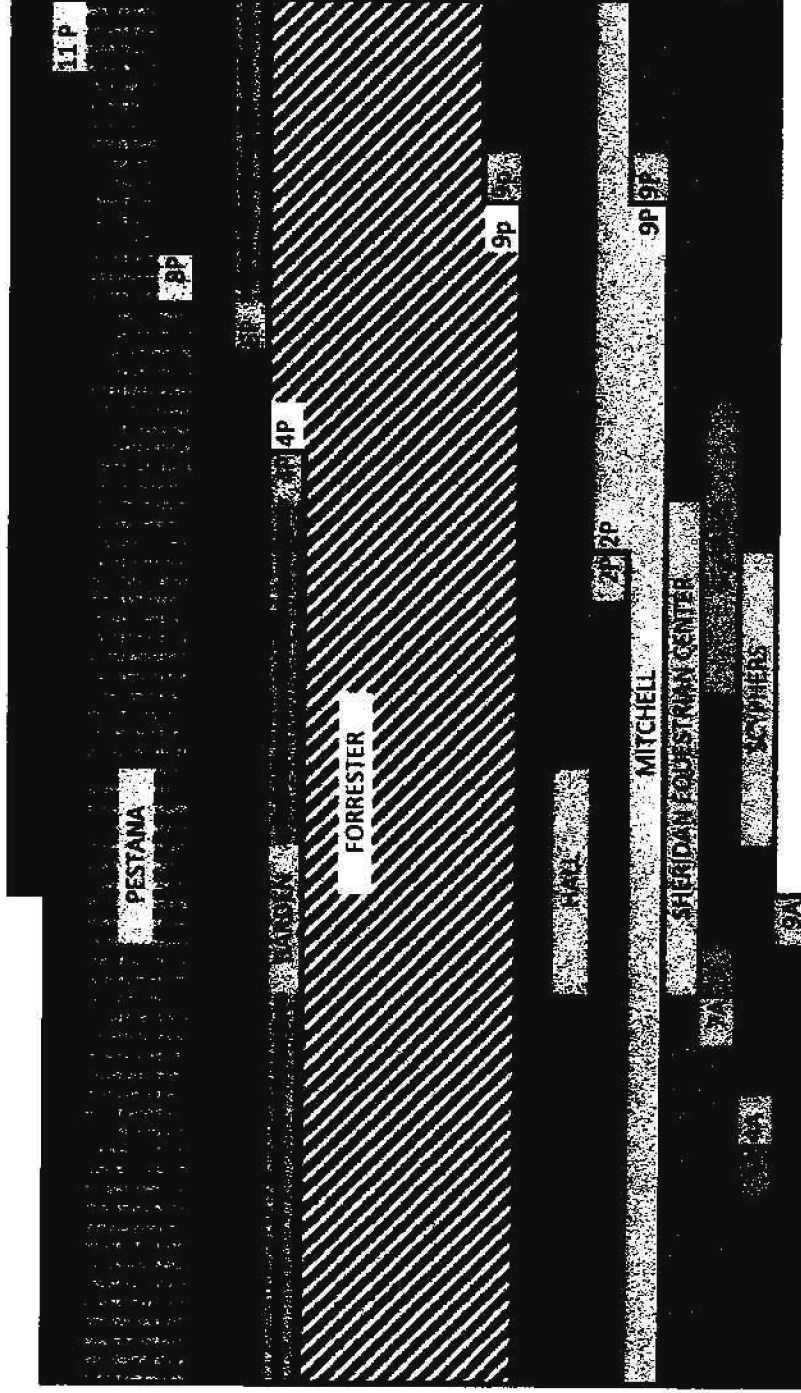


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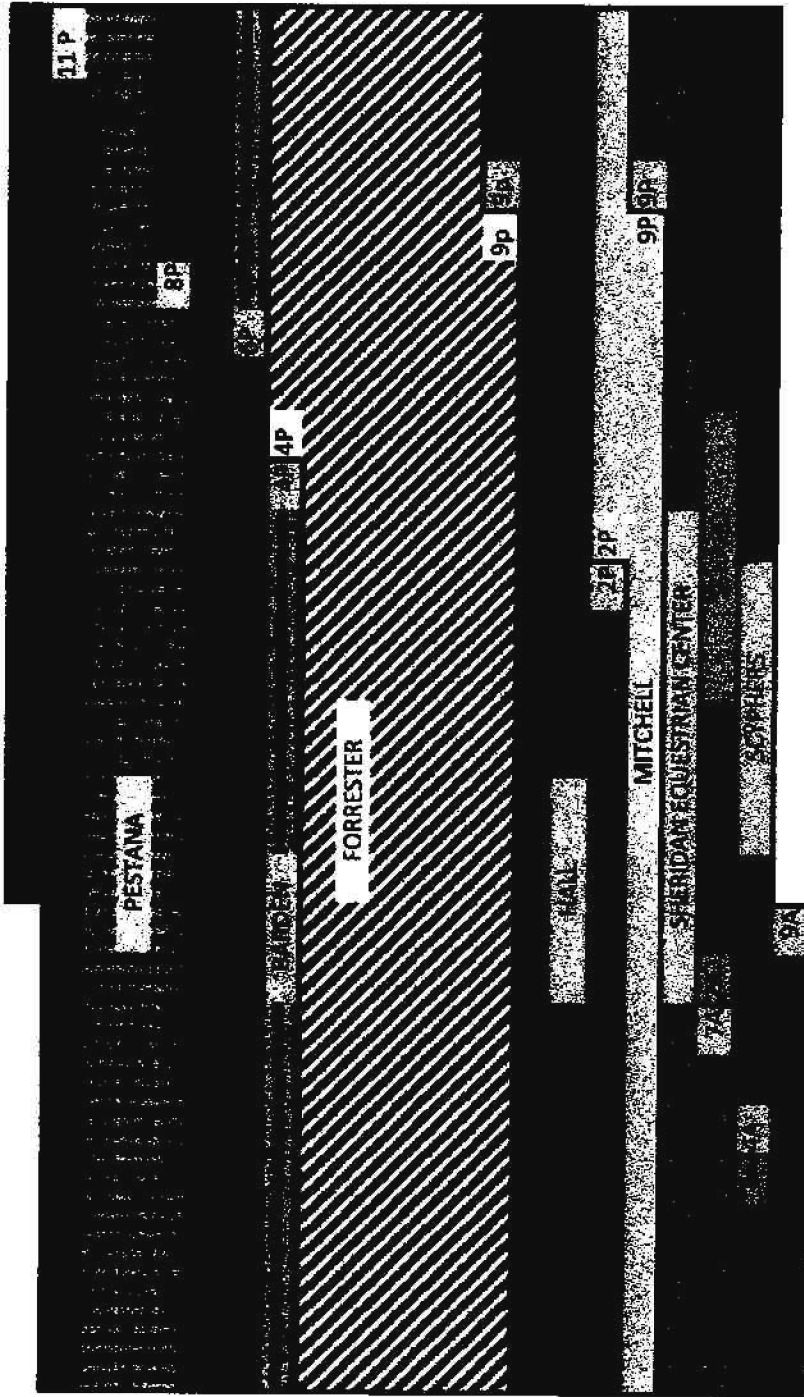


DATE

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FORRESTER

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HALE

MITCHELL

SHERIDAN EQUESTRIAN CENTER

SCOPHERS

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FORRESTER

PESTANA

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FORRESTER

EXHIBIT 2

IN THE SUPREME COURT OF NEVADA

Electronically Filed
Jan 31 2014 03:28 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

In Re: Rotation Schedule

Supreme Court Case No. 64773

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 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 County,
Nevada.

District Court Consolidated Case No.:
08-CV-0363-D1

DOCKETING STATEMENT
CIVIL APPEALS

JOY SMITH, DANIEL BARDEN and
ELAINE BARDEN, J.W. BENTLEY and
MARYANN BENTLEY, TRUSTEES OF
THE BENTLEY FAMILY 1995 TRUST,

Appellants,

v.

STATE OF NEVADA, OFFICE OF THE
STATE ENGINEER,

Respondent.

