

EXHIBIT 2

EXHIBIT 2

**IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

IN THE MATTER OF PROTESTED)
APPLICATIONS 85573 THROUGH 85604,)
INCLUSIVE, 86149 THROUGH 86153,)
INCLUSIVE, 86157 THROUGH 86161)
INCLUSIVE, FILED TO APPROPRIATE)
THE UNDERGROUND WATERS OF)
KOBEN VALLEY (139) AND DIAMOND)
VALLEY (153) HYDROGRAPHIC)
BASINS, EUREKA COUNTY, NEVADA.)

**ORDER VACATING
PRE-HEARING CONFERENCE**

On July 26, 2016, the State Engineer issued a Notice of Pre-Hearing conference on the above-captioned protested applications for August 25, 2016. *Inter alia*, a protest issue raised by Eureka County was that the State Engineer was without jurisdiction to consider these applications while orders by the Seventh Judicial District Court of Nevada concerning State Engineer Ruling No. 6127 were on appeal before the Nevada Supreme Court in Case No. 70157. The Applicant filed an Answer to the Protests on May 20, 2016, including responding to Eureka County's jurisdiction protest issue. The State Engineer has not ruled on this protest issue.

On August 22, 2016, Eureka County filed a *Verified Petition for Writ of Prohibition or in the Alternative, Writ of Mandamus* in the Nevada Supreme Court, Case No. 71090. In the *Petition*, Eureka County requests that a writ issue precluding the State Engineer from taking action on these applications pending the ongoing appeal in Case No. 70157. Eureka County also questions the authority of the State Engineer taking any action on these applications prior to Eureka County's pending Application 83948. The State Engineer intends to Answer the *Petition*, if so directed by the Supreme Court.

Accordingly, IT IS HEREBY ORDERED that the pre-hearing conference in the above-referenced matter currently scheduled for August 25, 2016, is hereby VACATED pending any decision by the Nevada Supreme Court on Eureka County's *Petition*.


KRISTEN GEDDES
Chief, Hearings Section

Dated this 23rd day of

August, 2016.

Order Vacating Pre-hearing Conference

Re: Applications 85573 - 85604, inclusive, 86149 - 86153, inclusive, 86157 - 86161 inclusive

Page 2

SERVICE LIST

**Order Vacating Pre-hearing Conference in the matter of protested Applications
85573 through 85604, inclusive, 86149 through 86153, inclusive, 86157 through 86161,
inclusive.**

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EXHIBIT 1

EXHIBIT 1

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RACHEL L. WISE
DAVID H. RIGDON

April 27, 2016

Jason King
State Engineer
DIVISION OF WATER RESOURCES
901 South Stewart Street, 2nd Floor
Carson City, Nevada 89701

Re: Kobeh Valley Ranch Water Right Applications

Dear Mr. King:

Kobeh Valley Ranch, LLC ("KVR") requests that the State Engineer immediately proceed with the consideration and granting of change applications that are pending, and that are being filed concurrently with this letter, for use at the Mt. Hope mining project.

In Ruling 6127, the State Engineer approved water rights for the Mt. Hope project. However, that approval was reviewed and remanded by the Supreme Court. The Seventh Judicial District Court then vacated Ruling 6127. The State Engineer and KVR have appealed that ruling. However, KVR is entitled to proceed forward at this time without being delayed further by the Supreme Court proceeding.

To avoid further delay, in 2015, KVR filed new change applications. Those change applications identify the same base rights as those used in the change applications that were permitted in Ruling 6127. KVR would like the State Engineer to grant its 2015 change applications as soon as possible so KVR can move forward with the Mt. Hope project.

Further, concurrent with this letter, KVR is filing additional change applications on water rights it owns or controls to provide the water that is needed for the Mt. Hope project. KVR requests the State Engineer to expeditiously process these change applications and grant them during 2016. KVR is prepared to appear at an evidentiary hearing later this year to present evidence regarding mitigation that will address the concerns raised by the Supreme Court in its review of Ruling 6127.

