

**FILED**

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

**MAY 11 2016**

**INDICATE FULL CAPTION:**

STATE ENGINEER, et al.,  
Appellants,

vs.

EUREKA COUNTY, et al.,  
Respondents.

No. 70157

TRACIE K. LANDEMAN  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
DEPUTY CLERK

**DOCKETING STATEMENT  
CIVIL APPEALS**

**GENERAL INFORMATION**

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

**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 it 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 27 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, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

DETACHED FROM Motion &  
FILED PER 5/11/16 ORDER

16-14795

1. Judicial District Seventh Department Two  
County Eureka Judge Gary D. Fairman  
District Ct. Case No. CV-1100-155; 1108-156,157; 1113-164,165; 1202-170; & 1207-178

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

Attorney Micheline N. Fairbank Telephone (775) 684-1225  
Firm Office of the Attorney General  
Address 100 North Carson Street  
Carson City, NV 89701-4717

Client(s) Appellants, Nevada State Engineer, Office of the State Engineer, et al.

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 respondents(s):**

Attorney Ross E. DeLipkau, Esq. Telephone (775) 323-1601  
Firm Parsons Behle & Latimer  
Address 50 West Liberty Street, Suite 750  
Reno, NV 89501

Client(s) Respondent, Kobeh Valley Ranch, LLC

Attorney Francis M. Wikstrom, Esq. Telephone (801) 532-1234  
Firm Parsons Behle & Latimer  
Address 201 South Main Street, Suite 1800  
Salt Lake City, UT 84111

Client(s) Respondent, Kobeh Valley Ranch, LLC (SEE ADDITIONAL PAGES)

(List additional counsel on separate sheet if necessary)

**CONTINUATION PAGE**

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

Attorney: Paul G. Taggart, Esq. Telephone: (775) 882-9900  
Firm: Taggart & Taggart, Ltd.  
Address: 108 North Minnesota Street  
Carson City, NV 89703  
Client(s): Respondents, Municipal Water Purveyors, Southern Nevada  
Water Authority

Attorney: David H. Rigdon, Esq. Telephone: (775) 882-9900  
Firm: Taggart & Taggart, Ltd.  
Address: 108 North Minnesota Street  
Carson City, NV 89703  
Client(s): Respondents, Municipal Water Purveyors, Southern Nevada  
Water Authority

Attorney: Jennifer Mahe, Esq. Telephone: (775) 461-0992  
Firm: Mahe Law, Ltd.  
Address: 707 North Minnesota Street, Suite D  
Carson City, NV 89703  
Client(s): Respondent, Eureka County

Attorney: Laura A. Schroeder, Esq. Telephone: (775) 786-8800  
Firm: Schroeder Law Offices, P.C.  
Address: 440 Marsh Avenue  
Reno, NV 89509-1515  
Client(s): Respondents, Diamond Cattle Company, LLC, and Michel and  
Margaret Ann Etcheverry Family LP

Attorney: Therese A. Ure, Esq. Telephone: (775) 786-8800  
Firm: Schroeder Law Offices, P.C.  
Address: 440 Marsh Avenue  
Reno, NV 89509-1515  
Client(s): Respondents, Diamond Cattle Company, LLC, and Michel and  
Margaret Ann Etcheverry Family LP

**CONTINUATION PAGE**

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

Attorney: Karen A. Peterson, Esq. Telephone: (775) 687-0202  
Firm: Allison, Mackenzie, Ltd.  
Address: 402 North Division Street  
Carson City, NV 89703  
Client(s): Respondent, Eureka County

Attorney: Dawn Ellerbrock, Esq. Telephone: (775) 687-0202  
Firm: Allison, Mackenzie, Ltd.  
Address: 402 North Division Street  
Carson City, NV 89703  
Client(s): Respondent, Eureka County

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

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

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody  
☐ Venue  
☐ Termination of parental rights

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

Pending proceedings including the above captioned case, Nevada Supreme Court case number 71057, and a newly filed appeal, Real Party in Interest Kobeh Valley Ranch, LLC v. Eureka County, case number the same. Prior proceedings include the consolidated Nevada Supreme Court cases, Eureka County, Kenneth F. Benson, Diamond Cattle Company, LLC, and Michael and Margret Ann Etcheverry Family, LP v. State Engineer, case number 61324, and Michael and Margaret Ann Etcheverry Family LP, Diamond Cattle Company, LLC, and Kenneth Benson v. State Engineer, case number 63258.

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

Prior cases include the following: Eureka County v. State Engineer, Seventh Judicial District Court case numbers CV1108-155 and CV1112-164; Conley Land & Livestock, LLC, Lloyd Morrison v. State Engineer, Seventh Judicial District Court case number CV1108-156; Kenneth F. Benson, Diamond Cattle Company, LLC, Michael and Margaret Ann Etcheverry Family, LP v. State Engineer, Seventh Judicial District Court case numbers CV1108-157, CV1112-165, CV1202-170, and CV1207-178. These cases were consolidated. On March 2, 2016, following the Nevada Supreme Court's decision in Eureka County, et al. v. State Engineer, consolidated case numbers 61324 and 63258, the Seventh Judicial District Court issued an order granting the petitions for judicial review and vacating the permits pending before the Nevada State Engineer.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This is an appeal from the Amended Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits filed on March 9, 2016, and which the notice of entry of order was served March 14, 2016. The March 9, 2016, Order followed the Nevada Supreme Court's opinion, 131 Nev. Adv. Opn. 84, and was based upon the District Court's interpretation of the Nevada Supreme Court's opinion, the District Court did not remand to the State Engineer the intervenor's applications to appropriate water for a beneficial use, but rather denied those applications pursuant to NRS 533.370(2).

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

The State Engineer appeals the District Court's interpretation of the Nevada Supreme Court's decision and the District Court's exercise of the executive authority in violation of the Nevada Constitution Article 3, Section 1 and NRS Chapter 533.