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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 fill out the statement completely or to file in in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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, 3.44, 810 P.2d. 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. **Judicial District:** Ninth **Department:** I
County: Douglas **Judge:** Nathan Tod Young
District Court Case No. 08-CV-0363-D-1
(consolidated Case Nos. 12-CV-0141; 12-CV-0145; and 13-CV-0121)

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

Attorney: Michael L. Matuska Telephone: (775) 392-2313
Firm: Matuska Law Offices, Ltd.
Address: 937 Mica Drive, Suite 16-A, Carson City, NV 89705
Client(s): J.W. Bentley and Maryann Bentley, Trustees of the Bentley Family
1995 Trust

Attorney: Jessica C. Prunty Telephone: (775) 885-1896
Firm: Dyer, Lawrence, Flaherty, Donaldson & Prunty
Address: 2805 Mountain Street, Carson City, NV 89703
Client(s): Joy Smith, Daniel Barden and Elaine Barden

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, Deputy Attorney General
Telephone: (775) 684-1100
Firm: Nevada Attorney General
Address: 100 North Carson Street, Carson City, NV 89701-4717
Client(s): Office of the State Engineer

Attorney: Thomas J. Hall Telephone: (775) 348-7011
Firm: Law Office of Thomas J. Hall
Address: P.O. Box 3948, Reno, NV 89505
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

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

- 2 ☐ Judgment after bench trial ☐ Dismissal
3 ☐ Judgment after jury verdict ☐ Lack of jurisdiction
4 ☐ Summary judgment ☐ Failure to state a claim
5 ☐ Default judgment ☐ Failure to prosecute
6 ☐ Grant/Denial of NRCP 60(b) ☐ Other (specify): _____
7 ☐ Grant/Denial of injunction ☐ Divorce decree:
8 ☐ Grant/Denial of declaratory ☐ Original ☐ Modification
9 relief ☐ Other disposition
10 ☒ Review of agency (specify): _____
11 determination

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

- 13 ☐ Child custody
14 ☐ Venue
15 ☐ Termination of parental rights

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

19 Writ proceeding (Case No. 56531 - dismissed)
20 Appeal (Case No. 56551 - dismissed)
21 Appeal (Case No. 59188 - dismissed)
22 Appeal (Case No. 60891 - dismissed)

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

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

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

Ninth Judicial District Court Case No. 13-CV-0121
Bentley v. State Engineer

Ninth Judicial District Court Case No. 08-CV-0363-D
Bentley, et al. 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 petition for judicial review of the actions of the Nevada State Engineer in imposing a rotation schedule on the water rights from the North Branch of Sheridan Creek and subjecting Appellants' vested water rights to said rotation schedule. Appellants' enjoy vested water rights which have been proven, accepted, adjudicated, and decreed in Case No. 08-CV-0363 free from mandatory rotation. The Nevada State Engineer maintains he was required to impose a rotation schedule pursuant to the *Findings of Fact, Conclusions of Law and Judgment* entered by the Hon. David R. Gamble on April 5, 2012, after the trial in Case No. 08-CV-0363-D ("*Judgment*"). However, that trial concerned Intervenor's challenge to a Diversion Agreement which benefits J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family 1995 Trust. Appellants JOY SMITH, DANIEL D. BARDEN, and ELAINE BARDEN were not parties to that subproceeding. The Diversion Agreement is a separate issue from the rotation schedule that is the subject of this appeal. Deputy Attorney General Bryan Stockton requested in closing argument at the conclusion of the trial that the *Judgment* include a directive regarding a mandatory rotation schedule. Counsel for J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family 1995 Trust requested, but was denied, an opportunity to provide a further response. The *Judgment* includes a directive to the Nevada State Engineer to impose a rotation schedule when the flow of the North Branch of Sheridan Creek drops below 2.0 cfs. However, the *Judgment* is not a final judgment (See Case No. 60891), expressly states that the order regarding the rotation schedule will not be part of the final decree, and the parties stipulated and the *Judgment* ordered that J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family 1995 Trust reserved the right to petition for judicial review:

15. The parties made the following stipulations in relation to these Exceptions at the beginning of the trial, which were adopted by the Court:

a. Exception 1, in part, was that the State Engineer would not attempt to include a rotation schedule in the Decree itself, but that the provisions of NRS 533.075 and the order of this Court would be used to determine when and if a rotation schedule is needed to efficiently use the waters of the State of Nevada. However,

1 Bentley reserves all objections to the imposition of a rotation
2 schedule, including objection about the statutory authority to do so.
3 (Judgment)

4 NRS 533.075 was the only legal basis cited for a rotation schedule. However,
5 that section only authorizes rotation schedules upon agreement from the water users,
6 and when read in conjunction with the preceding non-impairment statute,
7 NRS 533.065, precludes the court and the State Engineer from imposing
8 compulsory rotation schedules on adjudicated claims.

