

1 Q. Lower right-hand?

2 A. 110, yes.

3 Q. So the applicant will be monitoring 110, at least  
4 110 sites; is that correct?

5 A. That's not entirely correct. And this is  
6 something that the county pointed out. The comment was that  
7 it's misleading because there's no certainty that this data  
8 will be collected by the USGS or NDWR. So it indicates that  
9 there's more monitoring points than we're committing. On our  
10 next version we plan to eliminate these and give a true  
11 representation. But what we are saying is those are the  
12 locations of wells that are monitored. As long as that data  
13 is collected and available we will add it to our database and  
14 use it to monitor our model.

15 Q. But the applicant itself will not monitor these  
16 sources?

17 A. That's correct. We have not proposed that.

18 Q. Would it be a true statement then that the  
19 applicant will monitor sources different from the 110 set  
20 forth herein?

21 A. Yes. If you look at Figure 1 and Figure 2, all  
22 of those sites that are not identified as USGS or NDWR are  
23 sites that we are proposing to collect the data from.

24 Q. And then all the data collected by other agencies  
25 or individuals as set forth on Figure 7 will be kept track of

1 by the company in mesh with its, I'll say, independent  
2 monitoring?

3 A. Yes. That's what we propose.

4 MR. DE LIPKAU: No further questions.

5 HEARING OFFICER WILSON: Thank you.

6 Recross.

7 RECROSS-EXAMINATION

8 By Ms. Peterson:

9 Q. Mr. Rogers, Figure 1 and Figure 2, are they  
10 basically the same but one is just five years out after  
11 pumping and the second is ten years out after pumping?

12 A. Yes. No. The second one is 44 years out.

13 Q. I'm sorry. And then looking at the text on  
14 Exhibit 34, page three at the bottom. Did it describe what  
15 Figure 1 shows and it says right at the end of the page going  
16 in to page four, the water rights, it says the water rights  
17 within this area. Do you see that?

18 A. I see that.

19 Q. Okay. And I can't find on here where the water  
20 rights are on these two figures.

21 A. That's because they're not here. It's something  
22 that the county pointed out and we're revising to correct  
23 that mistake.

24 Q. Okay. So existing, just so I'm clear, existing  
25 water rights are not shown on this?

1 A. That's correct.

2 Q. And so these proposed monitoring locations I  
3 guess there's just no way to depict on this to show how close  
4 those monitoring sites are or where they're located in  
5 conjunction with existing water rights, is that fair to say,  
6 based on these two maps?

7 A. Because the existing water rights are not shown  
8 on this map, that's correct, you can't tell how far those  
9 rights would be from a proposed monitoring site, correct.

10 Q. Okay. And I guess that would be true with  
11 Figures 3 through 5 then also, is that correct, existing  
12 rights are not shown on those maps either?

13 A. That's correct.

14 Q. I don't -- I do have one other question. At the  
15 beginning of your redirect, Mr. de Lipkau asked you a  
16 question. He asked you if a court of competent jurisdiction  
17 ordered the mine to shut down pumping, stopping pumping would  
18 the mine comply and your answer was yes. Do you recall that  
19 testimony?

20 A. Yes.

21 Q. And if the State Engineer ordered you to shut  
22 down pumping would the mine comply with that order from the  
23 State Engineer?

24 A. I interpreted Mr. de Lipkau's question to be  
25 court, agencies, anybody with appropriate jurisdiction, so

1 yes.

2 MS. PETERSON: Okay. That's all I have.

3 HEARING OFFICER WILSON: Thank you. Any  
4 questions of staff?

5 MS. URE: I have one.

6 HEARING OFFICER WILSON: Oh, I'm sorry, at the  
7 Reese.

8 RECROSS-EXAMINATION

9 By Ms. Ure:

10 Q. I have one question for recross. For the  
11 monitoring wells that the mine is proposing to place, are  
12 those same wells going to be in place for the life of the  
13 mine for 44 years assuming, you know, there's not an  
14 earthquake and caves one in?

15 A. The monitoring plan as we've written it  
16 anticipates that they'll be changed over the life of the mine  
17 and it specifically says that there may be changes in the  
18 monitoring. And again, this monitoring plan has not been  
19 approved or finalized yet, but clearly if we're proposing to  
20 put a well in there and monitor it, until that monitoring  
21 plan is changed and that change is approved by the  
22 appropriate agency, yes, we're committed to continue  
23 monitoring. That well would have to stay there or if it went  
24 bad it would have to be replaced.

25 Q. So any change in a monitoring well would have to



1 be approved by the monitoring plan and that's approved by  
2 that agency?

3 A. Yes. If I understand your question. The  
4 monitoring plan is approved by the agencies and it is a  
5 requirement for us to operate. The change in that plan has  
6 to be approved by those agencies.

7 MS. URE: Okay. No further questions.

8 HEARING OFFICER WILSON: Okay. Thank you.

9 THE STATE ENGINEER: I have a question.

10 HEARING OFFICER WILSON: Go ahead.

11 THE STATE ENGINEER: Mr. Rogers, it's kind of a  
12 follow-up to Ms. Peterson's question. I understand you  
13 didn't plot existing rights on these maps. Did you look to  
14 see whether or not there were existing rights that fell in to  
15 that 44 template contour shaded area?

16 THE WITNESS: Yes. Those were plotted in the  
17 hydrology report and they have also been added in the EIS so  
18 we have looked at them, yes.

19 THE STATE ENGINEER: And Mr. de Lipkau, are we  
20 going to hear more from your hydrologist about effective  
21 drawdowns?

22 MR. DE LIPKAU: Yes, sir. Mr. Katzer will  
23 discuss that.

24 THE STATE ENGINEER: Thank you.

25 HEARING OFFICER WILSON: Any other questions from

1 staff?

2 MR. FELLING: I do have.

3 EXAMINATION

4 By Mr. Felling:

5 Q. Mr. Rogers, there was a ten-foot drawdown contour  
6 that was shown on the map and I understand, tell me if this  
7 is not correct, that that's the -- that the cut-off that the  
8 BLM is interested in in determining impacts; is that  
9 accurate?

10 A. That's -- They told us to plot the ten-foot  
11 contour for their impact analysis, yes.

12 Q. Is General Moly proceeding with that ten-foot  
13 drawdown being a de facto cut-off or any impact to evaluate?

14 A. No. We're using it as a guide. One of the  
15 things that is notable though is that drawdown takes a long  
16 time to move from the well fields. It takes quite a while to  
17 go. So we understand that there can be impacts from drawdown  
18 less than ten feet and we are committed to mitigating those  
19 impacts.

20 MR. FELLING: Okay. No more questions.

21 HEARING OFFICER WILSON: All right. Thank you,  
22 Mr. Rogers. You may step down.

23 Could we have your next witness.

24 MR. DE LIPKAU: I'd like to call Mr. Katzer.  
25 We'd like to introduce the --

1 HEARING OFFICER WILSON: You want to go ahead and  
2 go through the exhibits?  
3 MR. DE LIPKAU: Yeah. 32 through 36.  
4 HEARING OFFICER WILSON: Let's take those one at  
5 a time here. Exhibit 32 is the matrix, any objection?  
6 MS. PETERSON: No objection.  
7 MS. URE: No objection.  
8 HEARING OFFICER WILSON: It will be admitted.  
9 Exhibit 33 is the summary of the hydrology  
10 modeling reports.  
11 MS. PETERSON: No objection.  
12 MS. URE: No objection.  
13 HEARING OFFICER WILSON: Exhibit 34 is the  
14 monitoring plan with the added figure.  
15 MS. PETERSON: No objection.  
16 MS. URE: No objection.  
17 HEARING OFFICER WILSON: It will be admitted with  
18 the added figures. I just want to make sure Exhibit 33 is  
19 admitted. Go to Exhibit 35 is a schematic of water cycle.  
20 Any objection?  
21 MS. PETERSON: No objection.  
22 MS. URE: None.  
23 HEARING OFFICER WILSON: Exhibit 35 will be  
24 admitted.  
25 Exhibit 36 is the BLM letter of July 27th 2010.

1 Any objection?

2 MS. PETERSON: No objection.

3 MS. URE: No.

4 HEARING OFFICER WILSON: That will be admitted.

5 We have Exhibit 42 was talked about as well,

6 proposed points of diversion and place of use map. Any

7 objection to Exhibit 42?

8 MS. PETERSON: No objection.

9 MS. URE: No objection.

10 HEARING OFFICER WILSON: Exhibit 42 will be

11 admitted.

12 I have Exhibit 402 is the memorandum of May 28th

13 2010. Any objection?

14 MS. PETERSON: No objection.

15 MS. URE: No objection.

16 HEARING OFFICER WILSON: Exhibit 402 will be

17 admitted.

18 We talked about Exhibit 403. That is the power

19 point of the State Engineer's meeting in Eureka, I believe.

20 Any objections?

21 MS. PETERSON: No objection.

22 MS. URE: No objection.

23 HEARING OFFICER WILSON: Exhibit 403 will be

24 admitted. And I have Exhibit 405, the State Engineer's

25 publication of January 10th 2010 on consumptive use. Any

1 objection to Exhibit 405?

2 MS. PETERSON: I don't have any objection to it

3 but I would just note that it's not the complete document.

4 HEARING OFFICER WILSON: Okay.

5 MS. URE: No objection.

6 HEARING OFFICER WILSON: Exhibit 405 will be

7 admitted.

8 I believe I also have 414, which is the protest

9 to Application 78721 filed by Eureka County on July 10th

10 2009. Any objection?

11 MS. PETERSON: No objection.

12 MS. URE: No objection.

13 HEARING OFFICER WILSON: Thank you. Exhibit 414

14 will be admitted.

15 Was there anything else, Mr. de Lipkau?

16 MR. DE LIPKAU: Mr. Wilson, I have one more thing

17 and that's Exhibit 31, which is a court document, matter of

18 public record. A copy was sent to this office.

19 HEARING OFFICER WILSON: The Halpin stipulation?

20 MR. DE LIPKAU: Yes.

21 HEARING OFFICER WILSON: Is there any objection

22 to the admission of Exhibit 31?

23 MS. PETERSON: No objection.

24 MS. URE: No objection.

25 HEARING OFFICER WILSON: Exhibit 31 will be

1 admitted. And you did talk about several of Eureka County's  
2 exhibits. I was going to wait until you brought them up as  
3 well or should we go ahead and admit them now?

4 MS. PETERSON: Which ones were they?

5 HEARING OFFICER WILSON: 502, 507 and 518.

6 MS. PETERSON: I don't have any objection to  
7 admitting them now.

8 HEARING OFFICER WILSON: Did you want to go ahead  
9 and admit those, Mr. de Lipkau?

10 MR. DE LIPKAU: Yeah.

11 HEARING OFFICER WILSON: That would be Exhibits  
12 502, 507 and 518. Ms. Ure, any objection?

13 MS. URE: No objection.

14 HEARING OFFICER WILSON: Exhibits 502, 507 and  
15 518 will be admitted.

16 And we're now ready for Mr. Katzer. Please be  
17 sworn.

18 (Witness was sworn in)

19 HEARING OFFICER WILSON: We have a power point  
20 from Mr. Katzer. We don't have the controller so we have  
21 someone will manually do the slides for you, Mr. Katzer.

22 MS. PETERSON: I have an objection to this power  
23 point because the notice of hearing specifically stated that  
24 power points needed to be provided as exhibits for evidence  
25 and exchanged prior to the date of the hearing and I have

1 never received this power point.

2 MR. DE LIPKAU: All documents that will be shown  
3 on the power point are contained within the evidentiary  
4 package. We wanted to make it easier for all parties. If we  
5 can't use power point, we'll refer to the exhibits. Nobody  
6 will be prejudiced. Let me put it that way.