Below is a more detailed explanation of KVR's request.

I. KVR's 2015 Change Applications

Kobeh Valley Ranch, LLC ("KVR") owns multiple existing water rights in Kobeh Valley and Diamond Valley. KVR also owns several applications to appropriate in Kobeh Valley.

KVR filed change applications on many of its water rights that were granted in Ruling 6127. Those applications were: Change Applications 79913, 79915, 79917, 79919, 79920,

79921, 79922, 79923, 79924, 79926, 79927, 79929, 79930, 79931, 79932, 79934, 79935, 79936, 79937, 79941 and 79942 ("Original Change Applications"). In 2015, KVR filed the following new change applications that identify the same base rights as the Original Change Applications. Those applications were: Change Applications 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 ("2015 Change Applications").

A. Fish Creek Change Applications

Permit 9682, Certificate 2780, is for 474 acre feet on 65.54 acres. Application 85585 is seeking to change the 474 acre feet that is appurtenant to the 65.54 acres identified in Certificate 2780. Based on the consumptive use duty of 2.7 acre feet per acre applied over the 65.54 certificated acres, a total pumping of 176.96 acre feet is requested as the consumptive use for mining, milling, and domestic use under Application 85585.

Permit 11072, certificate 2880, is for 322.5 acre feet to irrigate 132.76 acres. Application 85597 is to change the full 322.5 acre feet appurtenant to the 132.76 acres. Since the consumptive duty of 2.7 acre feet per acre applied on 132.76 acres totals of 358.452 is in excess of the certificated amount, the total 322.5 acre feet is being requested as the consumptive use for mining, milling, and domestic use under amount under Application 85597.

The existing rights are to be stripped from a total of 198.3 acres under Permits 9682 and 11072. The total consumptive use amount requested for pumping from the change applications regarding the Fish Creek Ranch under Applications 85585 and 85597 is 499.458 acre feet. The water from Permits 9682 and 11072 is being changed to proposed Well PoO_3 and Well 206 respectively.

B. Damale Ranch Change Applications

The portions of Permit 35866, Certificate 11256 and Permit 64616 owned by KVR are for a total combined duty of 819.24 acre feet on 204.81 acres. Applications 85596 and 85603 are seeking to change the 819.24 acre feet appurtenant to the 204.81 acres. Based on the consumptive use duty of 2.7 acre feet per acre applied over the 204.81 acres, a total of 552.99 acre feet is requested as the consumptive use for mining, milling, and domestic use under Applications 85596 and 85603. The total consumptive use amount requested for pumping from the change applications regarding Damale Ranch under Applications 85596 and 85603 is 552.99 acre feet. Application 85596 requests the water right to be diverted from proposed well 206. Application 85603 requests the water right to be diverted from proposed Well PoO_3.

C. Atlas Gold Mining, Inc.

KVR owns existing mining, milling and domestic water rights originally appropriated by Atlas Gold Mining, Inc., for a total duty of 1,389.60 acre feet. KVR is seeking to change the point of diversion and place of use only. The total combined duty requested under change Applications 85581, 85584, 85586, 85591, 85592, 85593, 85598, and 85599 is 1,389.60 acre

feet. The point of diversion for the water from these existing rights is proposed to be pumped from Well PoO_3, Well 206, and Well 229.

D. Bobcat Ranch, LLC

Permits 72580 through 72588 are permitted for 6,337.32 acre feet to irrigate 1,584.33 acres on the Bobcat Ranch. Permits 72580 through 72588 were the base rights for the following Original Change Applications that were approved in Ruling 6127: Permits 79913, 79915, 79917, 79920, 79921, 79926, 79927, 79932, and 79942. The following 2015 Change Applications were filed in 2015 and identify the same Bobcat Ranch base rights: Applications 85575, 85577, 85579, 85582, 85589, 85594, 85583, 85588, and 85604. Three of these 2015 Change Applications - Applications 85583, 85588, and 85604 - were filed on base rights to the base rights. Concurrently with the filing of this letter, these applications are being amended accordingly.