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

Appellant is aware of Real Party in Interest Kobeh Valley Ranch, LLC v. Eureka County, which is an appeal filed on or about April 18, 2016. The case number is the same.

**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 (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: This appeal addresses the District Court's interpretation of the Nevada Supreme Court's decision and the District Court's exercise of the executive authority in violation of the Nevada Constitution Article 3, Section 1 and NRS Chapter 533.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(9) as an administrative agency appeal involving a water determination and pursuant to NRAP 17(a)(13) as a matter raising as a principal issue a question of first impression involving the Nevada constitution.

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

Was it a bench or jury trial? \_\_\_\_\_

**15. 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?  
Not applicable



## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** March 9, 2016

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

**17. Date written notice of entry of judgment or order was served** March 14, 2016

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☒ NRCP 59      Date of filing March 25, 2016

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

(b) Date of entry of written order resolving tolling motion pending

(c) Date written notice of entry of order resolving tolling motion was served n/a

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed April 12, 2015**

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:  
Real Party in Interest Kobeh Valley Ranch, LLC.

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

NRAP 4(a)(1)

**SUBSTANTIVE APPEALABILITY**

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

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:  
This is an appeal from a final decision of the Seventh Judicial District Court based upon a petition for judicial review action commenced before the court where the judgment was rendered.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Eureka County, Conley Land & Livestock LLC, Lloyd Morrison, Kenneth F. Benson, Diamond Cattle Company, LLC, Michael and Margaret Ann Etcheverry Family, LP, Kobeh Valley Ranch, LLC, and the State Engineer of Nevada.

(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:

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

The petitioner parties before the district court appealed the State Engineer's determination to grant certain water rights permits to real party in interest Kobeh Valley Ranch, LLC.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☒ No

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

☐ Yes

☒ No

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

The district court order is subject to an independent appeal under NRAP 3A(b).

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

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

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

**Attachment A**

**Kobeh Valley Ranch, LLC's Motion to Alter or Amend Judgment**

Taggart & Taggart, Ltd.  
100 North Alameda Street  
Carson City, Nevada 89701  
(775) 683-9988 Telephone  
(775) 683-9989 Facsimile

1 CASE NOS.: CV-1108-155  
2 CV-1108-156  
3 CV-1108-157  
4 CV-1112-164  
5 CV-1112-165  
6 CV-1202-170  
7 CV-1207-178

8 DEPT. NO.: II

9 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10  
11 IN AND FOR THE COUNTY OF EUREKA

12 EUREKA COUNTY, a political subdivision of the  
13 State of Nevada,

14 Petitioner,

15 vs.

16 STATE OF NEVADA, EX. REL., STATE  
17 ENGINEER, DIVISION OF WATER  
18 RESOURCES,

19 Respondent.

20 CONLEY LAND & LIVESTOCK, LLC, a Nevada  
21 limited liability company, LLOYD MORRISON,  
22 and individual,

23 Petitioners,

24 vs.

25 OFFICE OF THE STATE ENGINEER OF THE  
26 STATE OF NEVADA, DIVISION OF WATER  
27 RESOURCES, DEPARTMENT OF  
28 CONSERVATION AND NATURAL  
RESOURCES, JASON KING, State Engineer,  
KOBEL VALLEY RANCH, LLC, Real Party in  
Interest,

Respondents.

KENNETH F. BENSON, an individual,  
DIAMOND CATTLE COMPANY, LLC, a  
Nevada limited liability company, and MICHEL  
and MARGARET ANN ETCHEVERRY  
FAMILY, LP, a Nevada registered foreign limited  
partnership,

Petitioners,

FILED  
MAR 2 2016  
Eureka County Clerk  
By Q. Pease

**KOBEL VALLEY RANCH, LLC'S**  
**MOTION TO ALTER OR AMEND**  
**JUDGMENT**

1 vs.

2  
3 STATE ENGINEER OF NEVADA, OFFICE OF  
4 THE STATE ENGINEER, DIVISION OF  
5 WATER RESOURCES, DEPARTMENT OF  
6 CONSERVATION AND NATURAL  
7 RESOURCES,

8 Respondent.

9  
10 EUREKA COUNTY, a political subdivision of the  
11 State of Nevada,

12 Petitioner,

13 vs.

14 STATE OF NEVADA, EX. REL., STATE  
15 ENGINEER, DIVISION OF WATER  
16 RESOURCES,

17 Respondent.

18  
19 KENNETH F. BENSON, an individual,  
20 DIAMOND CATTLE COMPANY, LLC, a  
21 Nevada limited liability company, and MICHEL  
22 and MARGARET ANN ETCHEVERRY  
23 FAMILY, LP, a Nevada registered foreign limited  
24 partnership,

25 Petitioners,

26 vs.

27 STATE ENGINEER OF NEVADA, OFFICE OF  
28 THE STATE ENGINEER, DIVISION OF  
WATER RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES,

Respondent.

KENNETH F. BENSON, an individual,  
DIAMOND CATTLE COMPANY, LLC, a  
Nevada limited liability company, and MICHEL  
and MARGARET ANN ETCHEVERRY  
FAMILY, LP, a Nevada registered foreign limited  
partnership,

Petitioners,

vs.