7 HEARING OFFICER WILSON: You're not asking for  
8 this power point to be an exhibit; is that correct?

9 MR. DE LIPKAU: No. Just for ease of  
10 presentation, Mr. Katzer, for example, will discuss Figure 1,  
11 Figure 1 is in your booklet and it will be on the power  
12 point. Nothing is new.

13 HEARING OFFICER WILSON: That's fine.

14 MS. PETERSON: For the record may I read from the  
15 notice?

16 HEARING OFFICER WILSON: Go ahead.

17 MS. PETERSON: On page four, "Any document,  
18 report, power point slides, et cetera, that any participant  
19 intends to refer to must be provided as an exhibit during the  
20 administrative hearing and served upon the other participants  
21 and the State Engineer in advance." That's the basis of my  
22 objection to this exhibit.

23 HEARING OFFICER WILSON: Thank you. And we have  
24 Exhibit 38 is Mr. Katzer's?

25 MR. DE LIPKAU: Yes.

1 HEARING OFFICER WILSON: And that was prefiled?  
2 MR. DE LIPKAU: Yes.  
3 HEARING OFFICER WILSON: Okay. Go ahead.  
4 THE WITNESS: The slides are from Exhibit 39.  
5 HEARING OFFICER WILSON: Exhibit 39. We may have  
6 to find an IT person to make sure we can -- Let's go off the  
7 record.  
8 (Discussion was held off the record)  
9 HEARING OFFICER WILSON: Go ahead.  
10  
11 TERRY KATZER  
12 Called as a witness on behalf of the  
13 Applicant, having been first duly sworn,  
14 Was examined and testified as follows:  
15 DIRECT EXAMINATION  
16 By Mr. de Lipkau:  
17 Q. Please state your name.  
18 A. Terry Katzer, K-a-t-z-e-r.  
19 Q. Mr. Katzer, you testified at the October 2008  
20 hearing before the State Engineer on behalf of the same  
21 applicant, did you not?  
22 A. Yes, I did.  
23 Q. And you qualified as an --  
24 (Discussion was held off the record)  
25 HEARING OFFICER WILSON: Mr. de Lipkau has



1 indicated that he has chosen not to utilize the power point  
2 presentation. We are at Mr. Terry Katzer's testimony. You  
3 mentioned he was previously qualified in hydrogeology in the  
4 Kobeh Valley hearing of 10-13-08. He has also been  
5 previously qualified in hydrogeology in several previous  
6 hearings before the State Engineer. Will there be any  
7 objection to qualifying Mr. Katzer as an expert in  
8 hydrogeology?

9 MS. PETERSON: No.

10 MS. URE: No.

11 HEARING OFFICER WILSON: Thank you. You'll be  
12 qualified as an expert in hydrogeology for purposes of this  
13 hearing.

14 MR. DE LIPKAU: I don't know whether to start or  
15 wait until the power point comes up.

16 MS. JOSEPH-TAYLOR: We're just trying to get the  
17 library connection going again where the overflow people are  
18 watching.

19 MR. DE LIPKAU: So I can continue then?

20 HEARING OFFICER WILSON: Mr. de Lipkau.

21 Q. (By Mr. de Lipkau) Mr. Katzer, have you had an  
22 occasion to review your testimony before the State Engineer  
23 on October 13th 2008?

24 A. I have.

25 Q. Do you wish to make any changes to your prior

1 testimony?

2 A. I don't wish to make any changes. I wish to make  
3 some additions.

4 Q. All right. Would you please make additions?

5 A. I will. The first figure is Figure 331, major  
6 streams and drainages in the study area.

7 Q. All right. Let's --

8 A. Okay.

9 Q. Let's determine where and what exhibit that  
10 document is in?

11 A. As I indicated, it's Exhibit 39.

12 Q. And Exhibit 39 is the two volume model?

13 A. Yes, that's correct. In the northern part of the  
14 project area on the border of Roberts Mountain on the border  
15 between Kobeh and Pine Valley with Diamond Valley to the east  
16 there are a series of streams. And these are, these are  
17 mostly perennial streams and they come and they drain in to  
18 Kobeh Valley and in to Pine Valley. And the purpose of  
19 showing these is because that was one of my main tasks after  
20 the 2008 hearing was to help establish a monitoring network  
21 of surface water stations. And I did this in concert with  
22 Interflow Hydrology, Western States Engineering and Eureka  
23 Moly. And you can see the streams all have names and there's  
24 those little green triangles on them and those are the  
25 approximate locations of gauging stations.

1 Q. Who installed the gauging stations?

2 A. Myself and Bob Squires and we were helped  
3 occasionally by Dwight Smith. And so we've established,  
4 we've established probably 12 to 15 gauges. And there are  
5 some that are not on here because we just -- we just located  
6 them a couple of months ago.

7 But let me take a quick tour of the mountain and  
8 I'll give you the names of the station, of the streams that  
9 we're monitoring. Starting with Roberts Creek and going west  
10 to Rutabaga Creek and then going to Cottonwood Canyon and to  
11 Tonkin Reservoir, Pete Hanson Creek, Birch Creek, Willow  
12 Creek and Willow Canyon -- Willow Springs and Willow Creek,  
13 excuse me. Vinini Creek, Henderson Creek and over in Diamond  
14 Valley we have Shipley Hot Springs. And then not shown are  
15 three creeks that we considered to be regional in nature.  
16 And the reason we want to do that, we want to move away from  
17 the project area is to be able to see what the regional  
18 hydrology looks like.

19 And they're located, one is located on the  
20 eastern side of the Simpson Park Range in Grass Valley. The  
21 other one is located in Pine Creek in Monitor Valley. That's  
22 southern Monitor Valley. And the other one is located in the  
23 west side of Antelope Valley, Allison Creek. So those are  
24 kind of our three marker stations that we hope to eventually  
25 collect enough data on so we can make some assumptions as to

1 the regional nature of runoff, storms and runoff.

2 So the purpose again of these perennial streams  
3 and there are a couple of ephemeral streams. And the purpose  
4 is not only to measure the total water resource but also to  
5 look at the variability. Because it is a critical factor in  
6 trying to determine stream flow. And if we get to a point  
7 where we're going to try and make a judgment on impact, it is  
8 absolutely critical to have the variability of these streams  
9 defined.

10 Q. Excuse me for interrupting. But when you  
11 installed these gauges as you just testified, were there any  
12 other gauges on Pete Hanson Creek and tributaries?

13 A. The only gauges we saw were unused. There was  
14 one on Tonkin Springs. There was one on Shipley. And I  
15 think those are the only two. I'd have to go back and look  
16 at my notes for that, Ross. But I'm really sure there's only  
17 two unused gauges that we've seen.

18 Now, having said that, we have not canvassed the  
19 whole stream. We haven't walked the whole channel. We've  
20 walked parts of them but not the whole channel. So there  
21 could be some sort of a measuring device that we just have  
22 not discovered.

23 All right. So then I think that's all I want to  
24 say about those streams. And oh, I should say that the green  
25 dots are not necessarily in the right spot because we've been

1 moving the stations to find the most optimum location for the  
2 gauging station.

3 Okay. The next figure is Figure 3.4-6,  
4 interpreting water levels. And that again is in Exhibit 39.  
5 Oh, one correction. I just noticed that there was also an  
6 unused gauging station on Coils Spring but it's not used  
7 anymore.

8 Q. What does unused mean?

9 A. It's in disrepair and it's not operating.  
10 There's no equipment in it, but it's an old gauging station.  
11 And I suspect that it was operated by the BLM back in the  
12 '50s and '60s.

13 Okay. Figure 3.4-6. And some of my testimony or  
14 maybe a fair amount of my testimony in 2008 had to do with  
15 this same figure. This shows the difference in water levels  
16 at Coils -- Not Coils. Excuse me. At Devil's Gate. And it  
17 shows water levels on both sides of the canyon. And what it  
18 shows is that the water level difference is about somewhere  
19 between 70, 60, 70, 80 feet. You can't tell because the  
20 wells aren't exactly at the front and the end of the canyon,  
21 the east or west sides.

22 Q. Can you please tell us where Devil's Gate is on  
23 this here?

24 A. Well, it's nearly in the middle on the right-hand  
25 side. Lone Mountain is virtually in the middle and Devil's

1 Gate is just to the right about an inch and a half. And  
2 there's a 6,000 foot line, contour line, water level line in  
3 Kobeh. And in Diamond Valley there's a 5900 foot line. So  
4 if you just take those differences it's about a hundred feet.  
5 But I think it's a little less than that.

6 So what this shows, what this tells me is that  
7 the gradient between the two valleys is such that massive  
8 pumping in Diamond Valley has not impacted any of the water  
9 levels in Kobeh Valley. And that's pre-development. And so  
10 there is 60, 70 years of pumping. And it's never impacted  
11 the water levels in Diamond Valley. The water table is  
12 really close to the surface in Diamond Valley. Excuse me.  
13 In Kobeh. So if that's true, which I believe it is, then the  
14 pumping of project wells in Kobeh Valley will not impact  
15 Diamond Valley.

16 Q. Now --

17 A. One more thing. I'd like to make reference to  
18 Figure 317, the extent of plasticine lakes within the Diamond  
19 Valley regional flow system. And again, this is in 39,  
20 Exhibit 39. And there is a journal article or a thesis  
21 rather that we ran across and it's the Lowe report. It's a  
22 thesis by Dennis Lowe. I don't know the exhibit number. But  
23 in that thesis he talks about the pre, the very earliest  
24 plasticine lakes, plural, Lake Jonathan in Kobeh Valley and  
25 Lake Diamond in Diamond Valley. He talks about the high

1 stand line of those lakes.

2 Q. Excuse me, Mr. Katzer. If you're going to refer  
3 to what is referred to as the Lowe report, it's Exhibit 415.

4 A. 415. And I think the date on that is I want to  
5 say 1983. '82, 1982. Anyway, in that report he talks about  
6 investigators of Marty Nefflin and Peg Wheat and Blackwelder I  
7 think his name was. And it's a 1948 reference. And they  
8 measured the height of these high stand lines.

9 Q. What is a high stand line?

10 A. That's a high shore line, the maximum shore line.  
11 And they determined that Kobeh Valley, the high stand line  
12 was 80 feet higher than the stand line, the high stand line  
13 in the Diamond Valley. To me this is another permeability  
14 problem or a solution, depending on your perspective. But if  
15 that high stand line could last -- And I don't know how long  
16 it lasts, thousands of years perhaps. Without that water  
17 seeping through either through the dam or the high stand  
18 lines, and they were probably connected, they were probably  
19 connected or butted up against maybe a rock outcrop. It  
20 might have been the Devil's Gate limestone. I don't know  
21 that. But at one point it didn't go anywhere. That was the  
22 high stand. You would think that over time there might very  
23 well have equalized out but they did not.

24 So I think that's another point that I  
25 fortunately believe shows that the permeability differences

1 are such that pumping in Kobeh Valley will not impact Diamond  
2 Valley.

3 And then they breached, Kobeh must have got more  
4 water, breached the dam and eroded it out.

5 Q. And that drained the lake in Kobeh Valley?

6 A. It drained the lake in Kobeh in to Diamond.

7 Q. Are you saying then that the groundwater levels  
8 in Kobeh Valley have remained consistently about 80 or so  
9 feet above the pre-pumping water levels in Diamond Valley?

10 A. That's correct.

11 Q. And that condition remains today?

12 A. It does. And it may not be 80 feet. It may be a  
13 few feet less. It's hard to make that judgment.

14 All right. Let's go to Figure 3.3-2 in Exhibit  
15 39. And this was presented in 2008. And we talked about how  
16 in Roberts Creek, which is on the left-hand side of the  
17 figure. It runs from north to south. The Roberts Creek flow  
18 on August 22nd of 2007 was measured from the confluence of  
19 the east fork of Roberts Creek and the west fork, made  
20 several measurements all the way down to where Roberts Creek  
21 exits the mountain block or very close to where it exits the  
22 mountain block. Actually if you are familiar with that, it's  
23 very close to the first road crossing when you're driving up  
24 the creek.

