

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERALD R. JACKSON, Trustee
of the JERALD R. JACKSON
1975 TRUST, AS AMENDED;
and IRENE M. WINDHOLZ
TRUST DATED AUGUST 11,
1992,

Appellants,

vs.

THE STATE OF NEVADA
STATE ENGINEER; and
EDWARD H.
GROENENDYKE, Trustee of
the GORENENDYKE FAMILY
TRUST,

Respondents.

CASE NO. 67289

District Court Case No. 08-cv-0363

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RESPONDENT STATE ENGINEER'S ANSWERING BRIEF

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Respondent Jason King, P.E., State Engineer, by and through counsel, Nevada Attorney General Adam Paul Laxalt and Senior Deputy Attorney General Bryan L. Stockton, respectfully submit the State Engineer's Answering Brief.

I. ISSUES

1. Does substantial evidence support the factual finding that the Green Acres properties have vested water rights?

2. Does substantial evidence support Spring A as the Source of the Green Acres vested rights?

3. Does the fact that Spring A produces more water than needed for the Barrum Ranch property irrigated by Spring A contribute to the substantial evidence that Green Acres properties have a vested right thereto?

4. Can Jackson assert a claim for acquisition by prescription when the issue was not litigated before the District Court?

II. STATEMENT OF THE CASE

“On June 5, 1987, a petition was filed in the Office of the State Engineer requesting a determination of the relative rights of the claimants to the waters of Sheridan Creek, Douglas County Nevada.” AA Vol. 1, p. 8.¹ “This request was followed by an order dated June 17, 1987, from the Ninth Judicial District Court in and for Douglas County, State of Nevada,” ordering the State Engineer to

¹ AA refers to the Appendix of Appellants filed by Jackson on May 12, 2015.

adjudicate the streams in Carson Valley originating from the Sierra Nevada Mountains, but not considered tributary to the Carson River and not included in the Alpine Decree. AA Vol. 1, p. 8; *See also United States v. Alpine Land and Reservoir Company, et al.*, Civ. No. D-183 BRT (D. Nev., Sept 18, 1951).²

The State Engineer issued the Preliminary Order of Determination on May 22, 2006. AA Vol. 5, p. 781. The State Engineer held a hearing on Objections on March 5 and 7, 2007. AA Vol. 1, p. 10. The State Engineer issued the Final Order of Determination on August 14, 2008. AA Vol. 1, p. 3. The Final Order of Determination was filed on October 28, 2008 in the Ninth Judicial District Court. AA Vol. 1, p. 1.

The District Court held a hearing on Exceptions on April 1, 2009. AA Vol. 5, p. 782. The district court divided the proceeding into six groups of protests based on the common water source in each set of protests. AA Vol. 5, p. 782. This appeal involves Case 08-CV-0363-E and involves the water of Unnamed Springs A, B, C and D; as well as Unnamed Creek. AA Vol. 5.1, p. 933. The hearing was held on November 30, 2012. AA Vol. 5.1, p. 931. The district court issued its Order on December 26, 2013. AA Vol. 5.1, p. 931. The district court issued its Findings of Fact, Conclusions of Law, Judgment and Decree on September 29, 2014. AA Vol. 5, p. 779. The Notice of Entry of Order for the Findings of

² Copy at http://www.cwsd.org/wp-content/uploads/2014/07/9-18-51AlpineDecree_Findings_of_Fact.pdf

Fact, Conclusions of Law, Judgment and Decree was filed on October 16, 2014. AA Vol. 5.1, p. 963. Jackson filed his Notice of Appeal on November 14, 2014. AA Vol. 5.1, p. 965. Jackson filed his Amended Notice of Appeal on November 24, 2014. AA Vol. 5.1, p. 968.

