

EXHIBIT 1

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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
KOBEL VALLEY RANCH, LLC,

Appellants,

Case No. 70157

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.

DECLARATION OF MICHELINE N. FAIRBANK
IN SUPPORT OF APPELLANT NEVADA STATE ENGINEER'S
UNOPPOSED MOTION TO POSTPONE ORAL ARGUMENT
SET FOR MARCH 6, 2017, TO APRIL 4, 2017.

I, MICHELINE N. FAIRBANK, being first duly sworn under
penalty of perjury of the laws of the State of Nevada, do here by depose
and state:

1. I am presently employed as a Senior Deputy Attorney General with the State of Nevada, Office of the Attorney General, assigned to represent the Nevada Division of Water Resources, Nevada State Engineer.

2. I am assigned to represent the Nevada State Engineer in the above-captioned matter.

3. I am admitted to practice law before all Nevada State Courts.

4. All statements made herein are based upon my personal knowledge, except where stated to be upon information and belief. As to those matters, I believe them to be true.

5. This declaration is filed in support of Appellant Nevada State Engineer's Unopposed Motion to Postpone Oral Argument set for March 6, 2017, to April 4, 2017.

6. I have a family vacation scheduled for the week of March 5-10, 2017, which has been planned and travel arrangements booked and paid for since early December 2016.

7. Following receipt of electronic notice of the scheduling of oral argument in the above-captioned matter on January 26, 2017,

I provided notice to all parties, through their attorneys of record, of a scheduling conflict. In that communication, I requested consent of the parties to file an unopposed motion to postpone oral argument in this matter to accommodate my scheduling conflict.

8. All parties, through counsel, expressed their consent to the filing of an unopposed motion. Counsel for Appellants Kobeh Valley Ranch, LLC (KVR), requested that the matter only be continued to the next available calendar date due to the expedited status of this matter.

9. Upon information and belief, and based upon a review of the Court's calendar, which is available electronically at <http://nvcourts.gov/Calendar.aspx>, I believe the next available calendar dates to be either April 3 or 4, 2017.

10. Based upon KVR's request and after reviewing the Court's calendar, I further communicated with all parties, through their counsel, asking if scheduling on either April 3rd or April 4th dates would be acceptable.

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11. Counsel for Michel and Margaret Ann Etcheverry Family, LP, stated that there was an existing conflict on April 3, 2017, but stated that April 4, 2017, would be an acceptable alternative date.

Pursuant to NRS 53.045, I hereby certify, under penalty of perjury, that the foregoing is true and correct.

Executed this 1st day of February, 2017.


MICHELINE N. FAIRBANK

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Respondents.

Electronically Filed
Feb 02 2017 08:16 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 70157

UNOPPOSED MOTION TO POSTPONE ORAL ARGUMENT
SET FOR MARCH 6, 2017, TO APRIL 4, 2017

Appellant, Jason King, P.E., the State Engineer, in his capacity as
the Nevada State Engineer, Department of Conservation and Natural
Resources, Division of Water Resources (hereafter “Nevada State
Engineer”), by and through counsel, Nevada Attorney General Adam

Paul Laxalt and Senior Deputy Attorney General Micheline N. Fairbank, hereby files this Conditionally Unopposed Motion to Postpone Oral Argument Set for March 6, 2017, to April 4, 2017 (hereafter “Motion”). This Motion is made pursuant to NRAP 34(a) and is based upon the attached Points and Authorities and the pleadings and papers on file herein.

POINTS AND AUTHORITIES

I. INTRODUCTION

Due to a pre-existing scheduling conflict with counsel for the State Engineer, the State Engineer requests that oral argument in this matter be postponed to April 4, 2017. State Engineer’s counsel has had a family trip scheduled for the week of March 6 through 10, 2017, and all travel arrangements have been made, prior to receipt of the order regarding scheduling of oral argument in this matter.

Counsel for the State Engineer has communicated with all parties, through their counsel, prior to moving to postpone oral argument. Based upon those communications, all parties are available and agreeable to seek postponement until April 4, 2017. Accordingly, the

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State Engineer asserts that good cause exists to postpone oral argument in this matter until April 4, 2017.

