

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

2
3
4 Electronically Filed
5 Jun 23 2015 08:44 a.m.
6 Tracie K. Lindeman
7 Clerk of Supreme Court

8 J.W. BENTLEY AND MARYANN
9 BENTLEY TRUSTEES OF THE
10 BENTLEY FAMILY 1995 TRUST; JOY
11 SMITH; DANIEL BARDEN; AND
12 ELAINE BARDEN,

CASE NO.: 64773

13 Appellants

14 vs.

15 STATE OF NEVADA, OFFICE OF THE
16 STATE ENGINEER; DONALD S. FORRESTER,
17 AND KRISTINA M. FORRESTER; HALL
18 RANCHES, LLC; THOMAS J. SCYPHERS AND
19 KATHLEEN M. SCYPHERS; FRANK SCHARO;
20 SHERIDAN CREEK EQUESTRIAN CENTER, LLC;
21 AND RONALD R. MITCHELL AND GINGER
22 G. MITCHELL,

23 Respondents.

24 _____
25 J.W. BENTLEY; MARYANN BENTLEY,
26 TRUSTEES OF THE BENTLEY FAMILY
27 1995 TRUST; JOY SMITH; DANIEL D. BARDEN;
28 AND ELAINE BARDEN,

CASE NO.: 66303

Appellants,

vs.

HALL RANCHES, LLC; THOMAS J. SCYPHERS;
KATHLEEN M. SCYPHERS; FRANK SCHARO;
SHERIDAN CREEK EQUESTRIAN CENTER, LLC,
A NEVADA LIMITED LIABILITY COMPANY;
DONALD S. FORRESTER; KRISTINA M.
FORRESTER; RONALD R. MITCHELL; AND
GINGER G. MITCHELL,

Respondents.

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

1 J.W. BENTLEY; MARYANN BENTLEY,
2 TRUSTEES OF THE BENTLEY FAMILY 1995
3 TRUST; JERALD R. JACKSON, TRUSTEE OF
4 THE JERALD R. JACKSON 1975 TRUST, AS
5 AMENDED; AND IRENE M. WINDHOLZ,
6 TRUSTEE OF THE WINDHOLZ TRUST DATED
7 AUGUST 11, 1992,

CASE NO.: 66932

8 Appellants,

9 vs.

10 THE STATE OF NEVADA STATE ENGINEER;
11 HALL RANCHES, LLC; THOMAS J. SCYPHERS;
12 KATHLEEN M. SCYPHERS; FRANK SCHARO;
13 SHERIDAN CREEK EQUESTRIAN CENTER, LLC;
14 DONALD S. FORRESTER; KRISTINA M.
15 FORRESTER; RONALD R. MITCHELL;
16 AND GINGER G. MITCHELL,

17 Respondents.

18 On Appeal from the Ninth Judicial District Court
19 of the State of Nevada, in and for Douglas County
20 Hon. Nathan Todd Young, District Judge

21 **REPLY BRIEF OF APPELLANTS**

22 **JOY SMITH, DANIEL BARDEN AND ELAINE BARDEN**

23 DYER, LAWRENCE, FLAHERTY,
24 DONALDSON & PRUNTY
25 JESSICA C. PRUNTY
26 Nevada Bar No 6926
27 2805 Mountain Street
28 Carson City, Nevada 89703
Telephone (775)885-1896
*Attorneys for Appellants Joy Smith,
Daniel Barden and Elaine Barden*

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned hereby certifies that Appellants Joy Smith, Daniel Barden and Elaine Barden (Smith & Barden) are individuals with no parent corporations and with no publicly held companies that have an interest in them. Jessica C. Prunty of the Dyer, Lawrence, Flaherty, Donaldson & Prunty firm has been Smith & Barden's only attorney in the district court proceedings below and no other attorney is expected to appear on their behalf in this matter.