1 STATE ENGINEER OF NEVADA, OFFICE OF  
2 THE STATE ENGINEER, DIVISION OF  
3 WATER RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES,

4 Respondent.

5  
6 COMES NOW, Real Party in Interest, KOBEN VALLEY RANCH, LLC (hereinafter  
7 "KVR"), by and through its attorneys of record, PAUL G. TAGGART, ESQ. and DAVID H.  
8 RIGDON, ESQ., of the law firm of TAGGART & TAGGART, LTD., and, pursuant to NRCP 59(e),  
9 hereby files this Motion to Alter or Amend this Court's March 9, 2016 Order granting Objection to  
10 Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; and  
11 Order Vacating Permits. This Motion is based on the attached Memorandum of Points and  
12 Authorities, all papers and pleadings on file in this matter, and any oral argument that this Court may  
13 permit.  
14  
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28

Taggart & Taggart, Ltd.  
108 North Mountain Drive  
Carson City, Nevada 89703  
(775) 687-5988 - Telephone  
(775) 687-9980 - Facsimile



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PROCEDURAL BACKGROUND AND HISTORY**

3 KVR proposes to develop a molybdenum mine, also known as the Mount Hope Mine Project, to  
4 be located in Eureka County, Nevada. The Mount Hope Mine Project will be one of the largest primary  
5 molybdenum mines in the world. The development and operation of the mine will greatly enhance the  
6 economic development efforts of the State of Nevada and provide substantial tax revenue for Eureka  
7 County. Almost \$300 million dollars has already been invested in this effort and it is expected that when  
8 the mine is operational, it will employ about 400 people in full-time positions. This Court, in its March  
9 9, 2016, order, denied water rights that are required for this project to succeed.

10 To develop the mine, several water applications were filed with the State Engineer to appropriate  
11 new water rights and change the point of diversion, place of use, and/or manner of use of existing water  
12 rights (collectively hereinafter "Applications").<sup>1</sup> The applications sought a total combined duty of  
13 11,300 afa of groundwater for mining and milling purposes associated with the proposed mine. The  
14 Applications were protested by various parties including Eureka County.

15 KVR has expended significant time and resources in pursuit of the Applications, including three  
16 separate trips through this Court. In October 2008, the State Engineer conducted five days of hearings  
17 on the applications and, six months later, issued a ruling granting most of them. Eureka County and  
18 other protesters appealed that determination. This Court subsequently vacated the ruling and remanded  
19 the case back to the State Engineer for additional proceedings. The State Engineer conducted a second  
20 round of hearings in December 2010 and May 2011. On July 5, 2011 the State Engineer issued Ruling  
21 6127 granting KVR 11,300 afa of groundwater rights. The Ruling was conditioned on the submission of  
22 a monitoring, management, and mitigation plan (hereinafter "3M Plan").

23 The Protestants again appealed the State Engineer's grant of the Applications. While the appeal  
24 was pending, in October 2011, KVR submitted a draft 3M Plan to the State Engineer. Although 3M  
25 Plans are regularly prepared in conjunction with large water rights projects, there is no statute or  
26

27 <sup>1</sup> The Applications were filed by a variety of individuals and entities. Those Applications not filed by KVR were later assigned  
28 and/or transferred to KVR.

1 regulation which governs the development of such plans. Applicants rely heavily on the direction and  
2 guidance of the State Engineer regarding how a plan should be drafted.

3 Accordingly, during the process of developing the plan, KVR met with the State Engineer to  
4 discuss the draft plan's sufficiency. In reliance on the guidance provided by the State Engineer, KVR  
5 revised the draft 3M Plan and submitted its final plan on May 10, 2012.

6 In June 2012, the State Engineer approved the final 3M Plan. At about the same time, on June  
7 13, 2012, this Court upheld the findings and conclusions of the State Engineer in Ruling 6127. In July  
8 2012, Protestants also appealed the State Engineer's approval of the final 3M Plan to this Court and on  
9 May 15, 2013, this Court upheld the State Engineer's approval of the 3M Plan.

10 This Court's approvals of the State Engineer's determinations were appealed to the Nevada  
11 Supreme Court and the two appeals were consolidated into a single appeal. After briefing and argument,  
12 the Supreme Court reversed and remanded the case to this Court. In the order of reversal and remand,  
13 the Supreme Court specifically declined to answer the question of whether "the State Engineer has  
14 authority to grant an application that conflicts with existing rights based on a determination that the  
15 applicant will be able to mitigate" the conflict.<sup>2</sup> Instead the Supreme Court found that the specific 3M  
16 Plan approved by the State Engineer "is not supported by sufficient evidence that successful mitigation  
17 effort may be undertaken so as to dispel the threat to the existing rights holders."<sup>3</sup>

18 The standards for 3M Plans adopted by the Supreme Court in the decision were unprecedented  
19 and, therefore, unknown to both KVR and the State Engineer at the time the plan was drafted and  
20 approved. Neither KVR nor the State Engineer could have reasonably anticipated that the final 3M Plan  
21 would be required to comply with such standards.

22 On March 9, 2016, this Court entered its Amended Order Granting Objection to Proposed Order  
23 Remanding to State Engineer; Order Granting Petitions for Judicial Review; and Order Vacating  
24 Permits. This Order effectively denies KVR's Applications outright, requires KVR to start over, and  
25 makes it significantly more difficult, expensive, and time-consuming to acquire the water resources

26  
27 <sup>2</sup> *Eureka Cnty. v. State Engineer*, 131 Nev. Adv. Op. 84 at 2, 359 P.3d 1114, 1115 (2015).

28 <sup>3</sup> *Id.*

1 needed to develop the mine project.

2 KVR respectfully submits that this Courts March 9, 2016, Amended Order was issued in error  
3 and, pursuant to NRCP 59(e), requests this Court alter or amend the order to allow the case to be  
4 remanded to the State Engineer for the purpose of allowing KVR to submit evidence of its ability to  
5 successfully mitigate conflicts and amend the 3M Plan to bring it into compliance with instructions  
6 provided by the Supreme Court.