9 The Nevada State Engineer proceeded to impose rotation schedules for the
10 entirety of the 2012 and 2013 irrigation seasons on all water rights users, including
11 JOY SMITH, DANIEL D. BARDEN, and ELAINE BARDEN, even though they
12 were not parties to subproceeding 08-CV-0363-D or the *Judgment*. JOY SMITH,
13 DANIEL D. BARDEN, and ELAINE BARDEN petition for judicial review of the
14 2012 rotation schedule (Case No. 12-CV-0141). J.W. BENTLEY and MARYANN
15 BENTLEY also petitioned for judicial review of the 2012 rotation schedule (Case
16 No. 12-CV-0145). JOY SMITH, DANIEL D. BARDEN, and ELAINE BARDEN,
17 and J.W. BENTLEY and MARYANN BENTLEY filed a joint petition for judicial
18 review of the 2013 rotation schedule (Case No. 13-CV-0121). All petitions were
19 consolidated with the pending adjudication case (08-CV-0363) and designated as
20 subproceeding D-1. HALL RANCHES, LLC; THOMAS J. SCYPHERS and
21 KATHLEEN M. SCYPHERS; FRANK SCHARO; SHERIDAN CREEK
22 EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company; DONALD
23 S. FORRESTER and KRISTINA M. FORRESTER; and RONALD R. MITCHELL
24 and GINGER G. MITCHELL intervened in those cases.

25 The petitions for judicial review proceeded to a hearing on October 17, 2013,
26 before the Hon. Nathan Tod Young. Judge Young entered a ruling from the bench
27 in which he declined to address the merits of the petitions which question the legal
28 basis for a compulsory rotation schedule because rotation was addressed in a prior
judgment. The written *Order* which followed on November 27, 2013, departs
slightly from the bench ruling and is unclear on whether it is intended to address the
merits of the legal challenge.

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

1. Whether the Order addressed all of Appellants' claims for judicial
review.

2. Whether Appellants' vested water rights protected by Nevada's non-impairment statute (NRS 533.065) can be subjected to rotation schedule by order of the district court and/or the Nevada State Engineer.

3. Whether rotation schedules are voluntary arrangements under NRS 533.075.

4. Whether the parties stipulated to and the district court ordered in Case No. 08-CV-0363-D that Bentley could pursue these issues on judicial review.

5. Whether the *Judgment* in Case No. 08-CV-0363-D precludes this petition for judicial review by operation of the doctrines of claim preclusion or issue preclusion.

6. Whether the *Judgment* in Case No. 08-CV-0363-D can have preclusive effect against Joy Smith, Daniel Barden, and Elaine Barden, who were not parties to that subproceeding.

7. Whether the rotation improperly sends water from Gansberg Springs to claimants who do not have rights to Gansberg Springs.

8. Whether intervention was proper.

9. Whether the rotation schedule is (a) in violation of constitutional or statutory provisions, (b) in excess of the statutory authority of the State Engineer to impose, (c) affected by other error of law, (d) not supported by substantial evidence, and/or (e) arbitrary or capricious or characterized by abuse of discretion.

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.

- N/A
- ☐ Yes
- ☐ No

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

If so, explain: Whether Appellants' vested water rights protected by Nevada's non-impairment statute (NRS 533.065) can be subjected to rotation schedule by order of the district court and/or the Nevada State Engineer.

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

N/A

Was it a bench or jury 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: November 27, 2013

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

3 **16. Date written notice of entry of judgment or order served:** December 2,
4 2013

5 Was service by:

- 6 ☐ Delivery
7 ☒ Mail/electronic/fax

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

10 (a) Specify the type of motion, the date and method of service of the
11 motion, and the date of filing.

12 ☐ NRCP 50(b)

13 ☐ NRCP 52(b)

14 ☒ NRCP 59 Date of filing: The question of whether Intervenor's
motion for award of costs is a tolling motion is addressed in the Motion for
15 Determination of Appealable Order filed on January 15, 2014.