II. DISCUSSION

This appeal arises from a March 9, 2016, order from the district court which vacated and denied numerous applications by Appellant Kobeh Valley Ranch, LLC (KVR) to appropriate water. Appellant Nevada State Engineer (State Engineer) filed his Notice of Appeal on April 12, 2016. On May 20, 2016, KVR, filed its notice of appeal on March 18, 2016, moved to expedite the appeal in this matter. This Court granted, in part, KVR's motion to expedite appeal, on July 28, 2016.

On December 21, 2016, this Court issued its Order Re: Scheduling of Oral Argument, placing the parties on notice that the matter would be scheduled for oral argument on the next available calendar. The Notice of Oral Argument Setting was filed on January 26, 2017, setting oral argument in this matter for March 7, 2017.

Upon receiving the Notice of Oral Argument Setting, Counsel for the State Engineer provided notice to all parties, through counsel, of a conflict precluding the State Engineer's counsel from appearing on

March 7, 2017, and requesting consent to file an unopposed motion to reset oral argument to the next available calendar date with the Court.¹ All parties consented to the filing of an unopposed motion; however, KVR requested that the motion seek postponement to either April 3rd or 4th, the next available dates which the Court's calendar appears to have set for En Banc arguments.² Through further consultation, State Engineer's counsel was informed that Respondents Michel and Margaret Ann Etcheverry Family, LP can only be available on April 4, 2017.

Nevada Rule of Appellate Procedure 34(a) provides in relevant part that "[a] motion to postpone [oral] argument must be filed reasonably in advance of the date fixed for hearing." This Motion is made more than 30 days prior to the date set for hearing oral argument in this matter, is made in good faith, and not for the purpose of delay. Due to a preexisting conflict, counsel for the State Engineer will be unavailable on March 7, 2017.³

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¹ See Declaration of Micheline N. Fairbank, attached hereto as Exhibit 1.

² *Id.*

³ *Id.*

However, as this matter has been granted expedited status, and not desiring to cause unnecessary delay, the State Engineer consulted with all parties to coordinate this request. In order to respect the expedited request by KVR, counsel for the State Engineer has determined that April 4, 2017, is a date which all parties are available for oral argument in this matter. Accordingly, the State Engineer respectfully requests that this matter be postponed to April 4, 2017.

III. CONCLUSION

Based upon the foregoing, the State Engineer respectfully requests that oral argument set for March 7, 2017, be postponed to April 4, 2017.

RESPECTFULLY SUBMITTED this 1st day of February, 2017.

ADAM PAUL LAXALT
Attorney General

By: /s/ Micheline N. Fairbank
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Attorney for Appellant,
Nevada State Engineer

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 1st day of February, 2017, I served a copy of the foregoing UNOPPOSED MOTION TO POSTPONE ORAL ARGUMENT SET FOR MARCH 6, 2017, TO APRIL 4, 2017, by electronic service to:

Paul G. Taggart, Esq.
David H. Rigdon, Esq.
TAGGART & TAGGART, LTD.
Respondent, Kobeh Valley Ranch

THEODORE BEUTEL, ESQ.
Eureka County District
Attorney
Respondent, Eureka County

Ross E. De Lipkau, Esq.
Gregory H. Morrison, Esq.
PARSONS BEHLE & LATIMER
Respondent, Kobeh Valley Ranch, LLC

Karen A. Peterson, Esq.
Dawn Ellerbrock, Esq.
Kyle A. Winter, Esq.
ALLISON, MACKENZIE,
LTD.
Respondent, Eureka County

Francis M. Wikstrom, Esq.
PARSONS BEHLE & LATIMER
Respondent, Kobeh Valley Ranch, LLC

Jennifer Mahe, Esq.
MAHE LAW, LTD.
Respondent, Eureka County

Laura A. Schroeder, Esq.
Therese A. Ure, Esq.
SCHROEDER LAW OFFICES,
P.C.
*Respondents, Kenneth F. Benson,
Diamond Cattle Company, LLC,
and Michel and Margaret Ann
Etcheverry Family LP*

/s/ Dorene A. Wright

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