7 **II. STANDARD OF REVIEW**

8 NRCP 59(e) authorizes a party to file a motion requesting alteration or amendment of a judgment  
9 within "10 days after service of written notice of entry of the judgment." Notice of Entry of Judgment in  
10 this matter was filed on March 14, 2016. Since Rule 59(e) does not provide standards for granting a  
11 motion to alter or amend a judgment, a district court enjoys considerable discretion in granting or  
12 denying a Rule 59(e) motion.<sup>4</sup> A district court's decision to grant or deny a motion for reconsideration is  
13 reviewed under an abuse of discretion standard.<sup>5</sup> "A district court may properly reconsider its decision if  
14 it (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was  
15 manifestly unjust, or (3) if there is an intervening change in controlling law."<sup>6</sup>

16 KVR respectfully submits that the March 9, 2016 order was issued in error and is manifestly  
17 unjust in that it fails to allow KVR an adequate opportunity to amend the 3M Plan to render it compliant  
18 with the newly articulated and wholly unprecedented standards adopted by the Nevada Supreme Court.

19 **III. ARGUMENT**

20 A. **This Court erroneously concluded that the Supreme Court would have remanded**  
21 **this case directly to the State Engineer if it had intended for further proceedings**  
22 **to occur before the State Engineer.**

23 This Court stated that "[t]he Nevada Supreme Court did not remand the cases to the State Engineer  
24 for further proceedings consistent with its opinion which it could have done if the court concluded  
25 additional administrative review and findings were necessary." However, the Supreme Court is not  
26

27 <sup>4</sup> *Stevo Design, Inc. v. SBR Marketing Ltd.*, 919 F.Supp.2d 1112, 1117 (D. Nev. 2013).

28 <sup>5</sup> *Smith v. Clark County School Dist.*, 737 F.3d 950, 954 (9th Cir., 2013).

<sup>6</sup> *Id.* at 955 (internal quotations and citations omitted).

1 empowered to remand issues directly to the State Engineer.<sup>7</sup> Instead, in administrative appeals,  
2 particularly when the Supreme Court wants an administrative agency to take substantive action consistent  
3 with its instructions, the Supreme Court remands to a district court for that court to then remand to the  
4 administrative agency.<sup>8</sup>

5 Given this long-standing practice, it would be quite extraordinary for the Supreme Court to  
6 bypass a district court and remand a case directly to the State Engineer. When the Supreme Court  
7 remanded this case back to this Court it did so for the purpose of having the Court conduct or order  
8 "proceedings consistent with this order."<sup>9</sup> Since a district court is only empowered by NRS 533.450 to  
9 review the fact-finding proceedings conducted by the State Engineer, and not to conduct its own fact-  
10 finding proceedings in the matter, an order for remand to the district court is effectively an order  
11 requiring the district court to further remand the issue to the State Engineer for additional fact-finding.

12 In addition, the statement in the Supreme Court decision that "the State Engineer's decision to  
13 grant KVR's applications cannot stand" must be read within its proper context.<sup>10</sup> The Supreme Court  
14 did not find that no 3M Plan can ever provide substantial evidence for a finding that impacts from  
15 proposed pumping can be fully mitigated. It only held that this particular 3M Plan did not provide such  
16 substantial evidence. This is the context for the quote.

17 What the Supreme Court effectively said was that if this particular 3M Plan is the only  
18 substantial evidence supporting the State Engineer's determination, that determination cannot be upheld.  
19 This opens the door for the development and implementation of a different 3M Plan on remand that  
20 could provide substantial evidence supporting the State Engineer's approval of the permits. Given the  
21 enormous negative economic impacts that will result from a complete denial of KVR's Applications,  
22 KVR urges this Court to give it the opportunity to develop such a plan and provide evidence of its ability

23  
24 <sup>7</sup> See *Town of Eureka v. Office of State Engineer*, 108 Nev. 163, 169-70, 826 P.2d 948, 952 (1992)(remanding case to district  
25 court for referral to the State Engineer to conduct further proceedings); *Application of Fillipini*, 66 Nev. 17, 31, 202 P.2d 535,  
26 541-41 (1949)(remanding to the district court issues concerning whether and to what extent an application would injure  
27 appellant); *Revert v. Ray*, 95 Nev. 782, 788, 603 P.2d 262, 265 (1979)(reversing and remanding to district court for further  
28 proceedings by State Engineer.); *Great Basin Water Network v. State Eng'r*, \_\_\_ Nev. \_\_\_, \_\_\_, 234 P.3d 912, 920  
(2010)(reversing and remanding case to district court for further remand to State Engineer to conduct further proceedings).

<sup>8</sup> *Id.*

<sup>9</sup> *Eureka Cnty. v. State Engineer*, 131 Nev. Adv. Op. 84 at 16, 359 P.3d 1114, 1121 (2015).

<sup>10</sup> *Id.*

1 to successfully mitigate conflicts without requiring it to start over.

2 B. KVR reasonably relied on the State Engineer's direction regarding the  
3 development of the 3M Plan.

4 The Nevada Supreme Court has held that "the State Engineer has been charged with the statutory  
5 duty of administering the complex system of water rights within the state. We believe that *lay members*  
6 *of the public are entitled to rely upon its advice as to the procedures to be followed under the state water*  
7 *law.*"<sup>11</sup> As noted above, Nevada currently has no statute or regulation governing the development,  
8 amendment, and implementation of 3M Plans. Accordingly, applicants who are required to submit such  
9 plans must rely solely on the direction and guidance of the State Engineer as to what elements must be  
10 included within such plans and what standards will be used to review a plan.

11 In accordance with the requirements of Ruling 6127, KVR submitted a draft 3M Plan for the  
12 State Engineer to review and provide feedback.<sup>12</sup> A meeting was held between KVR and the State  
13 Engineer for the specific purpose of receiving input from the State Engineer regarding the sufficiency of  
14 the plan.<sup>13</sup> Based on this guidance, KVR made revisions and submitted a final 3M Plan to the State  
15 Engineer for approval.<sup>14</sup> In addition, throughout the development of the plan, KVR consulted with  
16 Eureka County and other Protestants to ensure that their concerns would be fully addressed.<sup>15</sup> The final  
17 3M Plan was approved by the State Engineer after more than a year of cooperation and collaboration  
18 between KVR, the State Engineer, and the Protestants.