25 But we saw the flow steadily decrease. And these



1 are several measurements that we made in one day overtime and  
2 we've averaged them out and they show that the flow from the  
3 top to the bottom loses discharge, loses flow. What that  
4 means is that flow is going to the groundwater system,  
5 draining to the groundwater system with some amount, probably  
6 being used by the repairing vegetation. But it was a  
7 decreasing flow all the way down the system.

8 Now, in the vicinity of, if you see there SR4,  
9 0.12 CFS, just downstream a little bit there's what's called  
10 the middle Roberts Creek well. And the middle Roberts Creek  
11 well, we had the well surveyed and the channel surveyed. And  
12 the difference between the water level in the well and the  
13 bottom of the creek is about 66 feet on the day we did this  
14 survey, which means to me that the channel is perched. It's  
15 perched in this very narrow alluvial valley that runs up in  
16 to the Roberts Mountain there. And the stream is not in  
17 direct contact with the groundwater.

18 (Cell phone rings)

19 THE WITNESS: It's my mother. She always calls.

20 Q. (By Mr. de Lipkau) Could I stop you right there,  
21 Mr. Katzer?

22 A. Sure.

23 Q. You testified earlier that Roberts Creek at least  
24 the segment you measured is a losing stream and that the  
25 water is percolating in to the groundwater system; right?

1           A.    That's exactly right.

2           Q.    And then you just said that you think the creek  
3           and shallow groundwater system are not hydrologically  
4           connected to the aquifer to which the applications here seek  
5           groundwater. Is that your testimony?

6           A.    Right. I say it a little differently. I would  
7           say they're not in direct physical contact but they are in  
8           hydrologic continuity. We can sense that the water from the  
9           creek drains down in to, in to the groundwater table  
10          underneath. It's got to go through the saturated part to get  
11          there.

12          Q.    When you say underneath?

13          A.    Subsurface.

14          Q.    How far down?

15          A.    It probably varies from well up in the mountain  
16          block by the confluence of Roberts Creek and east west from  
17          probably just a few feet down to, well, clearly 66 at the  
18          middle of Roberts Creek well.

19                And then as you will learn later in the session,  
20          there is a large fault that crosses the creek in the vicinity  
21          of the middle of Roberts Creek, actually about a half mile  
22          down, I think, and the water table just really drops from  
23          there. And I forget. You'll have to ask Dwight or Jack that  
24          question. I think it's something like 150 feet difference.  
25          So clearly the water in Roberts Creek is perched above the

1 groundwater system. So that any pumping will not reach, will  
2 not reach the creek and cannot drain the creek dry.

3 Now, we have a gauge at just below the confluence  
4 of those three forks and then we have a gauge downstream. We  
5 don't have a full years of record of actual recording because  
6 we just got the lower gauge on in April. But in 2009 we  
7 estimated the total flow and we show about 120, 130 feet less  
8 water at the lower gauge than at the upper gauge. And while  
9 that's not -- it's preliminary record and we'll probably/  
10 eventually change it. But with the gauging stations in a few  
11 years we'll be able to make some really definitive stages  
12 about that.

13 It is somewhat complicated on Roberts Creek  
14 because there is just below the upper gauge a tenth of a  
15 mile, a couple tenths, there is a perennial stream. There's  
16 very little water. We measured it at about just a few  
17 hundredths.

18 Q. Hundredths of the CFS?

19 A. Of cubic foot per second of water, yes, just a  
20 few gallons a minute. And then there are a few springs in  
21 there too. And one drains directly in to the creek. This is  
22 Yerington Spring. But I don't know how much of the water is  
23 diverted. It's nearly impossible to measure. And I think  
24 that water goes towards the, goes to the Roberts Creek Ranch.

25 The other spring is just a diffuse system sitting

1       there and I can't make any sense out of it. You can't  
2       measure. It's just a real wet spot right next to the creek.  
3       So it could very well be creek water coming back in somehow  
4       and we haven't been able to sort that out. But it does  
5       complicate the record and we always have to be aware of those  
6       sort of things.

7                 Moving over the hill on to --

8                 Q.     Before we do that, Mr. Katzer, let me back up a  
9       little bit. You've just gone over the Roberts Creek  
10      drainage. Let's kind of start from where you left off in  
11      2008. What -- Do you understand where we're going?

12                A.     I'm not sure yet.

13                Q.     Okay. You were involved in Exhibit 116?

14                A.     Yes.

15                Q.     In 2008. And what was your task at the 2008  
16      hearing?

17                A.     In 2008 we had made a series of measurements  
18      obviously in August of '07, but mostly what I was involved  
19      with then was to put together the basin groundwater budgets  
20      and we looked at precipitation, tried to make some sense out  
21      of that, the existing stations, and could not. I made a  
22      large series of estimates of surface water runoff from not  
23      only the perennials but also all of the ephemeral streams  
24      that are in the project area. Not all of them, but most of  
25      them. To try and come up with a number of how much water

1 comes down off the mountain block. And most of it ultimately  
2 recharges the groundwater system. And that was primarily all  
3 I did.

4 Q. And then you testified at that hearing that in  
5 your opinion, your professional opinion there were  
6 approximately 16,000 acre-feet annually recharging Kobeh  
7 Valley?

8 A. That's correct.

9 Q. And is that about the same number the USGS  
10 publishes?

11 A. Yes.

12 Q. And you also testified based upon the recharge of  
13 16,000 acre-feet that the development of 11,300 acre-feet  
14 does not adversely affect surface water sources or would  
15 intercept water which otherwise would flow or allegedly flow  
16 from Kobeh to Diamond?

17 A. That's correct.

18 Q. How would you describe that method of testimony?

19 A. The basin water budget primarily.

20 Q. All right. In your opinion would your testimony  
21 standing alone prove the points that, number one, there's  
22 water availability, and number two, that the development of  
23 that water would not tend to impair existing rights?

24 A. Yes.

25 Q. Okay. You've testified before the State Engineer

1 many times?

2 A. Yes.

3 Q. Were you involved in the I'll say the Buqo report  
4 as we've called it, Exhibit 116? 115. I'm sorry.

5 A. No. I discussed parts of it with Tom, Tom Buqo,  
6 but I was not involved in any of the work.

7 Q. You shared no data?

8 A. No.

9 Q. All right. You realize Mr. Buqo has passed away.  
10 Could you describe how Mr. Buqo went through his task?

11 A. Tom was tasked with locating the wells, providing  
12 geophysics, providing estimates of production at the well  
13 sites, how much each well would produce and where the best,  
14 where the optimum areas were to drill these wells and to  
15 evaluate them based on his knowledge of the geology of the  
16 valleys and mountains.

17 Q. In your opinion would Mr. Buqo's testimony of  
18 2008 prove the same two elements, one, availability of water  
19 and two, the pumping of 11,300 AFA would not impair existing  
20 rights?

21 MS. PETERSON: Objection. The question is asking  
22 this witness if Mr. Buqo's testimony in 2008 still stands  
23 today such that it would, there is water available to  
24 appropriate and it would not impact existing rights. And of  
25 course, Mr. Buqo is not here. So I think the proper course

1 is that Mr. Buqo's testimony in 2008 rests as it stands on  
2 the record and there should be no opinions by Mr. Katzer in  
3 2010 on what Mr. Buqo's opinions would be.

4 HEARING OFFICER WILSON: I didn't think you were  
5 asking him Mr. Buqo's opinions.

6 MR. DE LIPKAU: No. I asked Mr. Katzer if he  
7 believed the Tom Buqo testimony and report, Exhibit 115,  
8 standing alone, supported the two positions. It's a yes or  
9 no question.

10 HEARING OFFICER WILSON: So it's Mr. Katzer's  
11 opinion based on his review of the documents from the  
12 previous hearing. That's what I got out of it. Is that the  
13 question --

14 MR. DE LIPKAU: That's my question.

15 HEARING OFFICER WILSON: -- you're objecting to?

16 MS. PETERSON: I am objecting to that question.

17 HEARING OFFICER WILSON: We can accept it as your  
18 opinion of Mr. Buqo's work and his prior testimony on the  
19 exhibit but not of what Mr. Buqo may or may not have said  
20 today if he were here today.

21 THE WITNESS: Yeah, I wouldn't do that.

22 HEARING OFFICER WILSON: And I want to make sure  
23 that's clear for the record and I believe that in that  
24 context it's okay.

25 Q. (By Mr. de Lipkau) Mr. Katzer, we introduced

1 Exhibit 38. Would you please refer to that.

2 A. Yes. Explain?

3 Q. Explain Exhibit 38.

4 A. In Exhibit 38 I have some paragraphs that deal  
5 with perennial yield at the front first two pages and then I  
6 talk about why I think that Roberts Creek and Vinini and  
7 Henderson Creek would not be impacted by project pumping.  
8 And then I've included also the 2009 first annual surface  
9 water report which lists all of the gauges that we had in  
10 operation as of, as of the end of 2009. And as I've  
11 indicated, we changed that considerably.

12 But this is our very first estimate to try and  
13 figure out what the stream flow characteristics are of these  
14 various streams and it's taken us a while to move them around  
15 a little bit. We've added some. We've even dropped some  
16 actually. But it's a work in progress and it's going to take  
17 a while to get it all sorted out.

18 And so these are just really the first year is  
19 pretty much just a -- It's not a crude estimate. It's based  
20 on hard data that we collected, but we'll do a lot better  
21 when we have gauge data that we can utilize.

22 Q. Have you briefly described Exhibit 38?

23 A. Briefly.

24 Q. All right.

25 A. Well, okay. There's one caveat -- Well, I'll



1 wait. Shall I go on to the next? Do you want to go in to  
2 Henderson Creek now?

3 Q. We've gone through Roberts Creek. I want to take  
4 these creeks separately. I think you testified that in  
5 conclusion the pumping of the water here sought would not  
6 adversely impact the surface waters of Roberts Creek and  
7 tributaries, is that your testimony?

8 A. Yes, that's my testimony.

9 Q. All right. Let's move to the next creek.

10 A. All right. On the same figure, 332 of 39,  
11 Exhibit 39, and we talked about Roberts Creek. There's also  
12 Henderson Creek about in the middle center of the figure.  
13 And again, there are arrows that indicate sites where we made  
14 miscellaneous measurements and these are made over a day.

15 Q. Excuse me, Mr. Katzer. In Henderson Creek we are  
16 now in Pine Valley?

17 A. We're in Pine Valley, that's correct.

18 Q. And the rest of your testimony involving these  
19 particular creeks will be in Pine Valley, not Kobeh or  
20 Diamond; is that correct?

21 A. That's correct.

22 Q. All right.

23 A. We did the same thing. We made a series of  
24 measurements and we determined -- This again is in August,  
25 August 22nd of '07. And the flow was down to, down to base

1 flow. And so it's losing flow from the top to the bottom  
2 from high up in the system down to -- down to where it went  
3 to zero. And that indicates again that the channel is  
4 sitting there contributing water to the groundwater system,  
5 not the groundwater system feeding Henderson.

6 Having said that, we now have a year of data  
7 behind us and we have two gauges on it, which we just  
8 recently installed. But we find that the measurement sites  
9 that we had before, we called them the upper and lower sites,  
10 were pretty evenly divided on Henderson Creek in terms of the  
11 amount of spring flow that they were receiving.

12 For 2009 we determined there was about a hundred  
13 acre-feet of spring flow feeding the creek above the upper  
14 gauge. And the lower gauge is about a mile and a half, two  
15 miles downstream. And it was gaining also another hundred  
16 acre-feet. Not quite but almost. So that's because of  
17 spring flow. There is a series of springs between, from the  
18 lower gauge all the way up to the top of the system, top of  
19 the drainage area actually.

