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

3 In Re: Rotation Schedule

4 In the Matter of the Determination
5 of the Relative Rights in and to
6 The Waters of Mott Creek, Taylor
7 Creek, Cary Creek (aka Carey
8 Creek), Monument Creek, and Bulls
9 Canyon, Stutler Creek (aka Stattler
10 Creek), Sheridan Creek, Gansberg
11 Spring, Sharpe Spring, Wheeler
12 Creek No. 1 Wheeler Creek No. 2,
13 Miller Creek, Beers Spring, Luther
14 Creek and Various Unnamed Sources
15 in Carson Valley, Douglas County,
16 Nevada.

12 JOY SMITH, DANIEL BARDEN and
13 ELAINE BARDEN, J.W. BENTLEY and
14 MARYANN BENTLEY, TRUSTEES OF THE
15 BENTLEY FAMILY 1995 TRUST,
16 1995 Trust,

16 Appellants,

16 vs.

17 STATE OF NEVADA, OFFICE OF THE STATE
18 ENGINEER,

18 Respondent.

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21 **REPLY IN SUPPORT OF MOTION TO DISMISS**

22 COME NOW THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK
23 SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada Limited
24 Liability Company, DONALD S. FORRESTER, KRISTINA M. FORRESTER,
25 RONALD R. MITCHELL, GINGER G. MITCHELL and HALL RANCHES, LLC, a
26 Nevada Limited Liability Company ("Intervenors"), as Real Parties
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28

Electronically Filed
Feb 04 2014 10:00 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Supreme Court No. 64773
District Court Consolidated
Case No.: 08-CV-0363-D1

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2 in Interest, by and through their counsel, THOMAS J. HALL, ESQ.,
3 and submit their Reply in Support of Motion to Dismiss as follows:

4 **A. Previous Rulings and Dismissals.**

5 In the previous Appeal from the District Court, Case No. 08-
6 CV-0363, Supreme Court Case No. 60891, filed by the Bentleys, this
7 Court dismissed that appeal for lack of jurisdiction as the April
8 5, 2012, Order was not a final judgment.

9
10 It should be noted that the lower court consolidated the
11 several Petitions for Judicial Review which are the basis for the
12 current appeal into the not yet final proceedings under Case No.
13 08-CV-0363-D-1, a sub-proceeding under the Final Order of
14 Determination filed under Case No. 08-CV-0363.

15 Here again, a final judgment has not been entered in the
16 consolidated District Court Cases in Case No. 08-CV-0363 and this
17 appeal should also be dismissed.

18
19 **B. NRAP4 (a) (6).**

20 (6) *Premature Notice of Appeal.* A premature notice of
21 appeal does not divest the district court of
22 jurisdiction. The Supreme Court may dismiss as
23 premature a notice of appeal filed after the oral
24 pronouncement of a decision or order but before entry of
25 the written judgment or order, or before entry of the
26 written disposition of the last-remaining timely motion
27 listed in Rule 4(a)(4). If, however, a written order or
28 judgment, or a written disposition of the last remaining
timely motion listed in Rule 4(a)(4), is entered before
dismissal of the premature appeal, the notice of appeal
shall be considered filed on the date of and after entry
of the order, judgment or written disposition of the
last-remaining timely motion.

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2 This current notice of appeal is premature as a final
3 judgment has not been entered in the case, but rather only in the
4 sub-proceeding under Case No. 08-CV-0363-D-1 which only partially
5 adjudicates the controversy, and the "Supreme Court may dismiss as
6 premature a notice of appeal"

7
8 Further, NRAP 4(C), provides as follows:

9 **(4) Effect of Certain Motions on a Notice of Appeal.** If
10 a party timely files in the district court any of the
11 following motions under the Nevada Rules of Civil
12 Procedure, the time to file a notice of appeal runs for
13 all parties from entry of an order disposing of the last
such remaining motion, and the notice of appeal must be
filed no later than 30 days from the date of service of
written notice of entry of that order:

14 (C) a motion under Rule 59 to alter or amend the
15 judgment;

16 The Intervenor timely filed their Motion to Amend the
17 Judgment on December 18, 2013. That Motion/issue has not been
18 disposed of by the District Court.

19 **C. Conclusion.**

20 This Appeal should be dismissed as no final judgment has been
21 entered.

22 The undersigned does hereby affirm that the preceding
23 document does not contain the social security number of any
24 person.
25

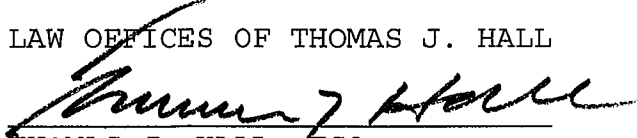
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2 Respectfully submitted this 3rd day of February, 2014.

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2 **CERTIFICATE OF SERVICE**

3 I certify that I am an employee of Thomas J. Hall, Esq., and
4 that on this date, pursuant to NRCP 5(b), I placed in the U.S.
5 Mail, postage prepaid and electronically filed the foregoing with
6 the Clerk of the Court by using the ECF system, a true and correct
7 copy of the preceding document addressed to:
8

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27 DATED this 3rd day of February, 2014.
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Misti Hale