19 KVR's reliance on the State Engineer's advice and guidance as to the sufficiency of the 3M Plan  
20 was reasonable given the fact that there was no statute, regulation, or precedential case law which  
21 provided alternative direction as to what the plan should include or what standards would guide its  
22 approval. In good-faith reliance on the State Engineer's advice, KVR diligently pursued the  
23 development of the 3M Plan using the best resources available to it at the time. The Nevada Supreme  
24 Court has clearly directed that an applicant "cannot be punished for the State Engineer's failure to follow  
25

26 <sup>11</sup> *Desert Irr., Ltd. v. State*, 113 Nev. 1049, 1061, 944 P.2d 835, 843 (1997)(emphasis added).

27 <sup>12</sup> State Engineer Record on Appeal (hereinafter "ROA") 295-335.

28 <sup>13</sup> ROA 354-376.

<sup>14</sup> *Id.*

<sup>15</sup> See ROA 54-167, 178, 181, 195-196, 204, 207-208, 214, and 227-241.

1 his statutory duty."<sup>16</sup> The Supreme Court's finding that the State Engineer failed to meet his statutory  
2 duty in approving the 3M Plan and the associated permits should not result in KVR being punished with  
3 the vacation of the permits. Rather, this Court should remand the case to the State Engineer to allow  
4 KVR to revise the 3M Plan to conform to the Supreme Court's newly adopted standards.

5 C. **The decision of the Nevada Supreme Court articulated new and unprecedented**  
6 **standards for the development of 3M Plans.**

7 Prior to the Supreme Court's decision, there was no statute, regulation, or case law that  
8 articulated the standards for approval of a 3M Plan developed in conjunction with an application to  
9 appropriate water. The adoption by the Supreme Court of the standard of review for 3M Plans is new  
10 and wholly unprecedented. There is simply no way that KVR could have known the standard that the  
11 Supreme Court would apply to its review of the plan before the rendering of the decision. If the State  
12 Engineer and KVR had known the Supreme Court would require a 3M Plan to be part of the original  
13 approval or to include more specific mitigation evidence, KVR would have done it. KVR should be  
14 given the opportunity to do that now.

15 This Court, on two prior occasions [Judges Papez and Thompson] affirmed the actions taken by  
16 the State Engineer. Given this, it is manifestly unjust to vacate the Permits before providing KVR an  
17 opportunity to amend the plan in a manner that will bring it into conformance with the Supreme Court's  
18 directive.

19 D. **This Court's vacation of the KVR's permits is manifestly unjust.**

20 The denial of KVR's Applications, as required by this Court's Order, will have significant  
21 economic ramifications for the State of Nevada. KVR may lose the priority position of the Applications  
22 for the remaining water in Kobeh Valley. In the time since KVR's Applications were filed, numerous  
23 entities, including Eureka County, have filed new applications to appropriate the groundwater sought by  
24 KVR. If KVR's applications are denied, the water associated with those applications will be made  
25 available to these later-filed applications. This is a manifestly unjust result. A project of great economic  
26 significance to the State of Nevada should not be placed in jeopardy based on a failure of the 3M Plan to  
27

28 <sup>16</sup> *Great Basin Water Network v. State Eng'r*, \_\_\_ Nev. \_\_\_, 234 P.3d 912, 920 (2010).

1 conform to a post-hoc standard articulated by the Supreme Court. Rather, KVR should be given a fair  
2 opportunity to draft a plan that complies with the ruling of the Supreme Court before they are summarily  
3 denied.

4 **IV. CONCLUSION**

5 For the reasons stated above, KVR respectfully requests this Court amend its Order to allow the  
6 case to be remanded to the State Engineer for the purpose of providing KVR the opportunity to  
7 address the issues raised by the Supreme Court and amend the 3M Plan to bring it into compliance  
8 with the standards articulated the Supreme Court.

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the social security number of any persons.

DATED this 25<sup>th</sup> day of March, 2016.

TAGGART & TAGGART, LTD.  
108 North Minnesota Street  
Carson City, Nevada 89703  
(775)882-9900 - Telephone  
(775)883-9900 - Facsimile

By: 

PAUL G. TAGGART, ESQ.  
Nevada State Bar No. 6136  
DAVID H. RIGDON, ESQ.  
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Taggart & Taggart, Ltd.  
108 North Main Street  
Carson City, Nevada 89703  
(775) 682-9900 Telephone  
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## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date, I served or caused to be served, a true and correct copy of the foregoing KOBEH VALLEY RANCH, LLC'S MOTION TO ALTER OR AMEND JUDGMENT by:

☒ [X]

By U.S. POSTAL SERVICE: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

Karen A. Peterson, Esq.  
Allison, Mackenzie, Pavlakis, Wright &  
Fagan, Ltd.  
P.O. Box 646  
Carson City, NV 89701

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Gordon H. DePaoli, Esq.  
Woodburn and Wedge  
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Reno, NV 89511

Theodore Beutel, Esq.  
Eureka County District Attorney  
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Eureka, NV 89316

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Carson City, NV 89701

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Reno, NV 89501

Laura A. Schroeder, Esq.  
Therese A. Ure, Esq.  
Schroeder Law Offices, P.C.  
440 Marsh Ave.  
Reno, NV 89509


☐ [ ]

By U.S. CERTIFIED, RETURN RECEIPT POSTAL SERVICE: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

☐ [ ]

By ELECTRONIC DELIVERY, via:

DATED this 29<sup>th</sup> day of March, 2016.

  
Employee of TAGGART & TAGGART, LTD.