20 And so those springs decreasing flow with time,  
21 with the year, as the snows melt, most of the water comes  
22 off, and as you would expect, April, May, June, maybe some in  
23 to July. And then by the time we get in to August we're  
24 starting to get down to just a few gallons a minute. And  
25 then the stream goes dry. And it dried up, I can't remember

1 the exact date this year. But we have it somewhere in late  
2 August I think it was drawn.

3 Henderson Creek is really interesting, at least  
4 to me, because it's the smallest creek that we measure. And  
5 it has, it has about 50 percent volcanics in the upper part  
6 of the drainage and about 50 percent of the vinini formation  
7 in the lower part of the drainage. And both of these are  
8 really low permeability systems.

9 And so what I think is happening is that there's  
10 a disasoral mantel. And also I think the number is just a  
11 little less than four square miles of drainage area. No.  
12 It's less than two. It's really a small area. And so what I  
13 think happens is in the upper part of the system there is a  
14 fair amount of alluvium sitting on top of the volcanics. And  
15 I think that's the main reservoir for these springs. And  
16 they flow, they flow all year. But they do decrease in flow  
17 towards the end of the year. And they get down to almost  
18 nothing, just a few gallons, a few gallons a minute.

19 So I find it really difficult to believe that  
20 whenever the ten-foot contour, the ten-foot drawdown does get  
21 up theoretically and touches Henderson Creek in the lower  
22 part, not the upper part, so I don't think it will bother the  
23 springs at all if that becomes reality.

24 Q. Why is that?

25 A. Well, because the springs are also sitting above,

1 quite a ways above the ten-foot contour, theoretically.

2 Q. When you say sitting above, what's the difference  
3 in elevation?

4 A. Several hundred feet, a thousand feet. It's a  
5 long way up to the top of the mountain.

6 Q. All right. So what you're saying is the pumping  
7 water level is at a certain level?

8 A. Yes.

9 Q. Let's call it zero. And the springs are?

10 A. Several hundred feet to over a thousand above  
11 that, sitting above that.

12 Q. Right. And what is the source of water to the  
13 springs in the surface water?

14 A. It's a melting snow.

15 Q. So it is not groundwater coming up then?

16 A. No.

17 Q. And discharging?

18 A. No. It's water goes down, it follows gravity.

19 Q. Right.

20 A. And so -- All right. We go to use the same  
21 figure, just over to Vinini Creek. And during that run,  
22 Vinini Creek was dry. So this year or after 2009 we've got  
23 two gauges in, one up high and one down low, and we find that  
24 Vinini Creek is not very perennial except during the runoff  
25 period. In the mid-summer to late summer and fall it becomes

1 intermittent and then it turns in to almost to an ephemeral  
2 stream.

3 We found that the gauges which are sitting up  
4 like at 7800 feet altitude and -- 7200 and 6800. That's our  
5 spread. That the gauge will have flow, both gauges will have  
6 flow and it will be dry for most of its course in between.  
7 And we'll come back the next month and the gauges, the gauges  
8 are dry but there's no flow and then you'll see flow in the  
9 narrow parts of the drainage area where the mountain  
10 encroaches on the channel. And so sometimes the gauges are  
11 flowing and there's dry stretches and sometimes there's dry  
12 stretches and the gauges aren't flowing. We haven't quite  
13 got this one figured out. That's part of this whole process  
14 is to be able to monitor these gauges, these streams and  
15 define their flow of variability characteristics. And that's  
16 primarily the whole purpose, because they're going to be in  
17 the monitoring system.

18 Q. And Pete Hanson Creek?

19 A. Pete Hanson Creek -- Pete Hanson Creek drains,  
20 it's sort of the western, northwestern part of Roberts  
21 Mountain. It backs up and headwaters in Roberts Mountain  
22 peak. And this is the -- this channel, this stream system is  
23 the largest that we measure. It is the largest runoff per  
24 unit area that we have, which I thought was really strange  
25 until we started looking at the -- looking at the geology

1 with interflow hydrology. And they pointed out to me all of  
2 these basalt dike rocks that are part of the Nevada rift.

3 And the upper, I think it's the upper 2,000 acres  
4 of Pete Hanson Creek is covered with numerous rock, the salt  
5 rift dikes. And what I think they're doing is becoming an  
6 impermeable boundary to any water there and it's getting in  
7 to the stream.

8 Q. Impermeable boundary is what?

9 A. To groundwater flow, to letting the water seep in  
10 to the ground.

11 Q. Okay.

12 A. Letting it get in to the groundwater system.  
13 It's getting in to the creek, running off. And all it's  
14 really doing is changing the distribution of the recharge  
15 area from the mountain block down to the valley fill.

16 Q. That's Pine Valley?

17 A. That's Pine Valley, yes. And we've done, we've  
18 completed a pre-extension seepage run there this last summer,  
19 spring/summer. And we were looking for areas where water was  
20 coming and going, fault zones across the creek. And we  
21 found, we found a couple areas where there was, where the  
22 flow more than quadrupled from the next site above it. And  
23 so that meant there had to be some inflow without -- we  
24 couldn't see any springs, had to be probably from a fault  
25 system of some sort. And then within a three-quarters of a

1 mile downstream it was nearly all gone again. We lost a fair  
2 amount of that water. And again, we were trying to figure  
3 out these characteristics, what happens to the streams, what  
4 doesn't happen to them.

5 On the site, on the lower site where we were  
6 losing all the water there's an old diversion ditch there.  
7 And I almost think that there might have been a black hose  
8 stuck in the creek and it was siphoning the water out. But  
9 we can't see -- we can see where the old rock dam was that  
10 diverted the water, but there's no sign of any sort of  
11 irrigation system there to divert it.

12 Pete Hanson also is the one of two creeks, I  
13 guess, that freezes solid during the winter. From our upper  
14 gauge always has water flowing under the ice and two or three  
15 feet of snow. And the lower gauge is frozen really solid.  
16 It stays zero flow for like December, January, February and I  
17 think we were starting to get some flow in March.

18 And that's exactly the same thing we found in  
19 Roberts Creek. The upper gauge at Roberts Creek below those  
20 three forks always was open. It would have a little ice.  
21 But it was always flowing. The lower gauge would be frozen  
22 solid. And we would take a big ice chisel and we would  
23 chisel down from six to eight inches of ice in a couple three  
24 or four places in the channel to try and find water but it  
25 was not there, which means to me that it was being

1 infiltrated in to the groundwater system, the same as Pete  
2 Hanson.

3 I have two other figures that don't correspond to  
4 the same figures in Exhibit 39. So I think I'll just talk  
5 about the ten foot, ten foot, the maximum ten-foot drawdown  
6 curve, the theoretical drawdown curve from the pit as well as  
7 from the well field. And this line or these lines because  
8 there are different periods of time when interflow hydrology  
9 has made that judgment and you should be able to ask him more  
10 about this later.

11 Q. What exhibit are you referring to?

12 A. Exhibit 39. I can't make reference to the  
13 figures because they've been changed slightly and I don't  
14 have any numbers. They're in the report. And so these  
15 figures get up and they do, one of them does cross the lower  
16 part of Henderson Creek. It does cross the lower part of  
17 Henderson Creek. But that's the one that has the 50 percent  
18 volcanics and 50 percent vinini, really, really tight pits.  
19 And so I don't think that there's any way at least in my  
20 lifetime, maybe some of yours, that it will ever ever impact  
21 Henderson Creek. And again, the reason for that is, as I  
22 mentioned earlier, are the springs sitting above and beyond  
23 that ten-foot theoretical line.

24 Q. Mr. Katzer, you said that your opinion there  
25 would be no impact to the groundwater table, no impact to the



1 surface caused by the pumping. What approximately is the  
2 groundwater difference, depth to groundwater?

3 A. In Kobeh Valley to the top of the range?

4 Q. Correct.

5 A. That's got to be three to 4,000 feet. Maybe,  
6 /eah, three to four.

7 Q. Okay. Will the pumping over time cause impacts  
8 to springs in direct stock watering wells in the floor of  
9 Kobeh Valley?

10 A. I believe it will. And I can't name the springs  
11 because I'm not that familiar with them. Mud Springs, for  
12 instance, I know where that is. I've been there. It will  
13 probably dry that up with time. And other springs that are  
14 in close proximity to the well field.

15 Q. Stock watering wells?

16 A. Stock watering wells, yes, probably.

17 Q. Could you state whether or not you're aware  
18 whether the applicant has agreed orally and in writing to  
19 mitigate these sources that may be impacted?

20 A. Yes, I'm sure they will, yes.

21 Q. Let's see if we can summarize your testimony on  
22 Roberts Creek, Roberts Creek drainage. I think we tried this  
23 before. And is it your testimony that the development of the  
24 desired volume of groundwater will not impact the surface  
25 waters of Roberts Creek and tributaries?

1 A. Yes.

2 Q. Please explain again why.

3 A. Well, the stream from the confluence of the east  
4 and west forks, which is up in the mountain block, is perched  
5 above higher than the underlying groundwater table in that  
6 small little alluvial valley that's occupied by Roberts  
7 Creek.

8 Q. And the difference is hundreds of feet?

9 A. In some areas it's probably close to 200 down way  
10 in the lower end of it. But in the vicinity of the Roberts  
11 Creek Well, the middle of Roberts Creek Well it's  
12 60-some-odd-feet difference.

13 Q. And the Henderson Creek?

14 A. Henderson Creek.

15 Q. Will there be an impact on the water of the  
16 Henderson Creek and their spring source?

17 A. I don't believe so. The caveat to that is I  
18 haven't walked that entire channel. So there could be a  
19 spring really close to our lower gauge which is where the  
20 ten-foot line gets very close to it. That could be impacted.  
21 I don't know that. But in the upper part where most of the  
22 water comes from, the springs are higher, much higher than  
23 the drainage. And it will be, it's a top down recharge for  
24 those springs receiving water from the melting snows and  
25 draining out of the overlying alluvium.

1 Q. So groundwater is not hydrologically being pumped  
2 up?

3 A. No.

4 Q. So all the spring source is water above them  
5 comes out?

6 A. That's true.

7 Q. And again what would be the difference in  
8 elevation from the springs on Henderson Creek to the pumping  
9 level caused by the KVR pumping?

10 A. It's got to be, it's got to be over a thousand  
11 feet.

12 Q. All right. Let's move on to Vinini Creek.

13 A. Same problem on Vinini Creek. Vinini Creek is  
14 totally out of reach by the theoretical drawdown.

15 Q. So again is it your opinion that the desired  
16 pumping will have no impact on the waters of Vinini Creek?

17 A. It is.

18 Q. And the Pete Hanson Creek, I ask you same  
19 question. Will the desired pumping cause an impact to the  
20 surface waters of the Pete Hanson Creek?

21 A. No, it will not.

22 Q. Let's go back to when you first made an on-site  
23 inspection. Did you see any measuring devices on Pete Hanson  
24 Creek and tributaries?

25 A. No, I did not. But again, the caveat is I

1 haven't walked the whole channel in the lower part.

2 Q. You observed none with all of your field work?

3 A. With all of the seepage tests, yes.

4 Q. Mr. Katzer, I'm going to show you Exhibit 404.

5 Mr. Katzer, I have shown you Exhibit 404, have I not?

6 A. Yes.

7 Q. What is that exhibit?

8 A. Let's see, Article 9 of that is dealing with the

9 perennial yield of a basin is estimated to be 30,000

10 acre-feet and estimated water consumption in 1981 was

11 approximately 71,744 acre-feet.

12 Q. What basin does that exhibit refer to?

13 A. Diamond Valley.

14 Q. And who signed it? Who signed the order or the

15 ruling?

16 A. Pete Morros.

17 Q. Pete Morros. He was the State Engineer?

18 A. Yes.

19 Q. All right. Does that ruling therefore affect

20 Diamond Valley? Does it concern itself with Diamond Valley?

21 A. Yes.

22 Q. Is there a definition of perennial yield in that

23 ruling?