The total combined duty of the 2015 Change Applications at Bobcat Ranch is restricted to the consumptive use portion of 4,277.691 afa. The water in these applications is proposed to be pumped from wells PoO_1, PoO_3, Well 226, Well 227, Well 228, and Well 229.

II. KVR's 2015 Applications to Appropriate

KVR was awarded new appropriations in Ruling 6127. The new appropriation applications were Applications 79911, 79912, 79914, 79916, 79918, 79925, 79928, 79933, 79938, 79939, and 79940 ("Original Applications to Appropriate"). The approval of those new appropriations was vacated and appeal of the vacation of Ruling 6127 is pending.

In 2015, KVR filed new applications to appropriate. Those applications are Applications 85573, 85574, 85576, 85578, 85580, 85587, 85590, 85595, 85600, 85601, and 85602 ("2015 Applications to Appropriate"). KVR's 2015 Applications to Appropriate were filed after an application by Eureka County. However, the State Engineer may grant KVR 2015 Applications to Appropriate before considering Eureka County's application. First, the State Engineer can grant KVR's 2015 Applications to Appropriate as temporary mining rights pursuant to NRS 533.371. If approved under this authority, the 2015 Applications to Appropriate would not be a permanent long-term commitment of the perennial yield of Kobeh Valley, and would not conflict with Eureka County's application. Second, the State Engineer can designate preferred uses in Kobeh Valley pursuant to NRS 534.120 and prefer mining uses over all other uses.

III. Change Applications Filed Concurrently With This Letter ("2016 Change Applications")

KVR owns sufficient existing rights to replace the water that was approved in the Original Applications to Appropriate that are currently in litigation. If the State Engineer elects to not grant KVR's 2015 Applications to Appropriate based on the authority in NRS 533.371 or NRS 534.120, KVR is filing 2016 Change Applications to replace the water that was awarded in the Original Applications to Appropriate. However, if the Original Applications to Appropriate are later reinstated as a result of the pending appeal, KVR may withdraw these 2016 Change Applications.

A. 2016 Change Applications Involving Permits 78272-78275

Permits 78272-78275 were filed on April 17, 2009 and approved on August 27, 2014. Permits 78272-78275 are currently being used for irrigation purposes pursuant to the permit terms. Each right is limited to 4,344 afa, with a total combined duty of 6,337.32 acre feet, to irrigate 1,584.33 acres. Change applications are being filed concurrently with this letter to change the consumptive use portion of these rights to mining, milling, and domestic purposes. The water rights are being changed to Wells 220, 222, 224, and 227.

B. 2016 Change Applications Involving Diamond Valley Water Rights

Permits 57835, 57836, 57839, and 57840 are irrigation rights with a total combined duty of 312.92 afa to irrigate 78.23 acres. The consumptive use component is 195.57 afa. Permit 66062 is for 303.08 acre feet to irrigate 75.77 acres. The consumptive use portion of this right is 189.43 acre feet. The Original Change Applications included applications that were approved in Ruling 6127 to change these water rights. Those Original Change Applications were Applications 76008, 76802, 76804, 76805, and 78424. New 2016 Change Applications are being filed concurrently with this letter that identify the same base rights as those in Applications 76008, 76802, 76804, 76805, and 78424. The total consumptive duty that is being sought in these applications is no greater than the consumptive use of the base rights.

Permits 50962, 50963, and 57838 are irrigation water rights with a total combined duty of 473.2 acre feet on a total of 118.3 acres. The consumptive use component of these rights is 295.75 acre feet. 2016 Change Applications are filed concurrently with this letter to request the change of the total consumptive use portion of these rights.