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

**Attachment B**

**Notice of Entry of Amended Order Granting Objection to  
Proposed Order Remanding to State Engineer; Order Granting  
Petitions for Judicial Review; Order Vacating Permits**

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

NO. FILED  
MAR 14 2016  
Eureka County Clerk  
By C. M. [Signature]

Case Nos. CV1108-155  
CV1108-156  
CV1108-157  
CV1112-164  
CV1112-165  
CV1202-170  
CV1207-178

Dept. No. 2

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF EUREKA

EUREKA COUNTY, a political  
subdivision of the State of Nevada.

Petitioner,

vs.

Case No.: CV1108-155

Dept. No.: 2

THE STATE OF NEVADA, EX. REL.,  
STATE ENGINEER, DIVISION OF  
WATER RESOURCES, and KOBEH  
VALLEY RANCH, LLC, a Nevada  
limited liability company,

Respondents.

CONLEY LAND & LIVESTOCK, L.L.C., a  
Nevada limited liability company; LLOYD  
MORRISON, an individual;

Petitioners/Plaintiffs,

vs.

Case No.: CV1108-156

Dept. No.: 2

THE OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVADA, DIVISION  
OF WATER RESOURCES, DEPARTMENT  
OF CONSERVATION AND NATURAL  
RESOURCES, JASON KING, State Engineer;  
KOBEH VALLEY RANCH, LLC, Real Party  
in Interest;

Respondents/Defendants.

///

///

///

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmckenzie.com

1 KENNETH F. BENSON, an individual,  
2 DIAMOND CATTLE COMPANY, LLC, a  
3 Nevada Limited Liability Company, and  
4 MICHEL AND MARGARET ANN  
5 ETCHEVERRY FAMILY, LP, a Nevada  
6 Registered Foreign Limited Partnership,

7 Petitioners,

8 vs.

9 STATE ENGINEER, OF NEVADA,  
10 OFFICE OF THE STATE ENGINEER,  
11 DIVISION OF WATER RESOURCES,  
12 DEPARTMENT OF CONSERVATION  
13 AND NATURAL RESOURCES, and  
14 KOBEH VALLEY RANCH, LLC, a  
15 Nevada limited liability company,

16 Respondents.

17 EUREKA COUNTY,  
18 a political subdivision of the State of Nevada,

19 Petitioner,

20 vs.

21 THE STATE OF NEVADA, EX. REL.,  
22 STATE ENGINEER, DIVISION OF  
23 WATER RESOURCES, and KOBEH  
24 VALLEY RANCH, LLC, a Nevada  
25 limited liability company,

26 Respondents.

27 KENNETH F. BENSON, an individual,  
28 DIAMOND CATTLE COMPANY, LLC, a  
Nevada Limited Liability Company, and  
MICHEL AND MARGARET ANN  
ETCHEVERRY FAMILY, LP, a Nevada  
Registered Foreign Limited Partnership,

Petitioners,

vs.

STATE ENGINEER OF NEVADA,  
OFFICE OF THE STATE ENGINEER,  
DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION  
AND NATURAL RESOURCES, and KOBEH  
VALLEY RANCH, LLC, a Nevada limited  
liability company,

Respondents.

Case No.: CV1108-157

Dept. No.: 2

Case No.: CV1112-164

Dept. No.: 2

Case No.: CV1112-165

Dept. No.: 2

ALLISON MacKENZIE, LTD.  
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1 KENNETH F. BENSON, an individual,  
2 DIAMOND CATTLE COMPANY, LLC, a  
3 Nevada limited liability company, and  
4 MICHEL AND MARGARET ANN  
5 ETCHEVERRY FAMILY, LP, a Nevada  
6 registered foreign limited partnership,

7 Petitioners,

Case No.: CV1202-170

8 vs.

Dept. No.: 2

9 STATE ENGINEER OF NEVADA,  
10 OFFICE OF THE STATE ENGINEER,  
11 DIVISION OF WATER RESOURCES  
12 DEPARTMENT OF CONSERVATION  
13 AND NATURAL RESOURCES,

14 Respondent.

15 MICHEL AND MARGARET ANN  
16 ETCHEVERRY FAMILY, LP, a Nevada  
17 Registered Foreign Limited Partnership,  
18 DIAMOND CATTLE COMPANY, LLC, a  
19 Nevada Limited Liability Company, and  
20 KENNETH F. BENSON, an individual,

21 Petitioners,

Case No.: CV1207-178

22 vs.

Dept. No.: 2

23 STATE ENGINEER, OF NEVADA,  
24 OFFICE OF THE STATE ENGINEER,  
25 DIVISION OF WATER RESOURCES,  
26 DEPARTMENT OF CONSERVATION  
27 AND NATURAL RESOURCES,

28 Respondent,

AND

KOBEH VALLEY RANCH, LLC, a  
Nevada limited liability company,

Intervenor-  
Respondent.

**NOTICE OF ENTRY OF AMENDED ORDER  
GRANTING OBJECTION TO PROPOSED ORDER REMANDING  
TO STATE ENGINEER; ORDER GRANTING PETITIONS  
FOR JUDICIAL REVIEW; ORDER VACATING PERMITS**

NOTICE IS HEREBY given that on the 9<sup>th</sup> day of March, 2016, the Court duly  
entered an AMENDED ORDER GRANTING OBJECTION TO PROPOSED ORDER

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

1 REMANDING TO STATE ENGINEER; ORDER GRANTING PETITIONS FOR JUDICIAL  
2 REVIEW; ORDER VACATING PERMITS in the above-entitled matters. A copy of said  
3 AMENDED ORDER is attached hereto as Exhibit "I".