24 A. Yes. The perennial yield --

25 Q. What page are you reading from?

1 A. Page four.  
2 Q. Page four. Please read it.  
3 A. "The perennial yield is the maximum amount of  
4 water of usable chemical quality that can be withdrawn and  
5 consumed economically each year for an indefinite period of  
6 time."  
7 Q. Do you agree with that decision -- with that  
8 definition?  
9 A. Yes.  
10 Q. All right. Utilizing that definition do you  
11 believe that the development of 11,300 AFA can be pumped  
12 within the definition of perennial yield?  
13 A. Yes.  
14 Q. Do you also believe that the pumping of that  
15 volume of water could be done without adversely affecting  
16 existing rights with the exception of the nearby springs?  
17 A. Yes, it can.  
18 Q. Okay.  
19 MR. DE LIPKAU: I believe that's all the  
20 questions I have for Mr. Katzer at this time.  
21 HEARING OFFICER WILSON: Thank you.  
22 Cross-examination.  
23 MS. PETERSON: Thank you.  
24 ///  
25 ///

1 CROSS-EXAMINATION

2 By Ms. Peterson:

3 Q. Mr. Katzer, I'm Karen Peterson. I'm the attorney  
4 for Eureka County. And I guess just following up on that  
5 line of questioning from your attorney. I mean determining  
6 whether there's water available to appropriate is not just a  
7 mathematical exercise. This is the amount of perennial  
8 yield, this is the amount of water rights that have been  
9 permitted or certificated in the basin and so any difference  
10 is water available to appropriate. That's not what the total  
11 job of the State Engineer is, is it?

12 A. Would you repeat the question.

13 Q. The job of the State Engineer is not just to  
14 perform a mathematical calculation to determine whether water  
15 is available to appropriate the source?

16 A. That's one of its jobs.

17 Q. It's not the sole basis to appropriate water, is  
18 it?

19 A. Well, in order to appropriate water you must  
20 prove that there is water available. And so that's why the  
21 USGS started in 1962 determining the amount of groundwater  
22 discharge and the amount of groundwater recharge in all of  
23 the basin. So then the State Engineer can use that data to  
24 make a judgment.

25 Q. And I notice you said at the beginning of your

1 testimony that you didn't have any changes to your previous  
2 testimony but you did have some additions; is that correct?

3 A. That's correct.

4 Q. And so would your testimony with regard to  
5 Exhibit 116 be the same today as it was in the last hearing?

6 A. I don't know. It would be concerning the  
7 groundwater budgets, it would be the same.

8 Q. And in the report, 116, on page 93, the statement  
9 was made that the perennial yield of Kobeh Valley was 16,000,  
10 assuming capture of the ET?

11 A. Correct.

12 Q. And you agree with that statement?

13 A. I'd have to look to see if I said that, but that  
14 sounds about right.

15 Q. And I can show you Exhibit 116.

16 A. I trust you.

17 Q. And you were basing that on your evaluation of  
18 Rush; is that correct?

19 A. Rush and Kazi, the authors of the report.

20 HEARING OFFICER WILSON: Could you spell that for  
21 the court reporter, the names of the authors?

22 THE WITNESS: I think it's K-a-z-i.

23 MS. PETERSON: I think it was Rush and Everest.

24 THE WITNESS: Oh, you're right. 1964.

25 Q. (By Ms. Peterson) And in this case is the mine's

1 pumping going to capture the ET?

2 A. The mine's pumping will begin to capture the  
3 discharge through evapotranspiration at some point, yes.

4 Q. At some point?

5 A. Yes.

6 Q. And the maximum amount captured is approximately  
7 4,500 acre-feet?

8 A. 4,500 acre-feet?

9 Q. Yes.

10 A. Oh, you mean after the 44 years?

11 Q. Yes.

12 A. I don't know exactly.

13 Q. You don't know?

14 A. No.

15 Q. And that definition of perennial yield for this  
16 basin in Kobeh Valley, the one we just talked about, 16,000  
17 assuming capture of the ET, that's consistent with those  
18 definitions of perennial yield that you put in your Exhibit  
19 38 I think it was?

20 A. Pretty much.

21 Q. The examples that you put in there; is that  
22 correct?

23 A. Yes, yes.

24 Q. Okay. And the examples that you put in your  
25 report are a little bit different than what's worded in the



1 ruling from 1983; is that correct?

2 A. The reason I put those in, I thought it would be  
3 interesting to take a look and see how that definition -- it  
4 doesn't really change, but it's modified through time by the  
5 various authors. Modified in the sense that they increase  
6 the descriptors on what would or would not happen.

7 Q. And there's also some statements made about  
8 transitional storage in your Exhibit 38?

9 A. Right.

10 Q. And would you agree that if pumping is taking  
11 water from transitional storage and ET is still occurring  
12 that that increases the total discharge from the basin?

13 A. Yes, that's true.

14 Q. Were you an author of Exhibit 39?

15 A. No.

16 Q. Okay. Do you agree that the model, I guess  
17 outlined in Exhibit 39 is the best predictive tool that we  
18 have for impacts at this time?

19 A. I think it's one of the best models that's  
20 probably ever been developed.

21 Q. Do you also agree that the concept of perennial  
22 yield is different from the concept of impacts to existing  
23 rights?

24 A. Say that again.

25 Q. The concept of perennial yield?

1 A. Right.

2 Q. Well or water available to appropriate from a  
3 source, that's one of the findings that the State Engineer  
4 has to make under the statute; isn't that correct?

5 A. Yes.

6 Q. And another finding that the State Engineer has  
7 to make is that there's no impacts or conflicts with existing  
8 rights; is that correct?

9 A. Yeah, I think, yes, that's correct.

10 Q. And you don't agree that -- There can be pumping  
11 that's within the perennial yield but it may impact existing  
12 rights; isn't that correct?

13 A. That can happen.

14 Q. Okay. And you worked in Nevada a long time;  
15 correct?

16 A. Correct.

17 Q. And you've worked for the USGS?

18 A. Correct.

19 Q. And you've done a lot of studies with regard to  
20 groundwater, aquifers and carbonate aquifers; is that  
21 correct?

22 A. That's correct.

23 Q. And isn't it true that you've advocated to the  
24 State Engineer that at least for the carbonate aquifer there  
25 should be staged development of the aquifer?

1           A.    That was back in 1984, I believe and we were in  
2   the process of trying to develop the carbonate aquifer, which  
3   we're not doing here, which is a big difference. And the  
4   unknowns at that time were really extensive in that  
5   throughout the whole White River flow system, groundwater  
6   flow system.

7                    But since that time they've learned an awful lot  
8   about the carbonate aquifer.

9           Q.    And were you involved in the Spring Valley  
10   hearings?

11          A.    No.

12          Q.    No. Are you aware of any decisions from the  
13   State Engineer where he's ordered staged development of  
14   groundwater resource from the alluvium based on not being  
15   able -- not being sure of the impacts from pumping?

16          A.    Yes, I am. And that's Coyote Springs you're  
17   talking about. And the difference there in trying to compare  
18   that to a staged pumping here for a mine that needs a bunch  
19   of water total right now is that there was endangered  
20   species, fish species in the muddy springs. And so they  
21   wanted to see and they had the time to do a pump test, an  
22   aquifer test to see if it would impact the muddy springs.

23          Q.    But in this case you've already testified that  
24   there's going to be impacts to existing rights from this  
25   pumping; is that correct?

1 A. That's in the alluvial system. That's a given.

2 Q. Right. And that's the system that we're in with  
3 these applications?

4 A. That's right. But there's also -- Excuse me for  
5 going on. But there's also a monitoring plan and mitigation  
6 that will take place to provide water for those sources if  
7 they're impacted.

8 Q. And then you had a series of opinions about the  
9 creeks, Vinini Creek, Henderson Creek, Roberts Creek, Pete  
10 Hanson Creek. Do you recall that testimony?

11 A. Yes, yes.

12 Q. And what I gathered from your testimony was that  
13 you had taken measurements one time on those creeks or  
14 someone had taken measurements one time on those creeks?

15 A. We've made dozens and dozens of measurements.

16 Q. On those creeks?

17 A. Yes. In 2007 in that August run we had limited  
18 number of measurements.

19 Q. Okay. So that was the -- I thought you based  
20 your opinion on that one measurement for Roberts Creek?

21 A. No. We had, I think, I forget the exact number  
22 right now. But we probably on Roberts Creek on August 22nd  
23 we probably made 20, 30 measurements over the course of a  
24 day.

25 Q. Oh, right up and down the creek.

1           A.    Up and down the creek at the same spots.  Because  
2   we were in base flow conditions and the flow wasn't  
3   increasing at the upstream side.  So nothing was changing.  
4   There wasn't more water coming in.  So we had a nice steady  
5   stream and we wanted to see if that stream was losing water  
6   to the groundwater system.

7           Q.    Right.

8           A.    Which it was.

9           Q.    And you based that opinion on the one  
10   measurement -- on the measurements that were made on that one  
11   day; is that correct?

12          A.    Yes.  But since then we had the gauge, one gauge  
13   and we have been able to make adjustments to that the upper  
14   gauge site runs about a hundred to 120 acre-feet more per  
15   year than the lower gauge site.  So the flows decrease in  
16   downstream direction.  That's only one-year measurements.

17          Q.    And you also had some testimony about a  
18   groundwater well that I think it was the middle Roberts Creek  
19   well?

20          A.    Yes.

21          Q.    And did you look at any cross-sections in that  
22   area for the lithology for the well?

23          A.    No, I did not.

24          Q.    So --

25          A.    Well, I know the well is an alluvium.

1 Q. Do you need some water?

2 A. No. I need antibiotics.

3 Q. I hope not from my cross-examination.

4 HEARING OFFICER WILSON: Mr. Katzer, as long as  
5 we're in a little spot here, if you can just be real careful  
6 about talking over or at the same time because then it's too  
7 difficult to record.

8 Q. (By Ms. Peterson) So in reading your report,  
9 Exhibit 38, and you make some opinions about Roberts Creek --  
10 Well, actually Vinini Creek and Henderson Creek, do you  
11 recall that?

12 A. Yes.

13 Q. And you start out with a premise at the beginning  
14 of like under Vinini Creek?

15 A. Right.

16 Q. In your report, "My premise is that project  
17 pumping will not impact stream flow in the Roberts  
18 Mountains."

19 A. Yes.

20 Q. And you made the same assumption for Henderson  
21 Creek; is that correct?

22 A. I did, yes.

23 Q. And then you came up with a conceptual model?

24 A. Yes.

25 Q. To support your premise; is that correct?

1 A. Yes.

2 Q. But that wasn't based on any data?

3 A. Well, it is based on data.

4 Q. What data is it based on?

5 A. When you look at Vinini Creek for instance. When  
6 I was talking about the upper, maybe the upper third or  
7 quarter of the drainage area being dissected by the salt  
8 dikes, what that does is compartmentalize that upper part of  
9 the range. And actually all over the whole Roberts Mountain  
10 area there are these massive dikes, long dikes that dissect  
11 the existing mountain block itself. And plus there are other  
12 faults that cross it. So what I believe is happening is that  
13 it's turning that whole mountain block of varying lithology  
14 in to compartments that have different geometry and different  
15 permeabilities so they'll all act differently in terms of  
16 letting water out.

17 And the fact that these, all of these springs  
18 have springs, and these springs are the highest permeability  
19 within that particular block, I believe, and they give us  
20 some indication of what's happening to that block. And I  
21 think the indication is that it's draining it out through  
22 those springs. Because those high springs go dry in the late  
23 fall and they're out of water. And so then the stream is out  
24 of water. So I think to me that's a physical model that sits  
25 up there.

1 Q. And that's based upon your surface evaluation; is  
2 that correct?

3 A. That's based upon everything I know about the  
4 mountain block including the surface evaluations.

5 Q. And I guess just to follow up on that, because  
6 there's comments that you made that I wrote down when you  
7 were testifying, we'll do better when we have gauge data that  
8 we can utilize and we don't have it figured out and we're  
9 trying to figure out, trying to figure it out what happens,  
10 what doesn't happen.