III. STATEMENT OF FACTS

A. Background

The factual questions answered by the State Engineer and district court concern the appropriation of water on the properties in 1853. Jackson owns the westerly portion of the Heritage Ranch property located on the west side of Foothill Road, which is located upstream of the other users of water from Springs A-D. Upstream users on a stream often attempt to use their position to gain advantage over users of the lower part of the system. All of the users in this case were found to have equal priority to the water. Water rights are adjudicated based on the practice in place when the water was appropriated. Jackson radically altered the system in the early 1990's with the construction of a pond near Spring D and should not be allowed to utilize this artificial time construct to create a new image of historical irrigation practices. This Court should affirm the district court's adjudication of the rights based on the original irrigation practices and not from the conditions unilaterally created by Jackson.

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B. Historical Irrigation

As noted by Jackson, the properties in question began as separate ranching operations that were owned by a single party at one point, but have mostly been owned separately. AA Vol. 3, pp. 488–490. The district court and the State Engineer reviewed evidence that would show historic irrigation practices to determine how the water was first appropriated. AA Vol. 1 pp. 23-32. All the water rights to Springs A-D share and equal priority date of 1853. *See* AA Vol. 1, pp. 126, 129–138, 145, 171–173, 176–177 and 182. The 1905 cultural map showed that the area was uniformly irrigated to create the homogenous vegetation pattern between the area that is now the Green Acres Subdivision and the Heritage Ranch. State Engineer Appendix (SEA) p. 1.³ Jackson correctly notes that the cultural map does not show exactly where the water came from, but does show the channel where water flowed from Spring A to the Unnamed Creek which flowed to the area now known as Green Acres. SEA pp. 1–5. The State Engineer and the district court found that the water would have been diverted to the property. Jackson does not deny that water can be delivered to the Green Acres property

³ Attached hereto is the State Engineer's Supplemental Appendix which contains five maps. The small maps show the area in question enlarged to facilitate use. The maps from which these were taken are in a large format that prevents the entire map from being reduced to 8.5 by 11 inch size. The full-size maps were admitted before the district court as Exhibits 2-6. The State Engineer forwarded a copy of the reduced maps, to counsel for Jackson and Groenendyke and has been informed that neither objects to the maps being used to illustrate the area.

from Spring A. AA Vol. 3, p. 386. The original channel created by the flow of Spring A leads directly to the Green Acres properties and supports the State Engineer and the district court on this finding of fact. AA Vol. 3, pp. 421–423.

The 1938 aerial photograph shows that the properties continued to be irrigated similar to the 1904 map. SEA p. 2; AA Vol. 3, pp. 430–431. The pattern of delivery changed somewhat with the construction of the Barrum house. The water from Spring A was put into a pipe and split in two directions. AA Vol. 3, p. 433. The 2” pipe leads to the Barrum house and thence across Foothill Road to the Heritage Ranch property to serve barns and stock troughs. AA Vol. 3, p. 451. The 2” pipeline was later capped on the west side of Foothill Road to preclude the siphoning of water from the Barrum house. AA Vol. 3, 442. The 6” pipe diverted water along what is now the Jackson Ranch Road on the north side of the Barrum house, across Foothill Road and down to the Green Acres South ditch. *See* diagram AA Vol. 1, p. 216; *See also* Vol. 3, pp. 441–442. Water could also be diverted diagonally to the south across Jackson’s property where it commingles with the water of Unnamed Spring D, into a culvert under Foothill Road and into the ditch that runs in an easterly direction along the north side of Bear Creek Trail. AA Vol. 3, p. 458; Vol. 1, p. 216. The commingled water of Unnamed Spring A and Unnamed Spring D could also be diverted into the bisecting ditch through Heritage

Ranch and to the Green Acres South ditch prior to the construction of the Jackson's pond. AA Vol. 1, pp. 28–29.

C. Subdivision

The Green Acres property was subdivided and sold in the 1960's. AA Vol. 3, pp. 432–433. At some time prior to 1993, Jackson built a large pond in the vicinity of Spring D. AA Vol. 1, pp. 28–29; Vol. 3, p. 435. Disputes arose from time to time requiring the State Engineer to become involved and attempt to work out the differences between the parties. This adjudication will establish the ownership of the water and will serve as a framework from which the parties can operate going forward.

