IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

v.

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

On Appeal from District Court
Case Nos. CV-1108-155,
CV-1108-156, CV-1108-157,
CV-1112-164, CV-1112-165,
CV-1202-170, and CV-1207-178

RESPONDENTS ETCHEVERRYS' AND DIAMOND CATTLE CO.'S ANSWERING BRIEF

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DISCLOSURE STATEMENT

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that there are no parent corporations or publicly-held companies that own 10% or more of the Respondents party's stock.

Schroeder Law Offices, P.C., including Laura A. Schroeder and Therese A. Ure, appeared for Appellants in proceedings in the District Court and have appeared for Appellants before this Court.

Dated this 19th day of September, 2016.

/s/ Therese A. Ure
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ROUTING STATEMENT

This appeal is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(9) because it is a case involving an administrative agency appeal concerning the determination of applications to appropriate water.

I.

ANSWER

Respondents Michel and Margaret Ann Etcheverry Family, LP and Diamond Cattle Company, LLC (collectively referred to herein as "Etcheverry")[1], by and through their attorneys of record, Schroeder Law Offices, P.C., Laura A. Schroeder and Therese A. Ure, file this Answer to the Appellants Nevada State Engineer's, and Kobeh Valley Ranch's Opening Briefs.

This Court should affirm the district court's March 9, 2016 Amended Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits.[2] The district court's order is consistent with this Court's Opinion in *Eureka County v. State*

[1] Before the District Court in the underlying proceedings, and on April 6, 2016, Schroeder Law Offices, P.C. filed a Notice of Withdrawal of Counsel for Kenneth Benson. Schroeder Law Offices, P.C. continues to represent Michel and Margaret Ann Etcheverry Family, LP and Diamond Cattle Company, LLC.

[2] Respondents Michel and Margaret Ann Etcheverry Family, LP and Diamond Cattle Company, LLC filed a joint objection with Eureka County to the Proposed Orders in Case Nos CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170. *See* JA 1370. In addition, Respondents filed a separate objection to the Proposed Order in Case No. CV1207-178 relating to the 3M Plan case. *See* Supp. JA 181.

Engineer, including its remand instruction, which mandated that the district court deny KVR's applications and vacate the corresponding permits without remanding the matter to the State Engineer.

II.

STATEMENT OF ISSUES

A. The district court correctly interpreted this Court's Opinion in *Eureka County v. State Engineer,* 131 Nev. Adv. Rep. 84, 359 P.3d 1114 (2015), and the district court's March 9, 2016 Amended Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits, is consistent with that Opinion.

B. Kobeh Valley Ranch is not entitled to equitable relief as a result of the district court's order vacating its permits.

III.

STATEMENT OF THE CASE

This is an appeal from the order of the district court following the reversal and remand by this Court in *Eureka County v. State Engineer,* 131 Nev. Adv. Rep. 84, 359 P.3d 1114 (2015). Pursuant to this Court's instruction for further proceedings consistent with its opinion, the district court vacated permits issued by the State Engineer as well as the monitoring, management, and mitigation ("3M")

plan developed by Kobeh Valley Ranch (hereinafter referred to as "KVR") and approved by the State Engineer. Additionally, the district court denied numerous water rights applications filed by KVR.

IV.

STANDARD OF REVIEW

A district court's conclusions of law, which in this instance concern its interpretation of this Court's instructions on remand, are reviewed de novo. *See White v. Continental Ins. Co.*, 119 Nev. 114, 116, 16 P.3d 1090, 1091 (2003). Further, "[W]here an appellate court deciding an appeal states a principal or rule of law, necessary to the decision, the principal or rule becomes the law of the case and must be adhered to throughout its subsequent progress both in the lower court and upon subsequent appeal." *Lo Bue v. State*, 92 Nev. 529, 532, 554 P.2d 258, 260 (1976). Therefore, the issue of whether the district court's order on remand was consistent with this Court's ruling in *Eureka County* is to be reviewed de novo.

V.