11 A. And the only way we can do that is through time.

12 Q. And based on?

13 A. Based on stream flow.

14 Q. And based on data; is that correct?

15 A. That's correct.

16 Q. So I infer then that your opinions are  
17 preliminary and conceptual.

18 MR. DE LIPKAU: Objection. He's already given  
19 his opinion. His testimony speaks for itself.

20 MS. PETERSON: Well, if I characterize your  
21 opinions as preliminary would you agree with that?

22 HEARING OFFICER WILSON: You can go ahead and  
23 answer that, Mr. Katzer.

24 THE WITNESS: I think that what we're going to  
25 see is our best estimates of flow and the trends that we have



1       seen will hold up through time with more measurements so that  
2       the data will support it.

3               MS. PETERSON: And some of the opinions that you  
4       expressed today are not the same as what's simulated in the  
5       model results; is that correct?

6               THE WITNESS: Oh, that's correct.

7               MS. PETERSON: I don't have any further  
8       questions.

9               HEARING OFFICER WILSON: Ms. Ure.

10              MS. URE: Yes. Thank you.

11                               CROSS-EXAMINATION

12       By Ms. Ure:

13              Q.     Good afternoon, Mr. Katzer. I have a couple  
14       questions on Exhibit 38 in your report. You argue that  
15       transitional storage reserve is part of the total groundwater  
16       resource that can be taken for storage; is that correct?

17              A.     That's correct.

18              Q.     Okay. However, isn't it true that this is simply  
19       stating that the transitional storage is a process by luring  
20       the aquifer akin to lowering an above-ground reservoir?

21              A.     You cannot take water out of the ground without  
22       causing a lowering of the water table.

23              Q.     I understand that. But when you add in the  
24       component of groundwater recharge isn't it true that the  
25       recharge can equal what's being taken out?

1           A.    Absolutely.

2           Q.    So are you saying then that your transitional  
3 storage is, you're lowering the groundwater aquifer from say  
4 a hundred-foot level down to a ten-foot level?

5           A.    Is that a question?

6           Q.    Just like conceptually. So you're saying that --  
7 Part of your summary in here is talking about maintaining the  
8 equilibrium and then you talk about different definitions of  
9 perennial yield, so --

10          A.    It's the same definition. Excuse me. You have  
11 to capture, ultimately you have to capture the recharge. The  
12 only way you're going to be able to do that, be able to  
13 capture the recharge is to utilize the groundwater  
14 transitional storage and it takes decades, years, many long  
15 periods of time to do that. And the classic case is Diamond  
16 Valley where they've been pumping groundwater since the early  
17 '50s, maybe even before. And it wasn't -- In 1970 the  
18 pumping reached a point where it equaled, where it nearly  
19 equaled the perennial yield of 30,000 acre-feet.

20                But you have not -- Diamond Valley has not  
21 captured the ET or the discharge from Diamond Valley. And  
22 they probably never will.

23                Part of that discharge number is in bare soil  
24 evaporation from the playa, which is made up of really fine  
25 grain and materials and gives up water very slowly. I

1 seriously doubt if Diamond Valley will ever be able to  
2 capture the entire amount of groundwater discharge through  
3 evaporation and through evapotranspiration.

4 Q. So is it your opinion then that there is  
5 transitional storage available to be withdrawn from Diamond  
6 Valley and Kobeh Valley?

7 A. Yeah.

8 Q. Well, maybe it's my misunderstanding here, but I  
9 don't understand your examples because, I mean, you could  
10 have equilibrium at any point in time just as long as what's  
11 coming in is what's coming out.

12 A. You can't. How can you? How could you? You can  
13 only reach equilibrium. Let's go back to Kobeh Valley. And  
14 this is probably a good question for Dwight because I can't  
15 remember when equilibrium occurs. I don't think equilibrium  
16 has occurred until -- No. The mine I think is still pumping  
17 and equilibrium has not occurred and the mine sees operation  
18 in 40-some-odd years and you have not achieved equilibrium.  
19 It would be like if you quit pumping now in Diamond Valley.  
20 You haven't achieved equilibrium and you've captured,  
21 perhaps, 20 percent of the discharge by bare soil and  
22 evapotranspiration.

23 Q. Okay. Earlier you stated that in the valley  
24 floor that, you know, like near the well field where there is  
25 the ten-foot drawdown effect that some of the stock water

1 rights will dry up and that the --

2 A. May dry up.

3 HEARING OFFICER WILSON: Wait for the whole  
4 question, please. Go ahead and question, Ms. Ure.

5 Q. (By Ms. Ure) And then you went on to state that  
6 it didn't really matter because mitigation would be provided  
7 to those water sources, however, there's no mitigation plan  
8 in place. What type of, I guess, in your mind, mitigation  
9 will be provided to those stock water users?

10 A. Well, there's a variety of techniques. You could  
11 increase the well if it's being fed by a well or you could  
12 run a pipeline to it from part of the distribution system.

13 Q. Are you aware that to run a pipeline from part of  
14 the other distribution system that permitting would have to  
15 take place with the BLM for easements?

16 A. I'm not involved in any of that.

17 MS. URE: No further questions.

18 HEARING OFFICER WILSON: Thank you. Any  
19 redirect?

20 MR. DE LIPKAU: I have some quick questions.

21 REDIRECT EXAMINATION

22 By Mr. de Lipkau:

23 Q. You could also truck water to the water.  
24 Cataline Water, the company, would provide water, is that not  
25 correct?

1 A. Yes.

2 Q. How many man hours have you spent in the field  
3 subsequent to the October 2008 hearing?

4 A. It's probably getting close to, I don't know, 50,  
5 60 days.

6 Q. 50, 60 field days?

7 HEARING OFFICER WILSON: Did you answer yes?

8 THE WITNESS: Yes, 50, 60 days.

9 Q. (By Mr. De Lipkau) All right. Let's get to  
10 evapotranspiration. Do you know what evapotranspiration is?

11 A. Yes.

12 Q. What?

13 A. It's the use of water by plants and bare soil.

14 Q. Could it be described as water plants received  
15 from the bottom up, meaning through the root system as  
16 contrasted to moisture coming down?

17 A. Moisture coming down will provide water for  
18 evapotranspiration.

19 Q. What is transitional storage?

20 A. Transitional storage is the amount of groundwater  
21 that you can pump, that an entity can pump when it's, with  
22 time in order to capture through drawdown the discharge,  
23 groundwater discharge.

24 Q. Right. The groundwater discharge is what?

25 A. Groundwater discharge is water leaving a system,

1 leaving the groundwater system and evapotranspiring to the  
2 atmosphere.

3 Q. Are you aware of any permit, State Engineer  
4 decision which required the granting of a groundwater permit  
5 to capture an equal volume of phreatophytes?

6 A. No.

7 Q. Okay. What is the recharge to Diamond Valley?

8 A. It's estimated at 30,000 acre-feet per year.

9 Q. And what is the estimated recharge to Diamond  
10 Valley?

11 A. It's estimated 30,000 feet.

12 Q. So if we were to turn the clock back in Diamond  
13 Valley to say 1900, the basin would be in balance, would it  
14 not?

15 A. Yes.

16 Q. All right. And as you describe, there's been  
17 pumping for 50, 60, 70 years. And now the water table is  
18 going down. The pumping is approximately twice the annual  
19 recharge; correct?

20 A. Maybe even a little greater. I'm not sure.

21 Q. And the phreatophyte loss has not yet been  
22 achieved, has it?

23 A. It has not.

24 Q. Let's turn your attention to Toole Basin in  
25 southern Nevada. You are aware that approximately 9500

1 acre-feet has been granted with that aquifer as the source?

2 A. Yes.

3 Q. What is the steady state or current phreatophyte  
4 consumption in that basin?

5 A. The only phreatophytes that I know in Toole are  
6 located near the springs and it's minimal, very minimal.

7 Q. A handful of acre-feet?

8 A. A few, yes.

9 Q. So is it your opinion that the State Engineer  
10 when granting a groundwater permit would not condition it  
11 upon a taking out or a consumption of an equal volume of  
12 phreatophytes?

13 A. There may have been a special case, but yes.

14 Q. When if ever will the development of groundwater,  
15 11,300 by KVR take out of production an equal volume of  
16 phreatophyte loss?

17 A. I don't believe it will during the life of the  
18 mine.

19 Q. Now, in the event it was necessary for the 11,300  
20 acre-feet to remove an equal volume of phreatophytes, how  
21 many wells would that take?

22 A. I can't estimate that. It could be a lot. Well,  
23 depending on the time.

24 Q. 44 years?

25 A. It would take a lot of wells. It takes a long

1       time. I don't know how many wells.

2           Q. But in order to achieve that balance one would

3       have to drill a well nearby every phreatophyte discharge

4       point in the valley, wouldn't you?

5           A. Almost yes.

6           Q. And then run a myriad of pipe lines?

7           A. Yes.

8           Q. So that's not feasible?

9           A. No.

10          Q. And to your knowledge that's not the way the

11       State Engineer grants groundwater rights?

12          A. That's correct.

13           MR. DE LIPKAU: No further questions.

14           HEARING OFFICER WILSON: Recross.

15           MS. PETERSON: I just had one clarification

16       question, Mr. Katzer. You had testified that you had visited

17       Henderson Creek and it was losing flow from top to bottom and

18       you said that was in August.

19           THE WITNESS: Uh-huh.

20           MS. PETERSON: What year was that?

21           THE WITNESS: It was in '07.

22           MS. PETERSON: Thank you.

23           HEARING OFFICER WILSON: Ms. Ure.

24           MS. URE: No further questions.

25           HEARING OFFICER WILSON: Let's go off the record



1 for just a minute.

2 (Discussion held off the record)

3 HEARING OFFICER WILSON: We have questions of  
4 staff. We have a few questions for you.

5 EXAMINATION

6 By Mr. Felling:

7 Q. Mr. Katzer, on your figure, well, it's Figure  
8 3.3-1 in Exhibit 39. I guess my first question is what types  
9 of gauges did you install?

10 A. We're installing a pressure gauge called an omni  
11 and it's manufactured in New Zealand. And it has about a  
12 hundred -- we just actually completed some tests in the last  
13 few weeks. It has a pressure sensitive of a hundredth of a  
14 foot when you raise and lower the water in the stream or in  
15 the bucket. And it records the gauge height every hour. And  
16 you can set it for different times. We've chosen an hour.

17 Q. Okay. And then you mentioned three perennial  
18 streams outside of this map area?

19 A. Yes. And they're not, I have not shown those.

20 Q. Can you tell me what the names of those springs  
21 are?

22 A. Sure. Steiner Creek in Grass Valley. Steiner  
23 Creek, if you're familiar with Grass Valley, is located, it  
24 drains down in to the Moly Knudtsen Ranch in the southern  
25 part of the valley. Steiner comes out of the Simpson Park

1 Range.

2 And the other one is Pine Creek in southern  
3 Monitor Valley. It drains off of the Tehema Range off of the  
4 east side of it.

5 And Allison Creek in Antelope Valley drains off  
6 of the Monitor Range.

7 Q. Was there any gauging on those streams before  
8 you -- before you installed your gauges?

9 A. On Pine Creek there was. There was a gauge there  
10 for since about 1978. I think it was discontinued in 2005 or  
11 2004. It was operated by the USGS.