16 **NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or**
17 **reconsideration may toll the time for filing a notice of appeal.**
18 **See AA Primo Builders v. Washington, 126 Nev. __, 245 P.3d 1190**
(2010)

19 (b) Date of entry of written order resolving tolling motion: N/A

20 (c) Date written notice of entry of order resolving tolling motion served:
21 N/A

22 Was service by:

- 23 ☐ Delivery
24 ☐ Mail

25 **18. Date notice of appeal filed:** December 23, 2013

26 If more than one party has appealed from the judgment or order, list the date
27 each notice of appeal was filed and identify by name the party filing the notice of
28 appeal:

Joint Notice of Appeal filed by Joy Smith, Daniel Barden and Elaine Barden
filed on December 23, 2013.

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:

(a)

- ☒ NRAP 3A(b)(1) ☐ NRS 38.205
☐ NRAP 3A(b)(2) ☐ NRS 233B.150
☐ NRAP 3A(b)(3) ☐ NRS 703.376
☐ Other (specify): _____

(b) Explain how each authority provides a basis for appeal from the
judgment or order: This is an appeal from a final order denying
consolidated petitions for judicial review.

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

(a) Parties:

Appellants J.W. Bentley and MaryAnn Bentley, Trustees of the
Bentley Family 1995 Trust; Joy Smith, Daniel Barden and Elaine
Barden

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

(b) 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:

22. Give a brief description (3 to 5 words) of each party's separate claims,

1 counterclaims, cross-claims, or third-party claims, and the date of
2 formal disposition of each claim.

3 Appellants contend that vested water rights protected by Nevada's non-
4 impairment statute (NRS 533.065) cannot be subjected to a mandatory rotation
5 schedule.

6 **23. Did the judgment or order appealed from adjudicate ALL the claims**
7 **alleged below and the rights and liabilities of ALL the parties to the action or**
8 **consolidated actions below?**

- 9 ☒ Yes
10 ☐ No

11 **24. If you answered "No" to question 24, complete the following:**

- 12 (a) Specify the claims remaining pending below:
13
14 (b) Specify the parties remaining below:
15
16 (c) Did the district court certify the judgment or order appealed from as a
17 final
18 judgment pursuant to NRCP 54(b)?
19 ☐ Yes
20 ☐ No
21
22 (d) Did the district court make any express determination, pursuant to
23 NRCP 54(b), that there is no just reason for delay and express
24 direction for the entry of judgment?
25 ☐ Yes
26 ☐ No
27
28

29 **25. If you answered "No" to any part of question 24, explain the basis for**
30 **seeking appellate review (e.g., order is independently appealable under**
31 **NRAP 3A(b)):**

1 **26. Attach file-stamped copies of the following documents:**

- 2 • The latest-filed complaint, counterclaims, cross-claims, and third-
- 3 • Any tolling motion(s) and order(s) resolving tolling motion(s).
- 4 • Orders of NRCP 41(a) dismissals formally resolving each claim,
- 5 counterclaims, cross-claims and/or third-party claims asserted in the
- 6 action or consolidated action below, even if not at issue on appeal.
- 7 • Any other order challenged on appeal.
- 8 • Notices of entry for each attached order.
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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.

Appellants:

J.W. Bentley and MaryAnn Bentley,
Trustees of The Bentley Family 1995
Trust

Michael L. Matuska, Esq.

(Name of Counsel of Record)

Date

January 30, 2014

(Signature of Counsel of Record)

Nevada, Douglas County

(State and county where signed)

Appellants:

Joy Smith, Daniel Barden and Elaine
Barden

Jessica, L. Prunty, Esq.

(Name of Counsel of Record)

Date

January 30, 2014

(Signature of Counsel of Record)

Nevada, Carson City

(State and county where signed)

CERTIFICATE OF SERVICE

I certify that on the 31st day of January 2014, 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 31st day of January 2014.


LIZ STERN, ALS

INDEX OF DOCUMENTS

NO.	DATE	DOCUMENT
1	04/30/12	Notice of and Petition for Judicial Review Ninth Judicial District Court Case No. 12-CV-0141 (Smith/Barden)
2	05/03/12	Notice of and Petition for Judicial Review Ninth Judicial District Court Case No. 12-CV-0145 (Bentley)
3	10/11/12	Order Granting Motion to Consolidate and Motion to Intervene Ninth Judicial District Court Case No. 08-CV-0363-D-1
4	04/25/13	Notice of and Petition for Judicial Review Ninth Judicial District Court Case No. 13-CV-0121 (Bentley)
5	11/27/13	Order Denying Petitions
6	12/02/13	Notice of Entry of Order Denying Petitions