Dated this 22nd day of June, 2015

DYER, LAWRENCE, FLAHERTY,
DONALDSON & PRUNTY
2805 Mountain Street
Carson City, Nevada 89703
Telephone: (775) 885-1896
Fax: (775) 885-8728

By: /s/Jessica C. Prunty
Jessica C. Prunty NV #6926
Attorneys for Appellants

1 **TABLE OF CONTENTS**

2 Page

3 TABLE OF AUTHORITIES CITED ii

4 INTRODUCTION 1

5 ARGUMENT 1

6 I. Rotation of Water Rights in Nevada

7 Must be Consensual 1

8 A. NRS 533.075 Does Not Impair Vested

9 Water Rights and Thus Controls 2

10 B. Common Law Does Not Contemplate

11 Using Forced Rotation in the Administration

12 of Water Rights 5

13 II. The State Engineer Did Not Properly Implement

14 the District Court’s Adjudication Order 7

15 III. Smith & Barden Are Entitled to Petition the

16 District Court for Judicial Review of the

17 State Engineer’s Rotation Schedule 9

18 IV. The State Engineer Did Not Have Substantial

19 Evidence to Support His Rotation Schedules 9

20 CONCLUSION 11

21 CERTIFICATE OF COMPLIANCE 12

22 CERTIFICATE OF SERVICE 13

23
24
25
26
27
28

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

Dyer, Lawrence, Flaherty, Donaldson & Prunty
 2805 Mountain Street
 Carson City, Nevada 89703
 (775) 885-1896

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES CITED

I. CASES

Anderson Family Associates v. Ricci,
 124 Nev. 182, 179 P.3d 1201 (2008) 4

Bacher v. State Engineer,
 122 Nev. 1110, 146 P.3d 793 (2006) 6

Barnes v. Sabron,
 10 Nev. 217 (1875) 5, 6

Davenport v. State Farm Auto Ins. Co.,
 81 Nev. 361, 404 P.2d 10 (1965) 7

G & M Properties v. District Court,
 95 Nev. 301, 594 P.2d 714 8

Hamm v. Carson City Nugget,
 85 Nev. 99, 100, 450 p.2d 358 (1969) 6

Humboldt Land & Cattle Co. v. Allen,
 14 F.2d 650 (Nev. 1926) 2

In re Manse Spring,
 60 Nev. 280, 108 P.2d 311 4

Natchez v. State,
 102 Nev. 247, 721 P.2d 361 (1986) 4

Ormsby County v. Kearney,
 37 Nev. 314, 142 P. 803 (1914) 2

II. STATUTES

NRS 1.030 6

NRS 533.035 6

NRS 533.070 6

NRS 533.075 *passim*

NRS 533.085 2

NRS 533.220(1) 7

NRS 533.230 7

NRS 533.305 5

NRS 533.450 7, 9

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

1	SB 65	3, 4
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 Adjudication Order and Decree compelled him to include the non-consenting
2 users within the rotation schedule he imposed. S.E. Ans. Brf. at 11-12.

3 A. NRS 533.075 Does Not Impair Vested Water Rights and Thus Controls.

4 When the Nevada Legislature enacted the water law scheme in 1913 it
5 intended to “place the distribution of the waters of the streams or stream
6 systems of the state to the person entitled thereto, under state control.” *Ormsby*
7 *County v. Kearney*, 37 Nev. 314, 336, 142 P. 803, 805 (1914). But in doing so,
8 it ensured that vested rights would be protected from *impairment* as
9 memorialized in NRS 533.085:

10 [n]othing contained in this chapter shall impair the vested right
11 of any person to the use of water, nor shall the right of any person
12 to take and use water be impaired or affected by any of the
provisions of this chapter where appropriations have been
initiated in accordance with law prior to March 22, 1913.

13 This protection was built into the water act by the Legislature as a due process
14 measure to ensure that water rights established prior to its enactment would not
15 be impaired by application of the statutory scheme, “that is, they shall not be
16 diminished in quantity or value.” *Ormsby County*, 37 Nev. at 352, 142 P. at
17 810. But the Legislature never intended to exempt vested rights from the
18 purview of the statutory scheme as suggested by Intervenors.

19 The whole scope and purpose of the act show that it was intended
20 to apply to *all water rights, whether acquired before or after its*
21 *adoption*. There would be little or no use in attempting state
control over a stream or stream system unless all water rights
were brought under that control.

22 *Id.* (*emphasis added*); see also *Humboldt Land & Cattle Co. v. Allen*, 14 F.2d
23 650 (Nev. 1926) (“If the Water Law can apply only to rights initiated after its
24 enactment, then as to the Humboldt River, and probably as to every other
25 considerable stream in the state, it is utterly useless.”).

26 ///

27 ///

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

1 Therefore, the question in this case becomes whether NRS 533.075¹ is
2 a statute that impairs vested water rights:

3 To bring about a more economical use of the available water
4 supply, it shall be lawful for water users owning lands to which
5 water is appurtenant to rotate in the use of the supply to which
6 they may be collectively entitled; or a single water user, having
7 lands to which water rights of a different priority attach, may in
8 like manner rotate in use, when such rotation can be made without
9 injury to lands enjoying an earlier priority, to the end that each
10 user may have an irrigation head of at least 2 cubic feet per
11 second.