IV. Conclusion

KVR owns a total of 15,679.94 afa in existing rights in Kobeh Valley. The combined consumptive use duty of the 2015 Change Applications and the 2016 Change Applications in Kobeh Valley is 10,997.43 acre feet. The total duty of KVR's Diamond Valley groundwater rights is 1,089.20 acre feet. The total consumptive use duty of these rights is 680.75 acre feet. Accordingly, KVR respectfully requests the State Engineer to grant the 2015 Change Applications and the 2015 Applications to Appropriate. Alternatively, KVR respectfully requests the State Engineer to grant the 2015 Change Applications and the 2016 Change Applications that are filed concurrently with this letter with a total combined consumptive duty of 11,678.18 acre feet per annum.

Sincerely,


PAUL G. TAGGART, ESQ.

PGT/tct
cc: Client

In the Supreme Court of Nevada

EUREKA COUNTY,

Petitioner,

vs.

JASON KING, P.E., NEVADA STATE
ENGINEER, DIVISION OF WATER RESOURCES,
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,

Respondents,

and

KOBEH VALLEY RANCH, LLC; ETCHEVERRY
FAMILY LTD. PARTNERSHIP; DIAMOND
CATTLE CO., LLC; AND DIAMOND NATURAL
RESOURCES PROTECTION & CONSERVATION
ASSOCIATION,

Real Parties in Interest.

Case No. 71090 Electronically Filed
Sep 09 2016 08:35 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

EMERGENCY MOTION UNDER NRAP 27(E)

**KOBEH VALLEY RANCH LLC'S
MOTION TO EXPEDITE REVIEW**

Action requested on or before September 20, 2016

Appellant, Kobe 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 Eureka County's Petition for Writ of Prohibition or, in the Alternative, Writ of Mandamus ("Eureka County's Writ Petition"). This request is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Eureka County seeks emergency relief but did not properly comply with NRAP 21(a)(6) and 27(e). This Court was not properly notified that Eureka County's Writ Petition should be reviewed expeditiously. The State Engineer has already taken action as a result of the pending Eureka County Writ Petition (case no. 71090) by suspending any further action on KVR's new water right change applications. Expedited resolution of the Eureka County Writ Petition is needed so the State Engineer will lift the stay he felt compelled to place on consideration of the new KVR change applications, in reliance on the Writ Petition.

I. RELEVANT FACTS AND PROCEDURAL HISTORY

This Court previously reviewed the State Engineer's issuance of Ruling 6127 (case no. 61324) and approval of KVR's mitigation plan (case no. 63258). On September 18, 2015, this Court issued an order that reversed the State Engineer's issuance of Ruling 6127 and his approval of KVR's mitigation plan. On October 28, 2015, KVR filed new change applications with the State Engineer. October 29, 2015, this Court issued its published opinion.

The Court remanded case no. 61324 to the district court for proceedings consistent with its opinion. On March 7, 2016, the district court issued an order that vacated Ruling 6127 and denied KVR's prior applications that had been granted in Ruling 6127. KVR and the State Engineer appealed that order, and this

Court is considering that appeal in case no. 70157. The applications that were vacated and denied in the district court order consist of two types of applications: new appropriation applications and change applications of existing water rights.

After the district court's order on March 7, 2016, KVR filed additional change applications with the State Engineer. The new change applications that are pending before the State Engineer seek to change existing water rights that KVR previously acquired in Kobeh and Diamond Valley, and water rights that the State Engineer granted in 2014 and were not appealed by Eureka County.

On April 27, 2016, KVR requested that the State Engineer immediately proceed with consideration of only the new change applications.¹ On July 26, 2016, the State Engineer issued a Notice of Pre-Hearing Conference regarding the change applications that scheduled the conference for August 25, 2016.

On August 23, 2016 Eureka County filed its Writ Petition. The Writ Petition was filed almost a month after the Notice of Pre-Hearing Conference was issued and only two days before the scheduled conference. Even though the relief requested had to occur within 14 days, Eureka County's Writ Petition did not comply with, the procedures for emergency motions in NRAP 21(a)(6) and 27(e).