12 Q. You mentioned two gauges installed on Henderson  
13 Creek; is that correct?

14 A. Yes, that's correct.

15 Q. Where are they? Is there a figure that shows  
16 where those gauges are?

17 A. The upper gauge or the gauge on the left, and we  
18 don't have a big blow-up of it, is right above a stock pond  
19 that's sitting way up high in the drainage area. The other  
20 one is down, well, actually this is part of the process. We  
21 just moved it about a month ago. We had a -- The channel  
22 wasn't conducive to making accurate measurements. We moved  
23 it downstream. So I'm guessing now that it's maybe as much  
24 as a quarter to a half mile upstream from the junction of  
25 north Henderson and south Henderson. And we're gauging south

1 Henderson. Maybe a little more. It's really close to the  
2 power line crossing if you're familiar with that.

3 Q. So they are what, a mile, two miles apart?

4 A. Yeah. Maybe two and a half.

5 Q. Did you say that there was a period of time when  
6 there was gaining between those two gauges?

7 A. Yes. The only time we found it losing was in the  
8 late summer when we're at base flow conditions and the  
9 springs are real low and it loses flow. And we made that run  
10 in August. For 2009 our best estimate of the annual flows  
11 there shows a hundred acre-feet flowing in to the upper gauge  
12 from the springs and then it picks up another hundred  
13 acre-feet by the time it reaches the lower gauge.

14 Q. And were you able to identify the springs that  
15 actually crossed that?

16 A. You can see them. Yes, we have.

17 Q. And where do the springs, where are they located  
18 relative to the stream?

19 A. Most of the springs that I'm aware of, and there  
20 may be some that I'm not, are on the south side of the creek  
21 and at the head waters of the creek.

22 Q. So that would be -- The springs that sit between  
23 the two gauges are pretty much in the stream on the south  
24 side?

25 A. They're right on the south side, yeah. They're

1 actually out of the stream. They're out of the stream.

2 Q. And where is the water table in that reach of the  
3 stream relative to the stream bottom?

4 A. We have not drilled any wells along Henderson  
5 Creek.

6 Q. If the water table is in contact with the stream  
7 does the potential exist for groundwater pumping and a  
8 lowering of the water table to impact those springs and the  
9 streams?

10 A. Theoretically. But I can't see that happening  
11 because it's so high up in the mountain block.

12 Q. How would we figure that out?

13 A. Go look at a few wells would be one way. Now, I  
14 know in the lower part, in the lower part of the stream, I  
15 think right in the vicinity of our new gauge or maybe just  
16 downstream from it, the groundwater table is really close to  
17 the surface there because there's some very large sagebrush  
18 which is always considered a phreatophyte. So it's within 20  
19 feet anyway of the stream.

20 MR. FELLING: Thanks. That's all the questions I  
21 have.

22 EXAMINATION

23 By the State Engineer:

24 Q. Mr. Katzer, you've spent a lot of time on both  
25 Kobeh Valley and Diamond Valley?

1 A. Not a lot in Diamond. But in Kobeh, yes.

2 Q. And most of your testimony today has been towards  
3 the effects of potential pumping in Kobeh Valley on the  
4 creeks and springs in Kobeh; correct?

5 A. Yes.

6 Q. You began your testimony talking about high water  
7 lines between the two historic rates in both basins?

8 A. Yes.

9 Q. Would you please summarize for me briefly, I  
10 guess, your opinion on the flow of water from Kobeh Valley to  
11 Diamond Valley or lack thereof?

12 A. The gradient, the groundwater gradient between  
13 the two valleys, I believe, has remained essentially  
14 unchanged since pre-development times. In the face of  
15 hundreds of thousands of acre-feet being pumped out of  
16 Diamond Valley, hardly any out of Kobeh Valley, except the  
17 natural discharge, to me that's a given that pumping in Kobeh  
18 Valley will not impact the water supply from groundwater in  
19 to Diamond Valley, which has been estimated by, I'm thinking  
20 about eight USGS sign tests. And the maximum I think they've  
21 all come up with was Jim Harold who estimated about 40  
22 acre-feet a year. And that's the only place I see water  
23 getting in to the valley is through Devil's Gate. I don't  
24 see it getting in anywhere to the east off the volcanic  
25 ridge, part of the Nevada rift. I just don't see how that

1 would be possible.

2 Q. So we have the pump, we'll call it a pump test  
3 that we've seen in Diamond Valley. Do you believe there's  
4 enough geologic data currently to support that there is this  
5 barrier other than at Devil's Gate?

6 A. I do.

7 THE STATE ENGINEER: I'm done. Thank you.

8 MR. FELLING: There's more limestone between  
9 Kobeh Valley and Diamond Valley than just at Devil's Gate,  
10 isn't there?

11 THE WITNESS: Sure.

12 MR. FELLING: What would preclude flow through  
13 other parts of the, you know, the carbonate between those  
14 basins? Why restrict it to just the structure at Devil's  
15 Gate?

16 A. You're talking about depth of 2,000, 3,000, maybe  
17 a few thousand feet. I think the biggest thing that will  
18 stop that is the volcanic ridge and whatever dikes are  
19 associated with it at depth that you can't see. I don't  
20 think you can get through that with a cone of depression.  
21 And I think that I defer to Dwight and Jack. But one of the  
22 tests ran the drawdown from the well hit the volcanics and  
23 stopped. And I think that goes really deep. I think there's  
24 hardly any chance of any interbasin flow in that area.

25 HEARING OFFICER WILSON: All right. Thank you,

1 Mr. Katzer. You can step down. Off the record for a minute.

2 (Discussion held off the record)

3 HEARING OFFICER WILSON: We were discussing the  
4 timing of the hearing and how we're progressing. We're going  
5 to adjourn for today and start at 8:30 a.m. tomorrow. And I  
6 want to remind everyone that we don't have the room available  
7 Wednesday. So we will not be here Wednesday but we will have  
8 Thursday and Friday.

9 Mr. de Lipkau, were you going to offer, we need  
10 to open the record and offer some exhibits.

11 MR. DE LIPKAU: We're on the record now as I  
12 understand it. Two quick things. One, we have the  
13 stipulation from counsel that James Moore will need not be  
14 present nor make himself available. And number two, the  
15 exhibits are 38, 415 and 404.

16 HEARING OFFICER WILSON: Is there any objection  
17 to Exhibit 38?

18 MS. PETERSON: No.

19 MS. URE: No.

20 HEARING OFFICER WILSON: Exhibit 38 will be  
21 admitted.

22 Any objection to Exhibit 404, which is the  
23 ruling?

24 MS. PETERSON: No.

25 MS. URE: None.

1 HEARING OFFICER WILSON: Hearing none, that will  
2 be admitted.  
3 And Mr. de Lipkau, did you say 415?  
4 MS. JOSEPH-TAYLOR: Uh-huh.  
5 HEARING OFFICER WILSON: Any objection to Exhibit  
6 415? That was Lowe?  
7 MS. PETERSON: No.  
8 MS. URE: No.  
9 HEARING OFFICER WILSON: Exhibit 415 will be  
10 admitted. And with that we'll adjourn until --  
11 MR. DE LIPKAU: One more comment. Ms. Peterson,  
12 do you agree with my statement that we stipulate?  
13 MR. BRANSTETTER: Because we're going to call him  
14 off. He's in the Philippines.  
15 MS. PETERSON: Oh, yes. I don't anticipate  
16 Mr. Moore testifying. You're going to rely on his previous  
17 testify from the last hearing?  
18 MR. DE LIPKAU: Absolutely.  
19 MS. PETERSON: Then I will agree with that.  
20 HEARING OFFICER WILSON: Mrs. Ure.  
21 MS. URE: Yes.  
22 (Hearing concluded at 4:58 p.m.)  
23  
24  
25



1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )  
4

5 I, CHRISTY Y. JOYCE, Official Certified Court  
6 Reporter for the State of Nevada, Department of Conservation  
7 and Natural Resources, Division of Water Resources, do hereby  
8 certify:

9 That on Monday, the 6th day of December, 2010,  
10 I was present at the Division of Water Resources, Carson  
11 City, Nevada, for the purpose of reporting in verbatim  
12 stenotype notes the within-entitled public hearing;

13 That the foregoing transcript, consisting of  
14 pages 1 through 218, inclusive, includes a full, true and  
15 correct transcription of my stenotype notes of said public  
16 hearing.

17 Dated at Reno, Nevada, this 14th day of  
18 January, 2011.

19  
20  
21  
22  
23  
24  
25

  
CHRISTY Y. JOYCE, CCR #625

## CERTIFICATE OF SERVICE

Pursuant to NRAP Rule 25(1)(c), I hereby certify that I am an employee of ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD., Attorneys at Law, and that on this date, I caused a CD-ROM version of same to be served to all parties to this action by:

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DATED this 21<sup>st</sup> day of December, 2012.

/s/ Nancy Fontenot

1 Q. What type of easements?

2 A. The one that comes to mind is power line easement  
3 with a mining company in the Eureka area to gain access  
4 across their property for the power line for the project.

5 Q. In your opinion is the project moving forward?

6 A. Yes.

7 Q. In your opinion is the parent corporation,  
8 General Moly, in good standing with any and all SEC  
9 regulations?

10 A. Yes, it is.

11 Q. Is good faith being exercised at all times by the  
12 parent corporation and the applicant?

13 A. Yes.

14 Q. Is the project speculative?

15 A. No.

16 Q. You testified earlier that the applicant would be  
17 willing to work with the county in any future development  
18 plans contemplated by the county or by the property owners;  
19 is that correct?

20 A. Yes.

21 Q. How would this occur in both valleys, being Kobeh  
22 and Diamond?

23 A. Well, if we owned some water rights, for  
24 instance, in Kobeh Valley that we were not, have not  
25 dedicated to the project but were available for other people

1 to use for whatever reason, they approached us and wanted to  
2 talk about whether we would transfer or lease or make those  
3 water rights available or if we would be more than willing to  
4 enter in to discussions with them to explore what they were  
5 after and whether it interfered with any of our mining  
6 projects.

7 Q. Right.

8 A. The number one use of our water will be more  
9 mining.

10 Q. And that would include the application as filed  
11 to appropriate water and what is commonly known as the 3 F  
12 Ranch and the Bobcat Ranch?

13 A. Yes.

14 Q. You sit ready to meet with Eureka County  
15 employees and officials to discuss these future development  
16 plans?

17 A. Certainly. Well, let me say, I haven't heard of  
18 any future development plans. But if they are aware of some  
19 that they want to talk to us about we would be willing to  
20 meet with them.

21 Q. Are you willing to discuss and meet with Eureka  
22 County regarding any and all monitoring programs?

23 A. Yes.

24 Q. Would you please refer to the Securities and  
25 Exchange Exhibit 532.

1 MS. JOSEPH-TAYLOR: What exhibit number?

2 MR. DE LIPKAU: 532. It's the SEC document.

3 THE WITNESS: I have it.

4 Q. (By Mr. de Lipkau) Did you have any part in  
5 preparation of that document?

6 A. I'm involved with the process of reviewing it for  
7 completeness and accuracy. Certain parts of it I'm more  
8 involved with than others but I do look at the entire  
9 document.

10 Q. All right. Do you have any issues or questions  
11 with the document?

12 A. No.

13 Q. Is your opinion as a corporate officer is the  
14 applicant proceeding in good faith in an attempt to perfect  
15 its water rights?

16 A. I have an opinion, and it is.

17 Q. Okay. Would the applicant or parent corporation  
18 agree to mitigate any wildlife and/or stock watering sources  
19 that could possibly be injured to any slight degree by reason  
20 of the pumping of the groundwater?

21 A. Yes.

22 Q. That is a commitment of the company?

23 A. Absolutely, certainly.

24 MR. DE LIPKAU: I have no further questions of  
25 this witness.

1 HEARING OFFICER WILSON: Thank you.

2 Cross-examination.

3 MS. PETERSON: Thank you.

4 CROSS-EXAMINATION

5 By Ms. Peterson:

6 Q. Mr. Branstetter, I'm Karen Peterson. I'm the  
7 attorney for Eureka County. And directing your attention to  
8 your update that you gave the State Engineer at the beginning  
9 of your testimony, you were discussing the agreement  
10 terminating the lease between Eureka County and General Moly;  
11 is that correct?