ARGUMENT

The district court did not err in its interpretation of this Court's Opinion in *Eureka County v. State Engineer,* 131 Nev. Adv. Rep. 84, 359 P.3d 1114 (2015). The district court's order is consistent with the Opinion, particularly the reverse-

and-remand instruction, which clearly stated that the matter did not call for further administrative proceedings before the State Engineer. Accordingly, and because this Court ruled that the State Engineer's underlying decision was not supported by substantial evidence and therefore could not stand, KVR is not entitled to equitable relief. *See, Id.*, 131 Nev. Adv. Rep. 84, 16, 359 P.3d at 1121.

1. THE DISTRICT COURT'S MARCH 9, 2016 ORDER IS CONSISTENT WITH THIS COURT'S OPINION IN *EUREKA COUNTY V. STATE ENGINEER.*

A. This Court's Opinion clearly mandates that the District Court deny KVR's applications.

The Opinion in *Eureka County* categorically states that, pursuant to NRS 533.370(2), KVR's applications must be denied. Further, the responsibility to proceed in accordance with the Opinion was clearly placed on the district court. Despite contrary assertions by KVR and the State Engineer, the district court acted properly in denying KVR's applications and vacating the corresponding permits in its March 9, 2016 Order.

While both KVR and the State Engineer maintain that the Opinion calls for additional fact-finding by the State Engineer (*see* KVR Opening Brief, Sec. II.A., and State Engineer Opening Brief, Sec. A.1.), this Court averred just the opposite:

> The State Engineer's decision to grant KVR's applications, when the result of the appropriations would conflict with existing rights, and based upon unsupported findings that mitigation would be sufficient to rectify the conflict, *violates the Legislature's directive that the State Engineer must deny*

> *use or change applications when the use or change would conflict with existing rights*. NRS 533.370(2). As appellants have met their burden to show the State Engineer's decision was incorrect, NRS 533.450(10), the State Engineer's decision to grant KVR's applications cannot stand.

Eureka County, 131 Adv. Rep. 84, 16, 359 P.3d at 1121 (emphasis added). This does not suggest that further proceedings by the State Engineer are required; rather, it declares that his ruling is erroneous, in violation of his statutory duty, and will not withstand judicial review, the petitions for which had been inappropriately denied. The Opinion instructed the district court to rectify that, and the district court complied.

Subsequently, the district court proceeded as instructed by this Court, in a manner consistent with the *Eureka County* Opinion. *Id.* Acting on this Court's determination that the State Engineer did not fulfill his statutory duty and that substantial evidence did not support his decision, *id.,* the district court denied the applications submitted by KVR while vacating the corresponding permits as well as the 3M plan approved by the State Engineer. JA 1420-21.

However, in so doing, both KVR and the State Engineer contend that the district court usurped the State Engineer's authority to grant or deny applications to appropriate water, as established in NRS 533.370. Both attempt to augment their position by citing to *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979),

where this Court ruled that a district court may not "substitute its judgment for that of the State Engineer."

But that is not what the district court has done here. Instead, it relied on this Court's findings in regard to the State Engineer's failure to fulfill his statutory duty as set forth in NRS 533.370(2) and the lack of substantial evidence supporting his decision to grant KVR's applications, and proceeded accordingly with its March 9, 2016 order. In sum, the district court precisely followed the guidance of this Court, which, in instances involving arbitrary administrative decisions, "will not hesitate to intervene." *Id* at 787 (*citing State ex rel. Johns v. Gragson*, 89 Nev. 478, 483, 515 P.2d 65, 68 (1973)).

B. This Court did not intend for the District Court to remand to the State Engineer.

In matters involving judicial review of rulings made by the State Engineer, this Court has historically directed district courts to remand for further administrative proceedings if it determined that said proceedings were needed. The fact that *Eureka County* included no such explicit instruction presupposes that this Court did not believe it to be necessary. Therefore, the district court acted properly in vacating KVR's applications rather than remanding to the State Engineer.