12
13 NRS 533.075. This statute was enacted as part of the 1913 comprehensive
14 water law scheme. Its plain and clear terms embody the policy of encouraging
15 the common practice of agreed-upon rotation as an efficient use of a single
16 source of water by its different irrigation users.²

17
18 ¹ It should be noted that only Intervenors advance the argument that NRS
19 533.075 cannot apply to their vested water rights. Additionally, the State
20 Engineer conceded in the proceedings below that rotation in the Carson Valley
21 is done only upon consent of the water users when he stated that there are rotation
22 schedules on other stream systems in the Carson Valley, but those were arrived
23 at “without intervention by the State Engineer.” IV JA 674.

24
25 ² The policy considerations articulated in the out-of-state cases and arcane
26 treatises are cited by Intervenors in support of their argument that rotation in
27 irrigations practices is a good thing. Inter. Ans. Br. at 12-17. That may be the
28 case under certain circumstances, but regardless, in Nevada the practice of
rotation is only statutorily sanctioned if bounded by consent parameters.

 In fact, in this past legislative session, the Legislature reiterated that
consensual rotation is the law in Nevada when it rejected a bill introduced by the
Division of Water Resources, a provision of which would have given the State
Engineer the authority to impose a rotation schedule. On December 20, 2014,
Senate Bill No. 65 (S.B. 65) was prefiled on behalf of the Division of Water
Resources. Nevada S.B. 65, 78th Reg. Session (December 20, 2014). Sec. Req.
for Jud. Not., Ex. 1. As introduced, S.B. 65 sought to give the State Engineer the
authority to impose a rotation schedule. *Id.* at Sec. 32. On April 20, 2015, the
Senate Committee on Government Affairs (“Government Affairs Committee”)
adopted an amendment, which entirely removed the language in Sec. 32 granting

1 The statute is an affirmative grant of authority to water users. Nothing
2 in NRS 533.075 can be construed as a diminishment in “quantity or value” of
3 vested water rights. *Cf. Anderson Family Associates v. Ricci*, 124 Nev. 182,
4 179 P.3d 1201 (2008) (holding that neither the vested right itself, nor its
5 *priority*, could be *lost* through the cancellation of a later, statutorily issued
6 permit, which had changed the place and manner of use of the vested right); *In*
7 *re Manse Spring*, 60 Nev. 280, 108 P.2d 311 (statute providing that water
8 rights are *forfeited* after period of non-use inapplicable to vested water rights
9 as forfeiture would “*impair*” the vested rights).

10 As opposed to the forfeiture of the right to use water or the loss of a
11 water right’s priority date, requiring that rotation of any water rights, including
12 vested rights, be based upon consent does not impair those vested water rights.
13 Those water right users still receive their water, subject to a potential pro rata
14 reduction in times of shortage, along with all the other users of the water
15 source. There is also nothing preventing them from taking advantage of the
16 flexibility that NRS 533.075 provides to use their water outside the terms of
17 ///

18 _____
19 the State Engineer the authority to impose a rotation schedule. Nevada S.B. 65,
20 78th Reg. Session (reprinted with amendments adopted on April 20, 2015); Sec.
21 Req. for Jud. Not., Exs. 2, 3 (S.B. 65 passed the Government Affairs Committee
22 as amended, but failed to garner the two-thirds majority vote required to pass the
23 Senate.). “Generally, the rejection of an amendment indicates that the legislature
24 does not intend the bill to include the provisions embodied in the rejected
25 amendment.” *Natchez v. State*, 102 Nev. 247, 250-51, 721 P.2d 361, 363 (1986)
26 (stating that when the Legislature was presented with a bill allowing
27 ophthalmologists to employ optometrists and then deleted that provision before
28 ultimately passing the bill, it demonstrated that the Legislature’s intent was to
prohibit that particular type of employment relationship). Clearly, the Nevada
Legislature has no appetite to change the law in Nevada to allow for forced
rotation.

1 the Decree in agreement with other users, even if not all users in the system
2 participate. In such a case, the non-participating users cannot over-appropriate
3 the resource to the rotating users' detriment in times of shortage. The State
4 Engineer can safeguard against any such worry with the threat of curtailment
5 orders or by otherwise regulating the quantity of water taken by non-
6 participating users to ensure that they receive no more than their pro rata share
7 in times of shortage. *See* NRS 533.305.

