

**In the Supreme Court of Nevada**

THE STATE OF NEVADA STATE ENGINEER;  
THE STATE OF NEVADA DEPARTMENT OF  
CONSERVATION AND NATURAL RESOURCES,  
DIVISION OF WATER RESOURCES; AND  
KOBEB VALLEY RANCH, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,

Appellants,

vs.

EUREKA COUNTY, A POLITICAL SUBDIVISION  
OF THE STATE OF NEVADA; 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,

Respondents,

Case No. 70157 Electronically Filed  
May 20 2016 03:56 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**MOTION TO EXPEDITE APPEAL**

Appellant, Kobeh Valley Ranch, LLC (hereinafter “KVR”), by and through its counsel, Paul G. Taggart, Esq. and David H. Rigdon, Esq., of the law firm of Taggart & Taggart, Ltd., respectfully requests that this Court expedite its review of this appeal for the reasons set forth in the attached Memorandum of Points and Authorities.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

This appeal only requires a clarification of the remand instructions in a recently decided opinion from this Court. This Court should summarily clarify its prior instructions to save the judicial resources that will otherwise be required to process this appeal.

### **I. Facts and Procedural History**

KVR proposes to develop a molybdenum mine—the Mount Hope Mine Project—in Eureka County, Nevada. The Mount Hope Mine Project will be one of the largest primary molybdenum mines in the world. The development and operation of the mine will greatly enhance the economy of the State of Nevada and provide substantial tax revenue to Eureka County. Almost \$300 million dollars is already invested in this effort and when the mine is operational, 400 people will be employed in full-time jobs.

To develop the mine, many water applications were filed with the State Engineer to appropriate new water rights and to change existing water rights (collectively hereinafter “Applications”). The Applications sought a total combined duty of 11,300 cfs of groundwater for mining and milling purposes at the mine. The Applications were protested by various parties including Eureka County.

KVR expended significant time and resources in pursuit of the Applications. In October 2008, the State Engineer conducted five days of hearings on the applications and, six months later, granted most of them. Eureka County and other protesters appealed that determination. The district court subsequently vacated the ruling and remanded the case back to the State Engineer for additional proceedings. The State Engineer conducted a second round of hearings in December 2010 and May 2011. On July 5, 2011, the State Engineer issued Ruling 6127 and granted KVR 11,300 afa of groundwater rights. The Ruling was conditioned on the submission of a monitoring, management, and mitigation plan (hereinafter the “3M Plan”).

The Protestants again appealed the State Engineer’s grant of the Applications. While the appeal was pending, in October 2011, KVR submitted a draft 3M Plan to the State Engineer. 3M Plans are regularly used by the State Engineer in large water projects. Given this, KVR relied heavily on the direction and guidance of the State Engineer regarding the contents of the 3M Plan. During the process of developing the 3M Plan, KVR met with the State Engineer, Eureka County, and other stakeholders, to discuss the draft 3M plan’s sufficiency. In reliance on the guidance provided in these meetings, KVR revised the 3M Plan and submitted its final plan on May 10, 2012.

In June 2012, the State Engineer approved the final 3M Plan. At about the same time, on June 13, 2012, the district court upheld the findings and conclusions of the State Engineer in Ruling 6127. But in July 2012, certain Protestants, but not Eureka County, appealed the State Engineer's approval of the final 3M Plan. On May 15, 2013, the district court upheld the State Engineer's approval of the final 3M Plan.

Appeals were filed from district court's separate approvals of State Engineer Ruling 6127, and the 3M plan. After briefing and argument, this Court reversed and remanded the case to the district court. *See Eureka Cnty. v. State Engineer*, 131 Nev. Adv. Op. 84, 359 p.3d 1114 (2015) (hereinafter "the Opinion"). In the Opinion, the Supreme Court directed the district court to conduct "proceedings consistent with this opinion." *Id.* Further proceedings were needed because this Court could not determine which water right permits were properly granted and which were considered to conflict with existing rights. Specifically, the Court stated in footnote 4 that:

From the record and Ruling 6127, it is unclear which of KVR's applications for proposed use or change in Kobeh Valley, if it can be pinpointed, is the appropriation that will cause the springs to dry up. Therefore, we must overturn the entire decision.

Footnote 4 clearly indicates that further factual determinations on remand were required to determine which of the Applications should be denied due to conflicts with existing rights, and which Applications should be approved.

Because NRS 533.450 restricts a district court's review of a petition for judicial review of a water rights decision to the facts contained in the record on appeal, such factual determinations can only be made by the State Engineer. Accordingly, after the issuance of the opinion, KVR requested the district court to further remand the matter to the State Engineer. Respondents filed an objection to KVR's request.