This Court succinctly stated, "We therefore reverse and remand these matters *to the district court* for proceedings consistent with this opinion." *Eureka County,* 131 Nev. Adv. Rep. 84, 17, 359 P.3d at 1121 (emphasis added). This

stands in direct contrast to instances when this Court has determined that further action by the State Engineer is warranted. On an occasion when this Court found that the State Engineer did not sufficiently analyze whether a municipality had "cured" forfeiture of certain water rights, it ordered "reverse and remand to the district court *for referral to the State Engineer* to conduct proceedings consistent with this opinion." *Town of Eureka v. State Engineer,* 108 Nev. 163, 169-170, 826 P.2d 948, 952 (1992) (emphasis added). On appeal of the cancellation of a portion of a water right, this Court ordered that, "on remand, the district court *shall instruct the State Engineer*" to allow the appellant an opportunity to show beneficial use. *Desert Irrigation, Ltd. v. State*, 113 Nev. 1049, 1061, 944 P.2d 835, 843 (1997) (emphasis added). And in weighing an adverse possession claim, this Court determined that "the judgment of the district court must, therefore, be reversed, and the instant case remanded *to the State Engineer for a full and fair determination*" of said claim. *Revert,* 95 Nev. at 788, 603 P.2d at 265 (emphasis added).

In respect to the present matter, the most telling instruction is found in *Great Basin Water Network v. State Engineer*, 126 Nev. Adv. Rep. 20, 234 P.3d 912 (2010). In finding that the State Engineer failed to fulfill his statutory duties, this Court ruled:

> Accordingly, we reverse the district court's order denying appellants' petition for judicial review and remand the matter to the district court *with instructions to, in turn, remand the matter*

> *to the State Engineer* for further proceedings consistent with this opinion.

Id. at 126 Nev. Adv. Rep. 20, 25, 234 P.3d at 920 (emphasis added). While the underlying circumstances of *Great Basin* and *Eureka County* differ significantly, the reverse-and-remand language of the former is significant for two reasons. First, it is the most recent opinion to which KVR and the State Engineer cite regarding this particular issue, suggesting that it accurately reflects this Court's disposition concerning remand instruction. Second, *Great Basin* and *Eureka County* were both heard *en banc* by the same panel, and were unanimous decisions. Although the opinions were written by different justices,[3] it follows that the respective remand instructions would closely parallel one another if they were intended to convey the same intent. As it is, *Great Basin* states twice that remand must ultimately go to the State Engineer, *Id.* at 126 Nev. Adv. Rep. 20, 4, 25, 234 P.3d at 914, 920. There is no equivalent reference in *Eureka County.*

KVR attempts to explain this discrepancy by classifying the remand language contained in *Eureka County* as general, and comparing it to *Bacher v. State Engineer,* 122 Nev. 1110, 146 P.3d 793 (2006), where this Court reversed the district court ruling without providing any remand instruction. KVR Opening Brief, p. 10 (*citing Bacher,* 122 Nev. at 1123, 146 P.3d at 801). However, the

[3] Justice Hardesty wrote the opinion in *Great Basin* while Justice Pickering wrote the opinion in *Eureka County*.

circumstances are not analogous. Whereas the *Bacher* opinion provides no guidance — it simply reversed the lower court's denial of the appellants' petition for judicial review, *id.* — this Court offered particular instruction in *Eureka County,* "revers[ing] and remand[ing] these matter s *to the district court* for proceedings consistent with this opinion." *Eureka County,* 131 Nev. Adv. Rep. 84, 17, 359 P.3d at 1121 (emphasis added). The district court correctly noted that if this Court "concluded additional administrative review and findings were necessary," it would have been instructed accordingly. JA 1420. But since remand was ordered solely *to the district court,* it is specious to presume this Court tacitly intended anything more.