As noted by Jackson, Applications 24918 (an unnamed spring, aka “Spring D”) and 24919 (an unnamed spring, aka “Spring A”) were filed by The Heritage Ranch – E. J. McGah, owner, on February 19, 1969. AA Vol. 4, pp. 671–672. Very little evidence was taken by the district court concerning these applications. If the Court finds that they are relevant to the issue of vested water rights in the Green Acres properties, the Court should remand the matter to the district court to hear evidence thereon. Jackson seems to assert that the applications were for the entire flow of Spring A. The map which accompanied the applications showed the “Point of Diversion” illustrated in Figure 2 shows “SPRING-Total flow 0.45

c.f.s.”⁴ Below that statement is “Point of Diversion Application No. 24919 2/3 of total flow .3 c.f.s.” However, the State Engineer found that Applications 24918 and 24919 were “superseded by Proof of Appropriation Nos. V-06321, V-06323, V-06342, V-06345, and V-08850.” 1 AA 27. Therefore, these applications have very limited relevance to the issue of whether the Green Acres have vested irrigation rights from Spring A and the court should remand these questions to determine whether the entire flow of Spring A was appropriated by Jackson’s predecessors.

IV. STANDARD OF REVIEW

The district court reviews the Final Order of Determination by the State Engineer de novo. NRS 533.170. The Findings of Fact, Conclusions of Law, Judgment and Decree constitute an order issued by the district court. Appeals are “taken to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution by the State Engineer or any party in interest in the same manner and with the same effect as in civil cases” NRS 533.200. “Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the

⁴ Application 24919 appears at JA pp. 671–672. The map that accompanied the applications may be found at: <http://images.water.nv.gov/images/Permit%20Maps/24000/24918m.pdf> and show that the total flow of the spring was 0.45 cubic feet per second and that the pipelines diverted the 0.3 or 2/3 of the flow of the spring and the remainder flowed in unnamed creek down to the Green Acres south ditch.

opportunity of the trial court to judge the credibility of the witnesses.” N.R.C.P. Rule 52(a). Questions of law are reviewed de novo. *Arguello v. Sunset Station, Inc.*, 127 Nev. Adv. Op. 29, 252 P.3d 206, 208 (2011).

The district court relied heavily on the State Engineer’s Final Order of Determination. To the extent the court finds that a decision of the State Engineer is under review, NRS 533.450(9) provides that, “[t]he decision of the State Engineer shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.” On appeal, the Court reviews the evidence on which the State Engineer based his decision to ascertain whether the evidence supports the decision, and if so, the Court is bound to sustain the State Engineer’s decision. *State Engineer v. Curtis Park*, 101 Nev. 30, 32, 692 P.2d 495, 497 (1985). Review of a decision of the State Engineer is in the nature of an appeal and is, consequently, limited in nature. NRS 533.450(1). Purely legal issues or questions may be reviewed without deference to an agency determination. However, the agency’s conclusions of law that are closely related to its view of the facts are entitled to deference and will not be disturbed if they are supported by substantial evidence. *Town of Eureka v. State Engineer*, 108 Nev. 163, 826 P.2d 948 (1992).

V. SUMMARY OF ARGUMENT

The evidence showed that Spring A water was diverted to the Green Acres property through the natural channel, known herein as Unnamed Creek. Jackson

can use water from Spring A and Springs B and D. These springs produce more water than Jackson needs to irrigate his property. Jackson appears to bring this appeal only to deny vested water rights to the down gradient properties in Green Acres who are on the original watercourse.

VI. ARGUMENT

A. Substantial Evidence Supports the District Court and State Engineer's Factual Findings and the District Court's Decision.

i. Green Acres Properties Have Vested Water Rights

The District Court and the State Engineer relied on substantial evidence to conclude that the parcels in the Green Acres subdivision had vested water rights to water from Spring A. Prior to parceling, the Green Acres properties were irrigated as a single ranch. AA Vol. 3, pp. 421-425. At certain times in the past, the Green Acres, Heritage Ranch and Barrum Ranch were held in common ownership. AA Vol. 3, p. 489. The State Engineer found that the “culture maps from the U.S. Geological Survey show homogenous vegetation on the parcels of land that make up the Heritage Ranch and the Green Acres subdivision prior to 1905.” AA Vol. 1, p. 32. These maps were created in the field using surveyor’s tools and reflect some of the best available evidence of the practices taking place at the time. AA Vol. 3, p. 413. Aerial photographs from 1938, 1954 and 1977 confirm the findings from the 1904 cultural map. AA Vol. 1, p. 26; SEA pp. 2–4.

“Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.” *Dynamic Transit v. Trans Pac. Ventures*, 128 Nev. Adv. Op. 69, 291 P.3d 114, 118 (Dec. 12, 2012) (citations omitted). The existence of the water right is a question of fact, and these maps provide substantial evidence to find that the Green Acres properties had acquired vested water rights.

Steve Walmsley from the Division of Water Resources testified that he had been examining maps such as those presented “ever since [he] got out of college in ’78” AA Vol. 3, p. 422. Mr. Walmsley testified that 1904 cultural map showed the irrigation of all the properties in question was “pretty much homogenous.” AA Vol. 3, p. 421. He also testified that the pattern of irrigation was consistent with historical irrigation patterns for the Carson Valley. AA Vol. 3, p. 421-422. When examined about the 1938 aerial photograph, Mr. Walmsley testified that “the patterning did not show a deficit of water anywhere.” AA Vol. 3, p. 430, ll. 22–23. Mr. Walmsley testified that the 1954 aerial photograph showed only changes consistent with development, but no significant changes to irrigation patterns. AA Vol. 3, p. 432. The court “must accord deference to the point of view of the trial judge since he had the opportunity to weigh evidence and evaluate the credibility of witnesses-an opportunity foreclosed to this court.” *Harris v. Zee*, 87 Nev. 309, 311, 486 P.2d 490, 491 - 492 (1971).

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The question of whether the Green Acres properties have a vested water right from Spring A is a question of fact. The facts available to the district court are limited to show the appropriation of water in 1853. However, substantial evidence supports the decision of the district court and that decision must be affirmed.

ii. Substantial Evidence supports Spring A as the Source of the Vested Rights

Part of the task of the State Engineer was to determine the source of the vested water rights discussed above. Spring A originates in Alpine County, California. The California Water Resources Control Board indicated to the Nevada State Engineer that “there’s no way to use it beneficially in the State of California . . .” and that Nevada would have jurisdiction over the use of the water. AA Vol. 3, p. 439.

The natural channel created by the spring quickly crosses the border into Nevada and continues down until it intersects Foothill Road directly across from the entrance to the Green Acres subdivision. *See* AA Vol. 1, p. 216. Jackson admits that the water would flow and could be delivered in this manner and notes that “water runs downhill.” Jackson Opening Brief (JOB) p. 25.

Jackson argues that the 2” and 6” pipe divert water from Spring A away from Green Acres and onto the Barrum Ranch. JOB at 25. There is no doubt that Jackson’s Barrum Ranch property was entitled to a water right from Spring A and

the State Engineer approved the vested claims. AA Vol. 1, p. 145. However, the substantial evidence also showed, in addition to water in the natural water course, that the water from Spring A diverted through the 6” pipe, was returned via the diagonal ditch across the upper portion of the Heritage Ranch Property and delivered to the Green acres property. AA Vol. 3, p. 437. The pipeline has and had a valve that is northwest of the Barrum Ranch House that allowed the water to be diverted to the Barrum house property or continue in a southerly direction to commingle with Unnamed Spring D. AA Vol 3, p. 452. The opening of the valve allowed the Spring A water to continue in the Unnamed Creek and go beneath Foothill Road where it is used to irrigate 12.43 acres in the northwest corner of the Groenendyke property under Proof of Appropriation No. V-08850. AA Vol. 3, p. 448. The water then continues to flow to the east in the South Green Acres ditch to irrigate acreage within the Green Acres Subdivision. AA Vol. 3, p. 347. Thus, water for irrigation was diverted by and put to beneficial use on the Green Acres property and the most direct source was Spring A. This substantial evidence supports the findings of the district court and the decision must be upheld.

iii. Over-Allocation to the Barrum Ranch

The State Engineer also found that Springs B and D produce ample water to irrigate the remaining properties of the Barrum and Heritage Ranches and that combining those sources with all of the Spring A water would have resulted in

excess water that the early settlers could not afford to waste. AA Vol. 1, p. 30. The district court recognized that the use of the term “waste” in this context meant “that water is available far in excess of duty for all the property that has rights to that water, what – I don’t want to call it waste any more” AA Vol. 3, p. 505. In this context waste simply meant that Jackson should not be able to divert more water than can be beneficially used on his property. Neither could Jackson defeat the vested water rights for the Green Acres property by claiming more water for his property than could be put to beneficial use.