8 B. Common Law Does Not Contemplate Using Forced Rotation in the
9 Administration of Water Rights.

10 Given that NRS 533.075 does not impair vested water rights, whatever
11 the common law was in regards to rotation in 1913 is irrelevant. Nonetheless,
12 contrary to Intervenor's position, there is no definitive common law authority
13 in Nevada allowing for forced rotation in the *administration* of water rights.

14 Intervenor's mistakenly rely upon *Barnes v. Sabron*, 10 Nev. 217 (1875),
15 for the proposition that the common law in Nevada prior to 1913 mandated
16 forced rotation. Int. Ans. Brf. at 16-17. That case is not about forced rotation,
17 rather it is a case that establishes the prior appropriation concept that the metes
18 and bounds of the right to use water is beneficial use. 10 Nev. at 243. In other
19 words, a water right user is not entitled to any more water than he can put to
20 use.

21 In *Barnes*, the dispute was between two users of a creek, one senior to the
22 other. The senior appropriator, who happened to be downstream from the junior
23 appropriator, was insisting that the junior appropriate had to turn the water of the
24 creek down to senior appropriator at all times, even when the senior appropriator
25 could not put the water to use. *Id.* at 227-30. The Court disagreed and held that
26 because the senior appropriator had made his use of water only during certain
27 periods of time in the irrigation season, he only had the established right to use
28

1 the water at those times, and the junior appropriator was entitled to use the water
2 during the other times. *Id.* at 240-43.

3 The Court held that a user of water is only entitled to an amount of water
4 which can actually be put to beneficial use, one of the foundational precepts of
5 Nevada water.³ *Id.* at 244-45 (cited in *Bacher v. State Engineer*, 122 Nev. 1110,
6 1116 n.8, 146 P.3d 793, 795 n.8 (2006)). Therefore, the Court held that the junior
7 appropriator could obtain a right to use the water in the times that the senior
8 appropriator could not put it to use. *Id.*

9 Smith & Barden do agree that the actual division of water in the *Barnes*
10 case between the two appropriators of the stream in question was done on the
11 basis of time, not quantity. But the waters at issue here were never divided
12 amongst the users on the basis of time. The Decree and FOD makes the division
13 of the waters of North Sheridan Creek in terms of quantity with an assigned rate
14 and duty, not on the basis of the timing of the use. II JA 388; V SJA 961-63;
15 NRS 533.070.

16 Here the question is whether the State Engineer may administer rights by
17 mandated rotation that contradicts the division by quantity in the Decree and
18 required by law. This is not an issue reached in *Barnes*, and the Court in that case
19 did not adopt a compulsory rule of rotation in the administration of water rights
20 that trumps the consent-based parameters of NRS 533.075.⁴

21
22 ³ Ultimately, the 1913 Nevada Legislature codified the principle
23 articulated in *Barnes* in NRS 533.035, which states that “[b]eneficial use shall be
24 the basis, the measure and the limit of the right to the use of water.”

25 ⁴ Furthermore, given the Legislature’s enactment of NRS 533.075, any
26 common law to the contrary does not control. The “common law is the rule of
27 decision in our courts *unless* in conflict with constitutional or *statutory*
28 commands.” *Hamm v. Carson City Nugget*, 85 Nev. 99, 100, 450 P.2d 358
(1969) (emphasis added); NRS 1.030. If the common law is contrary to a

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

1 **II. The State Engineer Did Not Properly Implement the District Court’s**
2 **Adjudication Order.**

3 The State Engineer is charged to *administer* the rights of the water law
4 claimants in accordance with the FOD and under the adjudicating district court’s
5 “supervision and control.” NRS 533.220(1); NRS 533.230. Of course the State
6 Engineer is not free to disregard the dictates of the decree court, converse to the
7 State Engineer’s mischaracterization of Smith & Barden’s position. SE Ans. Brf.
8 at 19. What the State Engineer does not discuss is the actual language of the
9 Adjudication Order and the Decree. The Decree, which referred to and reiterated
10 portions of the Adjudication Order,⁵ provides:

11 [U]nder the provisions of NRS 533.075 and the orders of this Court,
12 when the combined flow of Sheridan Creek falls below 2.0 cubic
13 feet per second (cfs), the State Engineer shall impose a rotation
14 schedule and the rotation schedule shall be in effect from the time
15 the North Diversion of Sheridan Creek drops below 2.0 cfs until the
16 flow rises above 2.0 cfs or until the schedule is modified by the
17 Court. The rotation schedule shall be prepared at the beginning of
18 the irrigation season to *allow review by this Court, under NRS §*
19 *533.450, if any party challenges the schedule.* The State Engineer
20 has full authority to implement a rotation schedule, *if appropriate.*
21 The rotation schedule shall reflect any agreements between the
22 parties. The State Engineer shall monitor the system and *make*
23 *changes as required by law or by the request* of the parties, which
24 changes are subject to review in this Court.

