

Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717

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**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.

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

Respondent.

Case No. CV 1108-155  
Case No. CV 1112-164

Dept. No. 2

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

Petitioners,

vs.

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.

Case No. CV 1108-156

Dept. No. 2

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Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717

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

Case No. CV 1108-157  
Case No. CV 1112-165  
Case No. CV 1202-170

Dept. No. 2

Petitioners,

vs.

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

Respondents.

**NOTICE OF APPEAL**

12 Notice is hereby given that the State Engineer of Nevada, Office of the State Engineer,  
13 Division of Water Resources, Department of Conservation and Natural Resources, Division of  
14 Water Resources ("Nevada State Engineer"), by and through counsel, Nevada Attorney  
15 General Adam Paul Laxalt and Senior Deputy Attorney General Micheline N. Fairbank, hereby  
16 appeals to the Nevada Supreme Court from the Amended Order Granting Objection to  
17 Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review;  
18 Order Vacating Permits entered by this Court on March 9, 2016. Notice of Entry of Order was  
19 served on March 14, 2016. A copy of said Notice of Entry of Amended Order is attached  
20 hereto as Exhibit 1.

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

The undersigned does hereby affirm that the preceding Notice of Appeal does not contain the social security number of any person.

DATED this 8th day of April, 2016.

ADAM PAUL LAXALT  
Attorney General

By: Michelle N. Fairbank  
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Nevada Bar No. 8062  
100 North Carson Street  
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Email: mfairbank@ag.nv.gov  
*Counsel for Respondent,  
Nevada State Engineer*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this this 8th day of April, 2016, I served a true and correct copy of the foregoing NOTICE OF APPEAL, by placing said document in the U.S. Mail, postage prepaid, addressed to:

Karen A. Peterson, Esq.  
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*Southern Nevada Water Authority*

  
Dorene A. Wright

Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717

INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	Notice of Entry of Amended Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits filed March 14, 2016	12

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**EXHIBIT 1**

**EXHIBIT 1**

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
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E-Mail Address: law@allisonmackenzie.com

1 Case Nos. CV1108-155  
2 CV1108-156  
3 CV1108-157  
4 CV1112-164  
5 CV1112-165  
6 CV1202-170  
7 CV1207-178

8 Dept. No. 2

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

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

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

14 vs. Petitioner,

Case No.: CV1108-155

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

Dept. No.: 2

20 Respondents. /

21 CONLEY LAND & LIVESTOCK, LLC, a  
22 Nevada limited liability company; LLOYD  
23 MORRISON, an individual;

24 vs. Petitioners/Plaintiffs,

Case No.: CV1108-156

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

Dept. No.: 2

Respondents/Defendants. /

///

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///

ALLISON MacKENZIE, LTD.  
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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,

Petitioners,

vs.

Case No.: CV1108-157

Dept. No.: 2

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

Respondents. /

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

Petitioner,

vs.

Case No.: CV1112-164

Dept. No.: 2

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

Respondents. /

19 KENNETH F. BENSON, an individual,  
20 DIAMOND CATTLE COMPANY, LLC, a  
21 Nevada Limited Liability Company, and  
22 MICHEL AND MARGARET ANN  
23 ETCHEVERRY FAMILY, LP, a Nevada  
24 Registered Foreign Limited Partnership,

Petitioners,

vs.

Case No.: CV1112-165

Dept. No.: 2

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

Respondents. /



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  
ETCHEVERRY FAMILY, LP, a Nevada  
registered foreign limited partnership,

5 Petitioners,

Case No.: CV1202-170

6 vs.

Dept. No.: 2

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

11 Respondent. /

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

16 Petitioners,

Case No.: CV1207-178

17 vs.

Dept. No.: 2

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

22 Respondent,

23 AND

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

26 Intervenor-  
27 Respondent. /

28 **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.  
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REMANDING TO STATE ENGINEER; ORDER GRANTING PETITIONS FOR JUDICIAL REVIEW; ORDER VACATING PERMITS in the above-entitled matters. A copy of said AMENDED ORDER is attached hereto as Exhibit "1".

AFFIRMATION

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

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

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

~ and ~

EUREKA COUNTY DISTRICT ATTORNEY  
701 South Main Street  
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Eureka, Nevada 89316

BY:

  
\_\_\_\_\_  
THEODORE BEUTEL, ESQ.  
Nevada State Bar No. 5222

Attorneys for EUREKA COUNTY

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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)]

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Dale E. Ferguson, Esq.  
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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

4838-0522-0143, v 1

EXHIBIT "1"

EXHIBIT "1"

NO \_\_\_\_\_  
FILED  
MAR - 19 2019  
Eureka County Clerk  
By W. Prine

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. 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,

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,  
KOBEL 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



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



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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,

v.

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

Respondent.

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

Petitioner,

v.

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

v.

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

Respondent.

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,

7  
8  
9 Petitioners,

10 v.

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

16  
17 Respondent.

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

25  
26 Petitioners,

vs.

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

Respondents.

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

Intervenor-Respondents.

On May 20, 2013, petitioners MICHEL AND MARGARET ANN ETCHEVERRY 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

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



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

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

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

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

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

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



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



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grant KVR's applications when the result of 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."<sup>4</sup> Having found petitioners had met their burden to show the State Engineer's decision was incorrect, the court held "the State Engineer's decision to grant KVR's applications cannot stand."<sup>5</sup> The court reversed and remanded these cases to the district court for further proceedings consistent with this opinion.<sup>6</sup>

The 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. Based upon the Supreme Court's reversal of this Court's order denying petitions for judicial review and the State Engineer's decision to grant KVR's applications, this Court finds that the petitions for judicial review filed by the petitioners must be granted.

Good cause appearing,

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

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<sup>4</sup>*Id.*  
<sup>5</sup>*Id.*  
<sup>6</sup>*Id.*

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




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

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

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

  
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DISTRICT JUDGE