On March 9, 2016, the district court entered an order and did *not* remand this case to the State Engineer for factual determinations. Instead, the district court vacated *all* of the Applications. The district court's order requires KVR to start over, making KVR's effort to acquire the water resources needed to develop the mine project significantly more difficult, expensive, and time-consuming.

The district court's stated reason for refusing to remand to the State Engineer is that this Court did not remand the case directly to the State Engineer or specifically instruct the district court to remand. The district court erroneously held that "[t]he Nevada Supreme Court did not remand the cases to the State Engineer for further proceedings consistent with its opinion *which it could have done* if the court concluded additional administrative review and findings were necessary." (emphasis added).

The district court's holding is contrary to standard appellate procedure in water rights cases under which this Court remands a case to the district court and

then, if further fact-finding is needed, the district court further remands the case to the State Engineer, consistent with NRS 533.450.

Given the district court's misinterpretation of this Court's instructions on remand, on April 18, 2016, KVR filed its Notice of Appeal in this matter seeking to have this Court clarify its remand instructions and specifically direct the district court to vacate its March 9, 2016 Amended Order and further remand the matter to the State Engineer for additional fact-finding.

## **II. Argument**

### **A. Expedited review, *without* additional briefing, is warranted.**

Expedited review of this appeal will serve the public interest.<sup>1</sup> The question of whether the district court should further remand this case to the State Engineer has been extensively argued in the proceedings below. It is highly unlikely that further briefing will assist this Court in interpreting its own instructions on remand. In addition, full briefing of this matter will only cause further delay and expense to the parties.

The very narrow question at issue in this appeal is whether this Court directed the district court to remand the case to the State Engineer for additional

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<sup>1</sup> Cf. *Huckabay Properties, Inc. v. NC Auto Parts, LLC*, 130 Nev. Adv. Op. 23, 322 P.3d 429, 430 (2014) (noting “the public’s interest in expeditious resolution of appeals”); *City of Las Vegas v. Int’l Ass’n of Firefighters, Local # 1285*, 110 Nev. 449, 451, 874 P.2d 735, 737 (1994) (noting that it “is a matter of the utmost concern to this court, to litigants in general, and to this State’s citizens” that “appeals proceed to finality in an expeditious fashion”).

fact-finding. This Court's instruction to the district court to conduct further proceedings consistent with the Opinion, coupled with the statement in footnote 4 indicating that the record lacked sufficient information to determine which Applications conflicted with existing rights, indicates that the district court should have remanded the case to the State Engineer for further proceedings. Either way, this Court does not need additional briefing to clarify its own decision.

NRAP 47(a) allows this Court broad discretion to "regulate its practice in any manner consistent with law and justice." The expeditious review of this matter is consistent with law and justice. It will allow a relatively simple clarification to be provided without the parties having to expend significant time and effort drafting and filing duplicative briefings. Accordingly, KVR respectfully requests that this Court conduct an expedited review of this matter, and clarify its remand instructions based upon the pleadings and papers filed by the parties in the district court.

**B. If this Court determines that further briefing is necessary, any such briefing should be completed on an expedited schedule.**

Alternatively, if this Court determines that further briefing on this matter is warranted, KVR respectfully requests that such briefing be completed in an expedited manner. An expedited briefing schedule is warranted since the issues raised in the appeal have already been thoroughly researched and briefed by the parties in the proceedings below.

Specifically, KVR requests that this Court issue an order requiring Appellant opening briefs be submitted no later than 20 days after notice of an order granting this motion is served. Likewise, Respondent answering briefs should be filed no later than 20 days after the deadline to file opening briefs and any Appellant reply brief should be filed no later than 10 days after the deadline to file answering briefs.

The proposed briefing schedule shortens the time in which KVR has to file its opening brief by 100 days, shortens the time in which Respondents have to file their answering brief by 10 days, and shortens the time for KVR to file its reply brief by 20 days. See NRAP 31(a)(1). Of course if an alternative time frame would better serve this Court's needs, KVR will comply with any briefing schedule the Court may order.



### **III. Conclusion**

Appellant KVR respectfully requests that this Court expedite the resolution of this appeal without additional briefing from the parties. In the alternative, KVR respectfully requests that briefing in this matter occur on an expedited schedule.

DATED this 20th day of May, 2016.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of May, 2016, I served the foregoing  
**MOTION TO EXPEDITE APPEAL** by:

☒ **By ELECTRONIC SERVICE**

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