19 V SJA 849 (emphasis added); *see also* I JA 169-170.

20
21 statutory enactment, that common law must give way to the statute. *Davenport*
22 *v. State Farm Auto Ins. Co.*, 81 Nev. 361, 404 P.2d. 10 (1965). Here, even if
23 there was some pre-1913 support for the concept of authorized compulsory
24 rotation, that law has been abrogated by the enactment of the consent-based
25 provisions of NRS 533.075.

25 ⁵ While Smith & Barden did not appeal the Decree, given the Decree’s
26 integration of the Adjudication Order’s dictates under which the State Engineer
27 was operating when Smith & Barden petitioned for judicial review upon being
28 included in his rotation schedule, for ease of reference, Smith & Barden cite to
the Decree and Adjudication Order. *See* V SJA 848, 974-989.

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In crafting its order, the district court referred to NRS 533.075 and stated that the State Engineer had the authority to implement rotation, “if appropriate.” He left the specificity of the content, manner or scope of any such rotation schedule to the discretion of the State Engineer, as well as directed the State Engineer to “make changes required by law” in monitoring the system.⁶ V SJA 849; *see also* I JA 169-170. The Court also ensured that any party objecting to the rotation schedules or changes made thereto, could petition the Court for review. *Id.* Plainly, the State Engineer’s hands were not tied. His authority under the Adjudication Order and Decree must therefore be exercised in accordance with NRS 533.075.

In administering North Sheridan Creek water, the State Engineer is limited by the very statutes he is charged with administering, including NRS 533.075. Given the district court’s express grant of authority to the State Engineer to make changes to any rotation schedule “as required by law,” the State Engineer cannot use the mandates of the Adjudication Order and Decree as a shield to excuse his actions in forcing non-consenting water users to rotate their use of their water. *Id.* If the State Engineer had excluded the non-consenting users from the purview of the rotation schedule, he would not have violated the Adjudication Order as that exclusion was “required by law.” Yet, the State Engineer abdicated his duty and perfunctorily compiled a schedule including all users, consenting or not. Those administrative actions were contrary to Nevada law and arbitrarily and capriciously singled out some users in favor of other users, all of equal priority.

///

⁶ The district court’s authority in a statutory adjudication is not the broad, equitable power espoused by Intervenor, but is limited in scope that granted the adjudication provisions of NRS Chapter 533. *G & M Properties .v District Court*, 95 Nev. 301, 594 P.2d 714 (court’s authority in statutory adjudication is limited to that set forth in adjudication statutes).

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

1 Therefore, the district court erred below in concluding the State Engineer acted
2 appropriately and in conformity with Nevada law.

3
4 **III. Smith & Barden Are Entitled to Petition the District Court for
5 Judicial Review of the State Engineer’s Rotation Schedule.**

6 Both the State Engineer and Intervenors state that Smith & Barden were
7 parties to the adjudication proceeding and are bound by the Decree. Int. Ans. Brf.
8 at 6; SE Ans. Brf. at 22-23. Smith & Barden agree that as users of the waters
9 adjudicated by the Decree, they are bound by its terms. Nor do they posit that
10 they are somehow “above the law.” What the State Engineer and Intervenors
11 ignore is that Smith & Barden have the right, just as “any person feeling
12 aggrieved by any order or decision of the State Engineer,” to petition for judicial
13 review of the State Engineer’s decision to include them in the rotation schedule
14 under NRS 533.450. This right was specifically affirmed by the District Court
15 in both the Adjudication Order and the Decree.