C. KVR and the State Engineer cannot challenge the Court's mandate of this juncture.

As established *supra,* the district court precisely followed the instruction provided by this Court in the *Eureka County* Opinion. As a subordinate tribunal, it does not have the discretion to do otherwise. However, both KVR and the State Engineer contend that the district court misinterpreted the holding, particularly the reverse-and-remand instruction. Yet since the provision in question plainly stated that proceedings consistent with this opinion were to be remanded to the district court. *Eureka County,* 131 Nev. Adv. Rep. 84, 17, 359 P.3d at 1121, it follows that the issue raised by KVR and the State Engineer does not lie with the district court's interpretation, but rather with the Opinion itself.

As Eureka County pointed out in its Opposition to KVR's Motion to Alter or Amend Judgment (JA 1505), the proper recourse for KVR would have been for it (or the State Engineer) to petition this Court for a rehearing. Pursuant to NRAP 40(c)(2)(A), an appellate court may consider a rehearing when it has "overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case." Since, for instance, KVR believes that a failure to remand to the State Engineer, while consistent with the Opinion's reverse-and-remand instruction, is manifestly unjust, KVR Opening Brief, Sec. III.C.2., it should have petitioned for rehearing on that basis. But the filing deadline is long past, since, pursuant to NRAP 40(a)(1), the petition needed to be filed within 18 days of the Opinion's date of publication, October 29, 2015.

Clearly, the district court's March 9, 2016 order is consistent with this Court's Opinion in *Eureka County.* In accordance with the Opinion, the district court denied KVR's applications without remanding the matter to the State Engineer because this Court determined that further administrative proceedings were unnecessary. Further, the district court correctly followed the Opinion's reverse-and-remand mandate, which was not subject to challenge from KVR or the State Engineer. Therefore, the district court did not err in issuing the order.

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2. KVR IS NEITHER DEPRIVED OF NOR ENTITLED TO EQUITABLE RELIEF AS A RESULT OF THE DISTRICT COURT'S ORDER.

A. The instant matter is distinguishable from *Great Basin,* and its equitable remedy is therefore inapplicable.

This Court ruled that the State Engineer violated his statutory duty by granting use or change applications that conflicted with existing rights. *Eureka County,* 131 Nev. Adv. Rep. 84, 16, 359 P.3d at 1121. While neither KVR nor the State Engineer dispute the violation, they assert that KVR cannot be punished for it. This equitable remedy, found in *Great Basin*, 126 Nev. Adv. Rep. 20, 24-25, 234 P.3d at 920, is inapplicable here because the underlying circumstances of these two cases do not correspond.

In *Great Basin,* this Court held the State Engineer accountable for his failure to take action on pending applications within one year of the closing of the protest period, as was statutorily required under NRS 533.370(2) when the applications were filed, in 1989. *Id.* at 126 Nev. Adv. Rep. 20, 3-4, 234 P.3d at 914. In weighing the district court's denial of a petition for judicial review, this Court determined that inequities would result among the parties if the applications were simply approved or denied. *Id.* at 126 Nev. Adv. Rep. 20, 24, 234 P.3d at 920. Therefore, in confirming its power to grant equitable relief in water cases, this Court ruled that the appropriate remedy would be for the State Engineer to re-notice the applications and reopen the protest period. *Id.*

It is important to note that in *Great Basin*, the State Engineer never approved or denied the applications at issue. *Id.* at 126 Nev. Adv. Rep. 20, 2, 234 P.3d at 914. In fact, the administrative process did not advance beyond the pre-hearing stage. *Id.* at 126 Nev. Adv. Rep. 20, 7-9, 234 P.3d at 915.

In contrast, in the instant matter a hearing was held in 2008, after which some of KVR's applications were approved, only to be vacated on review of the district court. *Eureka County,* 131 Nev. Adv. Rep. 84, 4-5, 359 P.3d at 1116. On remand to the State Engineer, a second hearing was held in 2010 and continued into 2011, after which all of KVR's applications were granted by way of Ruling 6127. *Id.* Subsequent to this ruling, KVR prepared, and the State Engineer approved, a 3M plan that would, theoretically, adequately and fully mitigate any impact the new appropriations would have on existing rights. *Id.*

So although both cases involve an established statutory violation on the part of the State Engineer, the similarities end there. In *Great Basin,* the parties pressed the State Engineer for a ruling on the pending applications, while KVR's applications have already been acted on twice —and the courts found that the State Engineer ruled improperly on both occasions. Now, KVR contends that it is entitled to a third try, because the State Engineer violated his statutory duty by relying on unsupported findings, at least some of which KVR provided. *Id.* at 131

Nev. Adv. Rep. 84, 8, 359 P.3d at 1117-18. This would not be an equitable remedy, but rather a gratuitous opportunity.