Also on August 23, 2016, at approximately 1:36 p.m., Eureka County sent a letter to the State Engineer requesting that the August 25, 2016 conference be

¹ Exhibit 1.

“postponed pending the Supreme Court’s action” on its Writ Petition.² On August 23, 2016, within hours of receiving Eureka County’s letter, the State Engineer granted the request and issued its Order Vacating Pre-Hearing Conference. The State Engineer’s order stayed any further consideration of the new KVR change applications, until a decision is made by this Court on Eureka County’s Writ Petition. KVR has filed a motion for reconsideration before the State Engineer.

II. ARGUMENT

A. Emergency relief is warranted.

Emergency motions can be filed pursuant to NRAP 27(e) if the relief requested is needed within 14 days to avoid irreparable harm. The pre-hearing conference in front of the State Engineer in this matter was scheduled to request a hearing in front of the State Engineer in late December. The timing of the hearing is important because the State Engineer does not hold hearings on water right applications during regular sessions of the Nevada Legislature. A regular session of the Legislature is schedule to begin on February 6, 2017, and will last until May, 2017. If this Court can decide the instant motion and dispose of Eureka County’s Writ Petition within the next 14 days, it will still be possible for the State Engineer to hold the hearing in late December. If not, a hearing on KVR’s applications will most likely be postponed until at least June, 2017, resulting in a delay.

² Exhibit 2.

KVR is seeking the approval of the new change applications to develop the Mount Hope Project – one of the largest molybdenum mines in the world. The development and operation of the mine will greatly enhance the economic development efforts of the State of Nevada and provide substantial tax revenue for Eureka County. Almost \$300 million dollars has already been invested in this effort. When the mine is operational, it will employ approximately 400 people.

The delay in setting and conducting a hearing on the KVR change applications postpones the issuance of KVR's water rights for its mining project. Such a delay will postpone actual production at the mine, which has direct financial consequences to the mining project, and its communities. The expeditious consideration, and denial, of Eureka County's Writ Petition will allow this important economic development project to move forward in a timely manner. Emergency relief in this matter will also serve the public interest.³

B. Eureka County's Writ Petition is procedurally deficient.

Eureka County's Petition did not properly comply with NRAP 21(a)(6) which requires any petition "that requests the court to grant relief in less than 14 days" to "comply with the requirements of NRAP 27(e)." Since Eureka County

³ 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").

requested relief that had to occur within 14 days, but did not comply with the requirements of NRAP 27(e), its Writ Petition was deficient.

Eureka County's failure to follow the requirements of NRAP 21(a)(6) and 27(e) caused real and substantive consequences. First, this Court was not made immediately aware that the Writ Petition should be reviewed before the August 25, 2016 pre-hearing conference. Second, the State Engineer was not made immediately aware that the Court would decide before August 25, 2016, whether to grant the relief sought by Eureka County. Hence, the State Engineer vacated the hearing before this Court would have acted if the writ had been properly pled.

The writ petition sought relief within two days but did not the title "Emergency Motion Under NRAP 27(e)." The Court did not know that immediate emergency relief was sought or that it needed to promptly address the Petition. Normally, a failure to follow this rule would prejudice only a petitioner. Here, KVR is prejudiced by Eureka County's failure to comply with Rule 21 and 27.

Furthermore, NRAP 27(e)(1) requires the Petitioner, before filing the Petition, to "make every practical effort to notify . . . opposing counsel and to serve the [Petition] at the earliest possible time." Eureka County waited almost a month after the State Engineer issued his Notice of Pre-Hearing Conference to file its Petition, and Eureka County did not consult with opposing counsel or provide any

notification of its intention to file the Writ Petition. Eureka County filed at the last possible moment, and after KVR had traveled to appear at the conference.