16
17 **IV. The State Engineer Did Not Have Substantial Evidence to Support His
18 Rotation Schedules.**

19 The State Engineer deflects responsibility to monitor the North Sheridan
20 Creek system when implementing rotation schedules to the district court’s
21 Adjudication Order. He opines that in the wake of that order, he is not required
22 to make any findings that rotation of the waters is the most efficient use of the
23 resource and does not impair any one user’s right to the water, given their equal
24 priority standing. However, that order contained no such findings, and those are
25 findings that must be made if this Court is going to accept the proposition that
26 forced rotation is permissible in Nevada.

27 ///

1 Further, Intervenor's bald assertion that Appellants were using *all* of the
2 water and Intervenor received *no* water have no support in the record. Inter.
3 Ans. Br. at 23. Intervenor's support are pieces of testimony from two of the
4 water users who favored rotation to the effect that their water usage increased
5 after the rotation schedules were issued. *Id.* at 24-29. Of course, Smith & Barden
6 could also pull bits of testimony from the record that demonstrate that their rights
7 have been diminished and otherwise impaired as a result of the rotation. *See* IJA
8 145-50. In either case, there were no findings made one way or the other by the
9 district court. And it is upon that shaky evidentiary base, that this Court is urged
10 to find that substantial evidence supports forcing Appellants, as highland water
11 users, to subjugate the usage of their rights in favor of their lowland neighbors,
12 even though they all hold rights of equal priority.

13 Nevada water law provides for no such distinction and in the absence of
14 substantial evidence of consent, efficiency and non-impairment, Smith & Barden
15 cannot be forced to rotate their water. Therefore, the district court erred in
16 finding that substantial evidence supported the State Engineer's imposition of the
17 rotation schedule.

18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

The district court erred in concluding that forced rotation is condoned by Nevada law and that the rotation schedules imposed that did not carve out Smith & Barden from their purview were valid, legal and supported by substantial evidence. Accordingly, and for the foregoing reasons, the order of the district court denying Smith & Barden's petitions for judicial review must be reversed and the matter remanded with instructions that the State Engineer must structure his rotation schedules for North Sheridan Creek in such a manner that non-consenting water users are exempted from their scope.

Respectfully submitted this 22nd day of June, 2015.

DYER, LAWRENCE, FLAHERTY,
DONALDSON & PRUNTY
2805 Mountain Street
Carson City, Nevada 89703
Telephone: (775) 885-1896
Fax: (775) 885-8728
Email: jprunty@dyerlawrence.com

By /s/ Jessica C. Prunty
Jessica C. Prunty NV #6926
Attorneys for Appellants Smith & Barden

1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this brief complies with the formatting requirements
3 of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
4 requirements of NRAP 32(a)(6) because: this brief has been prepared in a
5 proportionally spaced typeface using WordPerfect, Times New Roman 14 point
6 font.

7 2. I further certify that this brief complies with the page- or type-volume
8 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted
9 by NRAP 32(a)(7)(C), it is:

10 (a) proportionately spaced, has a typeface of 14 points or more, and contains
11 3864 words; and (2) does not exceed 15 pages.

12 3. Finally, I hereby certify that I have read this appellate brief, and to the
13 best of my knowledge, information, and belief, it is not frivolous or interposed for
14 any improper purpose. I further certify that this brief complies with all applicable
15 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which
16 requires every assertion in the brief regarding matters in the record to be supported
17 by a reference to the page and volume number, if any, of the transcript or appendix
18 where the matter relied on is to be found. I understand that I may be subject to
19 sanctions in the event that the accompanying brief is not in conformity with the
20 requirements of the Nevada Rules of Appellate Procedure.

21 Dated this 22nd day of June, 2015.

22 DYER, LAWRENCE, FLAHERTY,
23 DONALDSON & PRUNTY
24 2805 Mountain Street
25 Carson City, Nevada 89703
26 Telephone: (775) 885-1896
27 Fax: (775) 885-8728

28 By /s/ Jessica C. Prunty
Jessica C. Prunty NV #6926
Attorneys for Appellants Smith & Barden

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

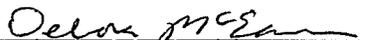
CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2015, I caused a true and correct copy of the within **REPLY BRIEF OF APPELLANTS JOY SMITH, DANIEL BARDEN AND ELAINE BARDEN** to be deposited in the U.S. Mail, first-class postage prepaid, addressed to the persons listed below:

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

Thomas J. Hall, Esq.
Law Offices of Thomas J. Hall
P.O. Box 3948
Reno, Nevada 89520

Michael L. Matuska, Esq.
Matuska Law Offices, Ltd.
2310 South Carson Street, Suite #6
Carson City, Nevada 89701


Debora McEachin