The State Engineer found that:

water from Unnamed Spring (A) is not necessary for the irrigation of the 25.54 acres lying south of the diagonal ditch under this claim and Proofs V-06321 and V-06323 based on prior findings within the scope of this objection to the Preliminary Order of Determination. The State Engineer further determines that the commingling of Unnamed Spring (A) with Unnamed Spring (D) directs excessive water onto lands irrigated by the claims referred to in this paragraph.

AA Vol. 1, p. 30. Jackson’s reasons for opposing the vested rights of the Green acres properties are not clearly stated in the opening brief, but the State Engineer notes that the reason for the 1992 field investigation was the “Jackson Pond.”

AA Vol. 1, pp. 28-29.

Staff of the State Engineer’s Office has observed that the construction of the pond near the southeast corner of the Jackson property precludes the ability to divert water

through the headgate and existing culvert that routes water through the “bisecting ditch” through the Groenendyke property.

AA Vol. 1, p. 28. Thus, until Construction of the Jackson Pond, water was routed through the bisecting ditch and returned through the diagonal ditch on the Heritage Ranch that routes water to the Green Acres parcels. AA Vol. 3, pp. 434–437.

“The concept of beneficial use is singularly the most important public policy underlying the water laws of Nevada and many of the western states.” *Desert Irrigation, Ltd. v. State Engineer*, 113 Nev. 1049, 1059, 944 P.2d 835, 842 (1997).

“Beneficial use shall be the basis, the measure and the limit of the right to the use of water.” NRS 533.035. The State Engineer included the following order in the Final Order of Determination:

The State Engineer therefore orders the reconstruction of the headgates and distribution system. The design and construction plans of the diversion/distribution structures are subject to the approval of the State Engineer prior to commencement of construction.

AA Vol. 1, p. 29 (emphasis in original). Jackson’s motive for defeating the water rights may be to avoid restoring the diversion works that he damaged during construction of the Jackson Pond and to use the water in the pond. However, the State Engineer and district court relied on the evidence that Spring D produces ample water for the Herritage Ranch to support the findings already made based on the maps and agricultural practices in the area and must be affirmed.

iv. Prior Claims Filings Do Not Preclude Green Acres Vested Rights

Finally, Jackson argues that the Green Acres property owners did not file claims for water from the springs and that his predecessor in interest did. However, this very fact is part of the situation in Carson Valley that led to the adjudication itself. There were a number of vested water rights determined in the decree for which no prior right was formally established. As noted by Jackson the State Engineer is required to consider rights that have not filed proofs of claims:

Upon neglect or refusal of any person to make proof of his or her claim or rights in or to the waters of such stream system, as required by this chapter, prior to the expiration of the period fixed by the State Engineer during which proofs may be filed, the State Engineer shall determine the right of such person from such evidence as the State Engineer may obtain or may have on file in the Office of the State Engineer in the way of maps, plats, surveys and transcripts, and exceptions to such determination may be filed in court, as provided in this chapter.

NRS 533.125(2). The purpose of the adjudication is to determine where water was appropriated under the common law in effect at the time these rights were acquired using the best evidence available. NRS 533.090. All the evidence shows that the Green Acres properties in question herein were irrigated with water diverted from the Springs, and that Spring A was the source as the water flowed directly in that direction with the original channel. The State Engineer properly considered the

vested claims of the Green Acres Properties and awarded vested water rights based upon substantial evidence.