B. This Court's Opinion did not announce a new rule.

KVR asserts that this Court announced procedures in *Eureka County* that altered the State Engineer's practice for using 3M plans and that it should be allowed to revise its 3M plan so that it conforms to the "newly adopted standards." KVR Opening Brief, Sec. III.C.1. In truth, however, this Court did not adopt new standards, but rather emphasized the significance of a well-established one in determining the adequacy of an administrative decision, the substantial evidence rule.

In granting KVR's permits, the State Engineer conditioned approval on KVR's subsequent development of a 3M plan that would fully mitigate any conflict the new uses may have on existing water rights. *Eureka County,* 131 Nev. Adv. Rep. 84, 5, 359 P.3d at 1116. But this Court rejected that practice, ruling that "[al]though the State Engineer certainly may use his experience to inform his decision make, his decisions must be supported by substantial evidence on the record before him, which is not the case here." *Id.* at 131 Nev. Adv. Rep. 84, 14, 359 P.3d at 1120.

KVR suggests that the Opinion announced two new procedures for 3M plans: 1) an application cannot be approved on the condition that the applicant will

subsequently develop a 3M plan, and 2) the plan must outline specific mitigation measures, be supported by evidence demonstrating likely success, and be subject to protestants' review. KVR Opening Brief, Sec. III. Then, again relying on *Great Basin,* KVR says it cannot be punished for its good-faith reliance on the State Engineer's advice, which this Court determined to be in violation of his statutory duties. *Id.* at Sec. III.C.1.

Actually, this Court announced nothing new, but instead focused on the integral element of its analysis:

> The State Engineer and KVR submit that the State Engineer may conditionally grant proposed use or change applications on the basis of future successful mitigation, thereby ensuring that the new or changed appropriation does not conflict with existing rights, in accordance with NRS 533.370(2). *This court has never addressed whether the statute may be read in this manner, and we need not do so at this time.* Even assuming that the State Engineer may grant a proposed use or change application on the basis of the appropriator's ability to successfully mitigate and bring the existing water rights back to their full beneficial use, *substantial evidence does not support the State Engineer's decision that this is the case here.*

Eureka County, 131 Nev. Adv. Rep. 84, 7, 359 P.3d at 1117 (emphases added) (internal citations omitted).

Nothing new was announced here as NRS 534.110(5) states that applications which may cause the groundwater level to be lowered can still be approved if the appropriations of existing rights holders can be satisfied under express conditions included in the permit. This point has already been briefed and argued before the

district court. Supp. JA 16-18, 49-54. If the State Engineer was going to rely upon a 3M Plan to resolve NRS 533.370(2) (conflicts), then such terms had to be an express condition in the granting of the permit. Again, this is neither new law nor new procedure.

Even if, for the sake of argument, this Court did articulate new standards regarding 3M plans, they would be irrelevant in this instance. "With questions of fact, the reviewing court must limit itself to the determination of whether substantial evidence in the record supports the State Engineer's decision." *Town of Eureka,* 108 Nev. at 165 (*citing Revert,* 95 Nev. at 786, 603 P.2d at 264). This Court has emphatically stated that the evidence upon which the State Engineer based his decision to grant KVR's applications pursuant to NRS 533.370 was clearly insufficient.

C. The District Court's Order is not manifestly unjust.

As previously indicated, substantial evidence did not support the State Engineer's decision to approve KVR's applications, and that the district court's vacation of the corresponding permits, pursuant to this Court's instruction, was appropriate. However, KVR argues that the district court's order produced two "unfair and unjust" consequences: 1) KVR must restart the process of acquiring water rights, and 2) now must overcome administrative complications, particularly

in regard to the loss of priority. KVR Opening Brief, Sec. III.C.2. Contrary to KVR's claim, there is nothing manifestly unjust about district court's order.