4 AFFIRMATION

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

7 DATED this 14<sup>th</sup> day of March, 2016.

8  
9 KAREN A. PETERSON, ESQ.  
Nevada State Bar No. 0366  
ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, Nevada 89703

10  
11 ~ and ~

12  
13 EUREKA COUNTY DISTRICT ATTORNEY  
701 South Main Street  
Post Office Box 190  
Eureka, Nevada 89316

14  
15  
16 BY:

17 THEODORE BEUTEL, ESQ.  
Nevada State Bar No. 5222

18 Attorneys for EUREKA COUNTY  
19  
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ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

### CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date I caused the foregoing document to be served to all parties to this action by:

☒ Placing a true copy thereof in a sealed postage prepaid envelope, first class mail, in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]

☐ Via electronic transmission

☐ Hand-delivery [NRCP 5(b)(2)(A)]

Micheline N. Fairbank, Esq.  
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Attorney General's Office  
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Gordon H. DePaoli, Esq.  
Dale E. Ferguson, Esq.  
Woodburn and Wedge  
6100 Neil Road, Suite 500  
Reno, NV 89511

Courtesy Copy to:  
Honorable Gary D. Fairman  
Seventh Judicial District Court  
P.O. Box 151629  
Ely, NV 89315

DATED this 14<sup>th</sup> day of March, 2016.

  
NANCY FONTENOT

4836-0522-0143, v. 1

EXHIBIT "1"

EXHIBIT "1"



SEVENTH JUDICIAL DISTRICT COURT  
GARY D. FAIRMAN  
DISTRICT JUDGE  
DEPARTMENT 3  
WHITE PINE, LINCOLN AND EUREKA COUNTIES  
STATE OF NEVADA



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Case Nos. CV 1108-155  
CV-1108-156  
CV-1108-157  
CV-1112-164  
CV-1112-165  
CV-1202-170  
CV-1207-178

Dept No. 2

NO. 11170  
MAR 1 2016  
EUREKA COUNTY CLERK  
By W. Prince

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF EUREKA

\*\*\*\*\*

EUREKA COUNTY, a political subdivision  
of the State of Nevada,  
Petitioner,

v.

STATE OF NEVADA, EX. REL., STATE  
ENGINEER, DIVISION OF WATER  
RESOURCES,

Respondent.

CONLEY LAND & LIVESTOCK, LLC, a  
Nevada limited liability company, LLOYD  
MORRISON, an individual,

Petitioners,

v.

OFFICE OF THE STATE ENGINEER OF THE  
STATE OF NEVADA, DIVISION OF WATER  
RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES, JASON KING, State Engineer,  
KOBEN VALLEY RANCH, LLC, Real Party in  
Interest,

Respondents.

**AMENDED ORDER**  
**GRANTING OBJECTION TO**  
**PROPOSED ORDER REMANDING**  
**TO STATE ENGINEER; ORDER**  
**GRANTING PETITIONS FOR JUDICIAL**  
**REVIEW; ORDER VACATING PERMITS**

SEVENTH JUDICIAL DISTRICT COURT

GARY D. FAIRMAN

DISTRICT JUDGE

DEPARTMENT 2  
WHITE PINE, LINCOLN AND EUREKA COUNTIES  
STATE OF NEVADA



1 KENNETH F. BENSON, an individual,  
2 DIAMOND CATTLE COMPANY, LLC, a  
3 Nevada limited liability company, and  
4 MICHEL and MARGARET ANN  
5 ETCHEVERRY FAMILY, LP, a Nevada  
6 registered foreign limited partnership,

Petitioners,

v.

7 STATE ENGINEER OF NEVADA, OFFICE OF  
8 THE STATE ENGINEER, DIVISION OF  
9 WATER RESOURCES DEPARTMENT OF  
10 CONSERVATION AND NATURAL  
11 RESOURCES,

Respondent.

12 EUREKA COUNTY, a political subdivision of  
13 the State of Nevada,

Petitioner,

v.

14 STATE OF NEVADA, EX. REL., STATE  
15 ENGINEER, DIVISION OF WATER  
16 RESOURCES,

Respondent.

17 KENNETH F. BENSON, an individual,  
18 DIAMOND CATTLE COMPANY, LLC, a  
19 Nevada limited liability company, and  
20 MICHEL and MARGARET ANN  
21 ETCHEVERRY FAMILY, LP, a Nevada  
22 registered foreign limited partnership,

Petitioners,

v.

23 STATE ENGINEER OF NEVADA, OFFICE OF  
24 THE STATE ENGINEER, DIVISION OF  
25 WATER RESOURCES DEPARTMENT OF  
26 CONSERVATION AND NATURAL  
RESOURCES,

Respondent.



1 KENNETH F. BENSON, an individual,  
2 DIAMOND CATTLE COMPANY, LLC, a  
3 Nevada limited liability company, and  
4 MICHEL AND MARGARET ANN  
5 ETCHEVERRY FAMILY, LP, a Nevada  
6 registered foreign limited partnership,

Petitioners,

v.

7 STATE ENGINEER OF NEVADA, OFFICE OF  
8 THE STATE ENGINEER, DIVISION OF  
9 WATER RESOURCES DEPARTMENT OF  
10 CONSERVATION AND NATURAL  
11 RESOURCES,

Respondent.

12 MICHEL AND MARGARET ANN  
13 ETCHEVERRY FAMILY, LP, a Nevada  
14 Registered Foreign Limited Partnership,  
15 DIAMOND CATTLE COMPANY, LLC, a  
16 Nevada Limited Liability Company, and  
17 KENNETH F. BENSON, an individual,

Petitioners,

vs.

18 STATE ENGINEER OF NEVADA,  
19 OFFICE OF THE STATE ENGINEER,  
20 DIVISION OF WATER RESOURCES,  
21 DEPARTMENT OF CONSERVATION  
22 AND NATURAL RESOURCES,

Respondents.

23 KOBEH VALLEY RANCH, LLC, a  
24 Nevada limited liability corporation,

Intervenor-Respondents.