B. Acquisition by Prescription Was Not Litigated Before the District Court.

The district court noted that after the stipulations of the parties to settle other issues, the only remaining issue was Jackson's contention concerning

the State Engineer's commingling of water originated from Unnamed spring (A) into Unnamed Creek, thereby allegedly redirecting the use of Unnamed Spring (A) from its historical beneficial use and, as a result and in effect, awarding vested water rights to certain downstream claimants.

AA Vol. 51, p. 934. Jackson did not raise the issue of acquisition by prescription of the water rights from the Green acres parcels below. "It is well established that arguments raised for the first time on appeal need not be considered by this court." *Diamond Enterprises, Inc. v. Lau*, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997) (citation omitted). There are valid reasons for this policy. The State Engineer was not able to respond, nor was the evidence examined. Jackson's increased use of water came about some time prior to 1993 when he built the Jackson Pond. AA Vol. 1, pp. 28–29. Installation of the pond "precludes the ability to divert water through the headgate and existing culvert that routes water through the 'bisecting ditch' through the Groenendyke property." AA Vol. 1, p. 29. Before the pond was

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installed, water was diverted through the diagonal ditch to the Green Acres parcels. AA Vol. 1, p. 29.

In 1949, the Nevada Legislature stopped the practice of acquiring the water rights of others by prescription. The provision provided that “[a] prescriptive right to the use of the water or any of the public water appropriated or unappropriated may not be acquired by adverse possession.” NRS 533.060(5). The 1954 aerial photograph did not show that the Green Acres properties had been dried up by the actions of the owners of the Barrum Ranch at the time. SEA p. 3.

In addition, the 6” pipe had a valve near the Barrum house that would deliver water across Foothill Road to Heritage Ranch and Green Acres that was cut off by Jackson to divert water to his pond. AA Vol. 3, pp. 434–437. This change also happened long after 1949 and at a time when a “prescriptive right to the use of the water or any of the public water appropriated or unappropriated may not be acquired by adverse possession.” NRS 533.060(5).

The application of California law to the water sources would also be inappropriate. The district court heard testimony that the State Engineer’s office had been in contact with the California Water Resources Control Board (CWRB). AA Vol. 3, p. 439. The CWRB replied that because the water could not be put to beneficial use in California, they would not exercise control over the source. AA Vol. 3, p. 439.

Finally, even if the Court finds that the Green Acres Parcels are not entitled to water from Spring A, that water cannot be awarded to Jackson to fill his pond to his heart's content. *Desert Irr., Ltd. v. State*, 113 Nev. 1049, 1059, 944 P.2d 835, 842 (1997) ("Indeed, even those holding certificated, vested, or perfected water rights do not own or acquire title to water. They merely enjoy the right to beneficial use."). He is entitled to only the amount of water that was put to beneficial use prior to 1905. *Andersen Family Associates v. Ricci*, 124 Nev. 182, 188, 179 P.3d 1201, 1204 (2008) ("‘vested’ rights are those that existed under Nevada's common law before the provisions currently codified in NRS Chapter 533 were enacted in 1913.")

Prior to the early 1990's, the area that now captures water for Jackson's pond was a swampy area that passed water through and down the system. Jackson cannot increase the amount of his water right based on the recent and higher requirement for water brought on by the construction of the pond. This court should reject these arguments made for the first time on appeal or remand the matter to the district court for further evidence on the issue.

VII. CONCLUSION

Substantial evidence supports the finding that the Green Acres properties have vested water rights and the decision of the district court must be affirmed. Substantial evidence also supports the finding that the source of the water rights

was Spring A diverted through natural channel, and the 6” pipe and a valve near the Barrum House. Jackson did not raise the issue of adverse possession below and the Court should refuse to hear those arguments. If the Court does decide to consider adverse possession, it should note that there is no evidence that the Green Acres properties’ water was cut off prior to 1949. For these reasons, the State Engineer requests that the decision of the district court be affirmed.

Respectfully submitted this 28th day of July 2015.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on July 28, 2015.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

s/ Sandra Geyer
Sandra Geyer, an employee of the office
of the Nevada Attorney General

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 14 pt. Times New Roman type style.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 4,670 words.

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

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sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 28th day of July 2015.

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