C. Eureka County's Writ Petition is legally deficient.

1. Eureka County has a adequate remedy at law.

A writ is an extraordinary remedy that may only be issued where there is no plain, speedy, and adequate remedy at law.⁴ Eureka County has an adequate and speedy remedy at law. NRS 533.450 allows it to appeal any “order or decision” of the State Engineer. Eureka County concedes that it can appeal any decision the State Engineer makes regarding KVR’s new change applications. Since Eureka County has an adequate and speedy remedy under NRS 533.450, writ relief is not warranted.

The only argument advanced by Eureka County on this point is that “[w]aiting until a final determination in the underlying proceedings involving KVR’s ingeminated Applications would take many *months*.”⁵ Eureka County acknowledged that the alleged delay will only be a matter of months, and this does not undermine its right to a legal remedy pursuant to NRS 533.450.

This Court has routinely denied similar writ petitions in cases involving water rights. Like this case, *State Engineer v. Third Judicial Dist. Ct.* (case no.

⁴ *Int’l Game Tech., Inc. v. Second Judicial Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

⁵ See Eureka County Writ Petition at 19 (emphasis added).

69921) involved a scheduling order and an attempt to bar a hearing from occurring. The petitioner in that case properly relied on NRAP 27, and the Court denied the writ petition within days of its filing. The Court cited to *Pan v. Eighth Judicial Dist. Ct.*, 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 844 (2004), which holds that a right to appeal a decision is generally an adequate legal remedy. Since NRS 533.450 provides such a remedy, writ relief was improper.⁶

Also, in *State Engineer v. Seventh Judicial Dist. Ct.* (Case No. 65776), this Court denied a writ petition because the “petitioners have an adequate legal remedy in the form of a petition for judicial review, or subsequent appeal, from any adverse decision on remand.”⁷ Despite the claim that writ relief would serve judicial economy and avoid delay, this Court concluded that the administrative review procedures of Nevada Revised Statutes (“NRS”) 533.450 still provided a plain, speedy, and adequate remedy.⁸

2. This Court has not taken jurisdiction over the subject matter of KVR’s new change applications.

In support of its Writ Petition, Eureka County cites the exclusive jurisdiction rule articulated in *Westside Charter Service, Inc. v. Gray Line Tours of Southern*

⁶ See Order Denying Petition for Writ of Prohibition or Mandamus, *State Engineer v. Third Judicial Dist. Ct.*, Nevada Supreme Court Case No. 69921 ((March 11, 2016).

⁷ See Order Denying Petition for Writ of Mandamus, *State Engineer v. Seventh Judicial Dist. Ct.*, Nevada Supreme Court Case No. 65776 (May 21, 2015).

⁸ See Order Denying Petition for Writ of Mandamus, *State Engineer v. Seventh Judicial Dist. Ct.*, Nevada Supreme Court Case No. 65776 (May 21, 2015).

Nevada.⁹ Eureka County argues that this rule prevents the State Engineer from acting upon KVR's change applications because this Court is reviewing the district court's vacation of KVR's previously approved permits.¹⁰ Eureka County is incorrect.

As this Court noted, "[o]peration of the [exclusive jurisdiction] rule is limited to situations where the exercise of administrative jurisdiction would conflict with the proper exercise of the court's jurisdiction."¹¹ In this case, the State Engineer's exercise of jurisdiction over KVR's new change applications does not conflict with this Court's determination of the State Engineer and KVR's appeal of the district court order.

The State Engineer's and KVR's appeals (case no. 70157) challenges the district court's interpretation of this Court's remand instructions. Case no. 70157 involves KVR's previously filed applications for new appropriations. Neither those applications, nor the water involved in them, are at issue in the change applications filed by KVR in this case.

Case no. 70157 also involves KVR change applications that were denied pursuant to the district court's order. Those change applications had sought to

⁹ 99 Nev. 456, 459, 664 p.2d 351, 353 (1983) ("It is generally accepted that where an order of an administrative agency is appealed to a court, that agency may not act further on the matter until all questions raised by the appeal are finally resolved.")