25 On May 20, 2013, petitioners MICHEL AND MARGARET ANN ETCHEVERRY  
26 FAMILY, LP, DIAMOND CATTLE COMPANY, LLC and KENNETH F. BENSON appealed  
this Court's findings of fact, conclusions of law, and order denying petitions for judicial



1 review, entered May 17, 2013 (Nevada Supreme Court case no. 63258). The appeal was  
2 consolidated with the appeal in Nevada Supreme Court case no. 61324 for appellate  
3 purposes. The court reversed and remanded the case for proceedings consistent with the  
4 opinion.<sup>1</sup> The remittitur was issued on November 23, 2015.

5 On November 25, 2015, Kobeh Valley Ranch, LLC ("KVR") via email, submitted to  
6 the court a proposed order remanding to State Engineer; on December 3, 2015, Eureka  
7 County, Kenneth F. Benson, Diamond Cattle Company LLC and Michel and Margaret Ann  
8 Etcheverry Family, L.P. filed a joint objection to proposed orders of Kobeh Valley Ranch,  
9 LLC; on December 7, 2015, Michel and Margaret Ann Etcheverry Family, L.P., Diamond  
10 Cattle Company, LLC and Kenneth Benson ("petitioners") filed an objection to proposed  
11 orders of Kobeh Valley Ranch, LLC; on December 16, 2015, KVR filed its reply to joint  
12 objection to proposed orders of Kobeh Valley Ranch LLC; on December 15, 2015,  
13 respondent Jason King, P.E., the State Engineer, filed his joinder to Kobeh Valley Ranch,  
14 LLC's reply to joint objection to proposed orders; on January 8 and 12, 2016, petitioners  
15 filed a request for review of objection to proposed orders of Kobeh Valley Ranch, LLC, the  
16 court has reviewed the pleadings and finds that no further briefing or hearing is  
17 necessary.<sup>2</sup>

18 The court has reviewed the Nevada Supreme Court's opinion issued October 29,  
19 2015. The Nevada Supreme Court held that "substantial evidence does not support the  
20 State Engineer's finding that KVR would be able to "adequately and fully" mitigate the fact  
21 that its ground water appropriations will cause Kobeh Valley springs that sources existing  
22 rights to cease to flow."<sup>3</sup> The court further held that "The State Engineer's decision to  
23

24 <sup>1</sup>Eureka County v. State Engineer, 131 Nev. Adv. Opn. 84 (2015).

25 <sup>2</sup>7JDCR 11.

26 <sup>3</sup>Eureka County v. State Engineer at 16.



1 grant KVR's applications when the result of appropriations would conflict with existing  
2 rights and based upon unsupported findings that mitigation would be sufficient to rectify  
3 the conflict violates the Legislature's directive that the State Engineer must deny use or  
4 change applications when the use or change would conflict with existing rights."<sup>4</sup> Having  
5 found petitioners had met their burden to show the State Engineer's decision was  
6 incorrect, the court held "the State Engineer's decision to grant KVR's applications cannot  
7 stand."<sup>5</sup> The court reversed and remanded these cases to the district court for further  
8 proceedings consistent with this opinion.<sup>6</sup>

9 The Nevada Supreme Court did not remand the cases to the State Engineer for  
10 further proceedings consistent with its opinion which it could have done if the court  
11 concluded additional administrative review and findings were necessary. Based upon the  
12 Supreme Court's reversal of this Court's order denying petitions for judicial review and the  
13 State Engineer's decision to grant KVR's applications, this Court finds that the petitions  
14 for judicial review filed by the petitioners must be granted.

15 Good cause appearing,

16 IT IS HEREBY ORDERED that the petitions for judicial review filed by petitioners  
17 in the above-captioned proceedings are **GRANTED**. The approval of the monitoring,  
18 management, and mitigation plan, issued by respondent, STATE ENGINEER OF NEVADA  
19 is **VACATED** and applications nos. 72695, 72696, 72697, 72698, 73545, 73546, 73547,  
20 73548, 73549, 73550, 73551, 73552, 74587, 75988, 75989, 75990, 75991, 75992, 75993,  
21 75994, 75995, 75996, 75997, 75998, 75999, 76000, 76001, 76002, 76003, 76004, 76005,  
22 76006, 76007, 76008, 76009, 76745, 76746, 76802, 76803, 76804, 76805, 76989, 76990,

23  
24 <sup>4</sup>*Id.*

25 <sup>5</sup>*Id.*

26 <sup>6</sup>*Id.*

SEVENTH JUDICIAL DISTRICT COURT  
GARY D. FAIRMAN  
DISTRICT JUDGE  
DEPARTMENT 2  
WHITE PINE, LINCOLN AND EUREKA COUNTIES  
STATE OF NEVADA



1 77171, 77525, 77526, 77527, 77553, 78424, 79911, 79912, 79913, 79914, 79915, 79916,  
2 79917, 79918, 79919, 79920, 79921, 79922, 79923, 79924, 79925, 79926, 79927, 79928,  
3 79929, 79930, 79931, 79932, 79933, 79934, 79935, 79936, 79937, 79938, 79939, 79940,  
4 79941 and 79942 are hereby DENIED pursuant to NRS 533.370(2) in accordance with the  
5 holding of the Supreme Court's opinion in 131 Nev. Adv. Opn. 84 issued October 29, 2015.

6 IT IS HEREBY FURTHER ORDERED that the permits issued by the State Engineer  
7 for the above applications are VACATED.

8 DATED this 7<sup>th</sup> day of March, 2016.

9   
10 DISTRICT JUDGE  
11  
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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.

Nevada State Engineer

Name of appellant

Micheline N. Fairbank

Name of counsel of record

May 5, 2016

Date

/s/ Micheline N. Fairbank

Signature of counsel of record

Nevada, Carson City

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 5th day of May, 2016, 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.)

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SEE ADDITIONAL SHEET FOR ADDRESSES

Dated this 5th day of May, 2016

/s/ Dorene A. Wright

Signature

**CONTINUATION PAGE**

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