This court has defined "manifest injustice" as an instance where "the verdict or decision strikes the mind, at first blush, as manifestly and palpably contrary to the evidence ..." *Kroger Properties & Dev. v. Silver State Title Co.,* 102 Nev. 112, 114, 715 P.2d 1328, 1330 (1986) (*citing Price v. Sinnot,* 85 Nev. 600, 607, 460 P.2d 837, 841 (1969). Thus, KVR would have to show that the result of district court's order, primarily the vacation of its permits, was unreasonable in light of underlying circumstances.

The Opinion directly rebuts that contention. This Court ruled that the State Engineer's decision to grant KVR's applications was not supported by substantial evidence, and therefore the adverse parties had met their burden to show the decision was incorrect. *Eureka County,* 131 Nev. Adv. Rep. 84, 16, 359 P.3d at 1121. In response to this Court's mandate that the decision could not stand, *id.,* the district court ruled accordingly in issuing the order that granted the petitions for judicial review, denied the applications while vacating the corresponding permits as well as the 3M plan approved by the State Engineer. JA 1420-21.

KVR's contention notwithstanding, it had the burden during proceedings before the State Engineer to show that its applications would not conflict with existing rights. Not only did KVR fail to demonstrate such, its own expert testified

to the contrary. *See Eureka County,* 131 Nev. Adv. Rep. 84, 8, 359 P.3d at 1117-18. KVR had the opportunity to present evidence of mitigation and it did so. While the State Engineer ruled that KVR had met its burden and granted the applications, this Court disagreed, ruling that the decision was not supported by substantial evidence and therefore could not stand. *Id.* at 131 Nev. Adv. Rep. 84, 16, 359 P.3d at 1211. Now, KVR attempting to argue that it is prejudiced by the State Engineer's failure to require a different 3M plan, perhaps, one that would actually resolve conflicts with existing rights. In essence, KVR asking for a rehearing to which it is not entitled. It is the applicant, not the State Engineer, who has the burden to show its applications do not conflict with existing rights.

In sum, KVR's claims for equitable relief are unsubstantiated. These circumstances are not parallel to those in *Great Basin*, so the equitable remedy announced therein is inapplicable here. Further, this Court did not proclaim a new rule regarding 3M plans, but rather emphasized the significance of the substantial evidence rule in analyzing the sufficiency of decisions made by the State Engineer. Finally, the district court's order is consistent with the determinations of this Court, so it cannot be considered manifestly unjust.

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VI.

CONCLUSION

For the reasons stated herein, this Court should affirm the district court's March 9, 2016 Amended Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits. The district court's order is consistent with this Court's Opinion in *Eureka County v. State Engineer,* including its remand instruction, which mandated that the district court deny KVR's applications and vacate the corresponding permits without remanding the matter to the State Engineer. Accordingly, and because this Court ruled that the State Engineer's underlying decision was not supported by substantial evidence and therefore could not stand, *Eureka County,* 131 Nev. Adv. Rep. 84, 17, 359 P.3d at 1121, KVR is not entitled to equitable relief.

Dated this 19th day of September, 2016.

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ATTORNEY'S CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 28.2, I hereby certify that I have read this answering brief, and to the best of my knowledge, information and belief, the brief is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), 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.

Pursuant to NRAP 32(a), I 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 in 14 point Times New Roman font. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7)(A)(ii), excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 4,250 words.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 19th day of September, 2016.

/s/ Therese A. Ure

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PROOF OF SERVICE

Pursuant to NRAP 25(d), I hereby certify that on the 19th day of September, 2016, I caused a copy of the foregoing ***RESPONDENTS ETCHEVERRYS' AND DIAMOND CATTLE CO.'S ANSWERING BRIEF*** to be served on the following parties as outlined below:

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Dated this 19th day of September, 2016.

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