¹⁰ See Petition at 16-20.

¹¹ *Westside Charter* at 459, P.2d at 353.

change existing irrigation and mining water rights that KVR's had acquired. When the change applications were denied, the base rights (KVR's existing rights) remained in good standing.¹² KVR is free to use its base rights as permitted, or seek to change those rights if it so desires.

This Court's jurisdiction in case no. 70157 does not extend to the new KVR change applications that were filed after this Court's opinion in case no. 70157. The subject matter of the appeal in case no. 70157 is quite different than the subject matter the State Engineer was considering before Eureka County filed its Writ Petition. Accordingly, Eureka County's Writ Petition should be denied.

D. Eureka County's Writ Petition is factually inaccurate.

Eureka County's Writ Petition states the State Engineer is acting on applications out of order.¹³ KVR's applications are requesting to changes to *existing* water rights.¹⁴ KVR is not asking the State Engineer to act on any applications for *new* water rights.¹⁵ Eureka County's applications are for *new* appropriations. When a change application is filed, it carries with it the priority date of the underlying base water right that is being changed.¹⁶ The priority system indicates that the State Engineer should act first on applications with the earliest

¹² *Anderson Family Associates v. Ricci*, 124 Nev. 182, 179 p.3d 1201 (2007) (base water rights remain in good standing after change application is canceled).

¹³ See Petition at 20-22.

¹⁴ See Exhibit 1.

¹⁵ *Id.*

¹⁶ NRS 533.040(2).

priority. Since KVR's base water rights are senior in priority to Eureka County's applications, KVR's proposed change applications are not junior to the County's applications for new appropriations and it is not improper for the State Engineer to act on KVR's applications before he takes action on Eureka County's requests for *new* water rights.

III. CONCLUSION

For the foregoing reasons, KVR respectfully requests that this Court expedite its consideration of Eureka County's Writ Petition.

DATED this 8th day of September, 2016.

By: /s/ Paul G. Taggart
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NRAP 27(e) CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CARSON CITY)

I, Paul G. Taggart, Esq., declare the following under penalty of perjury:

1. I hereby certify that this Emergency Motion complies with the requirements of NRAP 27(e). The telephone numbers and office addresses of the attorneys for the parties are as follows:

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2. Upon information and belief, I further certify KVR will suffer irreparable harm if relief is not provided in 14 days. The pre-hearing conference in front of the State Engineer in this matter was scheduled so as to facilitate a hearing in front of the State Engineer in late December. The timing of the hearing is important since the State Engineer has a practice of not holding hearings on water rights applications during regular sessions of the Nevada Legislature. A regular Session of the Legislature is schedule to begin on February 6, 2017, and will last until May of 2017. If this Court can decide the instant motion and dispose of Eureka County's Writ Petition within the next 14 days, it will still be possible for the State Engineer to hold the hearing in late December as planned. If not, a hearing on KVR's applications will be postponed until at least June of 2017, resulting in a delay of six months.
3. I further certify that KVR has attempted to achieve the relief sought in the instant motion by filing a motion for reconsideration with the State Engineer

asking him to reconsider his order suspending the review of KVR's applications. This motion has been opposed by at least one of the parties to this action and the State Engineer has yet to rule on the motion.

4. Finally, I hereby certify that counsel for the other parties were notified and served a copy of KVR's Emergency Motion by email sent on September 7, 2016.

DATED this 8th day of September, 2016.

By: /s/ Paul G. Taggart
PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2016, I served the foregoing **MOTION TO EXPEDITE APPEAL** by:

☒ **X** By **ELECTRONIC SERVICE**

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/s/ Sarah Hope

Employee of Taggart & Taggart, LTD.

INDEX OF EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
1.	April 27, 2016, Letter from Taggart & Taggart Ltd. to Jason King
2.	August 23, 2016, Order Vacating Pre-Hearing Conference