12 A. The agreement to terminate?

13 Q. Yes.

14 A. Yes. Okay. I did not hear your word.

15 Q. And is it fair to say that the agreement states  
16 "Despite Eureka Moly's efforts, all the work anticipated to  
17 be completed described in paragraphs 400 and 1300 of the  
18 lease, the work that was to be completed by Eureka Moly had  
19 not been accomplished"?

20 A. I think that's a recital in the document, yes

21 Q. And that's a true and correct recital of that?

22 A. Yes.

23 Q. And so one of the agreements -- One of the  
24 reasons that the agreement was terminated was because Eureka  
25 Moly had not been able to complete work required under the

1       lease; is that correct?

2               A.    No, I don't think that's why.  That wasn't one of  
3       the reasons for it being terminated.

4               Q.    It is one of the recitals?

5               A.    It's one of the recitals but it's not one of the  
6       reasons for the termination.

7               MR. DE LIPKAU:  Excuse me.  We're discussing a  
8       document, which apparently is not in evidence and will not be  
9       entered in to evidence.

10              HEARING OFFICER WILSON:  Wasn't that part of what  
11     Mr. Branstetter brought up?

12              MS. PETERSON:  He did.

13              MR. DE LIPKAU:  It was a narrative on his change  
14     in testimony between 2008 and today and it had to do with the  
15     annex agreement which is no longer in full force and effect.  
16     That's the only change in his testimony.

17              HEARING OFFICER WILSON:  Do we have that document  
18     anywhere?

19              MS. PETERSON:  You don't.  It's a matter of  
20     public record but I was just using the documents to refresh  
21     the witness' recollection as to what the termination was for.  
22     And I'm ready to move on.

23              HEARING OFFICER WILSON:  Okay.

24              Q.    (By Ms. Peterson)  Turning now to Exhibit 28.

25              A.    I have it.



1 Q. And it's the settlement agreement that you  
2 testified to between Eureka Moly and the Producers Co-op?

3 A. Yes.

4 Q. And Eureka County obviously was not a party to  
5 that agreement; is that correct?

6 A. That's correct.

7 Q. And Eureka County didn't have any input in to any  
8 of the terms and conditions that were negotiated between  
9 Eureka Moly or General Moly and the co-op; is that correct?

10 A. That's correct.

11 Q. And Eureka County is not the only protestant  
12 identified in the agreement that General Moly and the  
13 Producers Co-op agreed what action would affect the level of  
14 the funding under the agreement; is that correct?

15 MS. JOSEPH-TAYLOR: Can you say that again for  
16 me? I'm sorry.

17 Q. (By Ms. Peterson) Isn't it fair to say that in  
18 the agreement, Exhibit 28, negotiated between General Moly  
19 and the co-op that you agreed to certain funding levels based  
20 on the action of other parties; is that correct?

21 A. There were two called out, Tim Halpin and Eureka  
22 County. They were the protestants in the water rights  
23 hearing, appellants to the district court. And we were  
24 trying to have a complete resolution. So those two were  
25 called out.

1 Q. And isn't Mr. Benson one of the other protestants  
2 called out in the agreement with regard to the level of the  
3 funding?

4 A. He's not called out as a protestant at all.

5 Q. But he is called out to the level of funding?

6 A. He is. And as it turns out, he will not be a  
7 factor because of the reduction to the co-op for the funding  
8 will never be more than 50 percent and we've already reached  
9 that.

10 Q. And directing your attention to page five,  
11 paragraph four.

12 A. Yes.

13 Q. And could you just read paragraph four to  
14 yourself just so you know what it says.

15 A. I have.

16 Q. And do you know if the co-op ever sent such a  
17 letter to Eureka County commissioners urging them to settle  
18 their protest?

19 A. They agreed to execute a letter or letters to be  
20 prepared by us. I don't think we've asked them to do that.  
21 We've asked them to communicate to the commissioners  
22 consistent with this paragraph.

23 Q. But to your knowledge there's been no letters  
24 that have been directed to the commission based on that  
25 paragraph?

1           A.    I don't recall any.

2           Q.    All right. And then directing your attention to

3 paragraph F.

4           A.    On page five?

5           Q.    Yes. And it goes on to page six.

6           A.    Okay.

7           Q.    And you're familiar with that paragraph?

8           A.    I'm familiar with paragraph F, yes.

9           Q.    And doesn't paragraph F provide that Eureka Moly

10 at its discretion can determine to terminate the agreement

11 based on certain factors?

12          A.    You're referencing all of the subparts of

13 paragraph F.

14          Q.    Everything in paragraph F but it's mainly in the

15 first page there, the first part of paragraph F.

16          A.    Retain the right but not the obligation to

17 rescind if certain things happen. But as a part of the

18 overall text of the agreement, that was a provision that was

19 inserted earlier and has been qualified in so many ways that

20 if we get our permits, we get financing and the board of

21 directors decide to proceed with the project, the co-op will

22 get four million dollars.

23          Q.    But based on the terms of this agreement as

24 presented in Exhibit 28, notwithstanding what you just said,

25 Eureka Moly at its own discretion can terminate this

1 agreement?

2 A. No, I didn't say that. I didn't. The entire  
3 agreement does not allow us to terminate the funding if we  
4 proceed with this project.

5 Q. Doesn't the agreement say right here on paragraph  
6 five?

7 A. Paragraph five?

8 Q. Yes. I'm sorry. Page five, paragraph F, that if  
9 Eureka County doesn't withdraw its protest.

10 A. What part are you reading?

11 Q. Right at the beginning of paragraph F.

12 A. It says if Eureka County does not.

13 Q. Does not withdraw its protest, do you see that?

14 A. Yes.

15 Q. Can either harm or delay to Eureka Moly's ability  
16 to obtain required approval for state or regulatory agencies  
17 or obtain approval from the State Engineer granting position  
18 applications for construction on the Mount Hope project. Do  
19 you see that?

20 A. Yes.

21 Q. And then harm or delay causes material schedule  
22 delays for the Mount Hope project. Do you see that?

23 A. Yes.

24 Q. Then Eureka Moly shall, And I see subject to F-1  
25 and F-2 below, be entitled but not obligated to rescind this

1 agreement and resolve and terminate the trust and all funds  
2 in the trust shall be returned to Eureka Moly. Do you see  
3 that?

4 A. Yes. And it's subject.

5 Q. I understand it's subject to subsections one or  
6 two. I'm not trying to argue with you about that.

7 A. Okay. F-1 and F-2 qualify it and provide for the  
8 funding reduction not to exceed 50 percent. And if we  
9 proceed with this project we will have to pay the co-op 50  
10 percent of the funds. I don't know how you can read it any  
11 differently.

12 Q. Well, you'll agree with me that Eureka Moly  
13 retained the right at its discretion to dissolve or terminate  
14 the trust and the agreement says and all funds in the trust  
15 shall be returned to Eureka Moly? You agree that that  
16 language is in the agreement stated right there?

17 A. And it's stated subject to F-1 and F-2.

18 HEARING OFFICER WILSON: And we really get this.  
19 Mr. de Lipkau, let me speak, please. We can read this  
20 ourselves. It's in evidence. There's no sense in just  
21 arguing it.

22 MS. PETERSON: I can't remember if you testified  
23 with regard to Exhibit 30.

24 MS. JOSEPH-TAYLOR: No.

25 Q. (By Ms. Peterson) Would you look at Exhibit 30.

1 A. Yes.

2 Q. Was that prepared by you or under your direction?

3 A. That was prepared by counsel. I'm familiar with

4 it.

5 Q. And it's an unsigned document?

6 A. I don't -- In my book it's unsigned.

7 Q. And I believe you did testify that it was

8 prepared by you or under your direction; is that correct?

9 A. Exhibit 30?

10 Q. Yes.

11 A. No. I wasn't asked any questions about this. I

12 haven't testified about it.

13 Q. Okay. Thank you. And then turning to Exhibit

14 401. I think you did testify about that agreement?

15 A. 401?

16 Q. Yes.

17 A. Yes, I did testify about 401.

18 Q. Were you aware or did your counsel advise you

19 there was some arguments raised in that document by your

20 counsel regarding standing in, Eureka County's standing in

21 this proceeding. Do you agree with that?

22 A. Would you repeat your question please.

23 Q. Exhibit 401, I believe you testified there were

24 certain legal arguments being made with regard to Eureka

25 County's standing in this proceeding?

1           A.    I don't remember stating that. Standing?

2           Q.    What did you testify to then about Exhibit 401?

3           A.    I said it was a legal memorandum prepared by

4           counsel to address certain legal issues raised by counsel for

5           Eureka County and others at the prehearing conference and at

6           other times to address those and to anticipate those legal

7           issues.

8           Q.    So did you read this document?

9           A.    I have read it, yes.

10          Q.    So do you know that it addresses -- or the issues

11          raised by it are Eureka County's standing to participate in

12          this proceeding?

13               MR. DE LIPKAU: I'm going to have to object to

14          that. Number one, the document speaks for itself. And

15          number two, the standing of Eureka County has never been

16          questioned.

17               HEARING OFFICER WILSON: Ms. Peterson, do you

18          have a response?

19               MS. PETERSON: Well, I do. If you read this

20          document, Exhibit 401, it says that Eureka County needs to

21          have water rights to be able to proceed with its protest and

22          that it doesn't have water rights on the Pete Hanson decree

23          so it shouldn't be entitled to protest. So it's evidence

24          with regard to that. And it also talks about the scope of

25          testimony on page four and --

1 HEARING OFFICER WILSON: You can ask him about  
2 it. Go ahead.

3 THE WITNESS: What's your question?

4 HEARING OFFICER WILSON: If you could just please  
5 restate your question.

6 MS. PETERSON: Are you aware of the legal  
7 arguments that are made in this document?

8 THE WITNESS: I have read them but I rely upon  
9 counsel for their completeness and accuracy of Nevada water  
10 law.

11 MS. PETERSON: Well, I'm going to object to the  
12 admission of this exhibit then because it's pure legal  
13 argument. It supposedly was introduced as evidence,  
14 "evidence", based on this witness testifying that it had been  
15 prepared at his direction but yet he's not available to  
16 discuss any of the concepts in this exhibit that he's  
17 supposedly supporting.

18 HEARING OFFICER WILSON: Let's wait until it's  
19 offered and then you can lodge your objection to the  
20 admission.

21 MS. PETERSON: And make my argument?

22 HEARING OFFICER WILSON: Yes.

23 MS. PETERSON: Okay.

24 Q. (By Ms. Peterson) And turning now to Exhibit  
25 409.



1 A. Yes.

2 Q. And do you have that in front of you?

3 A. Yes, I do.

4 Q. And you agree in the second paragraph that this

5 group is urging the county commissioners to maintain their

6 water protest?

7 A. That's what it says.

8 Q. And it is important to even mention that at the

9 upcoming decision of the State Engineer is not in the best

10 interest of maintaining the Diamond Valley flow system in

11 Eureka County and the group, that the county may need to

12 appeal it to the court?

13 A. There is a sentence to that effect.

14 Q. Okay. And then turning to Exhibit 410.

15 A. Yes.

16 Q. Those are the Exxon water permits?

17 A. Yes.

18 Q. And are you aware that those were canceled in

19 1996?

20 A. I believe that they were canceled for not,

21 cancelled for non-use, I think.

22 Q. Not providing proof of beneficial use or proof of

23 works?

24 A. Yes, I think that's right.

25 Q. Okay. And then directing your attention to

1 Exhibit 532, page 20.

2 A. Page 20 on the text of the document or the upper  
3 right-hand corner?

4 Q. Page 20 on the text of the document. Thank you.

5 A. All right, yes.

6 Q. The very last paragraph, do you see that?

7 A. Yes.

8 Q. Then it says the trust may be funded by Eureka  
9 Moly?

10 A. Yes.

11 Q. Do you see that language there? Indicating that  
12 there's a possibility that the trust may not be funded?

13 A. The trust agreement and the settlement agreement  
14 provides if we do not get full financing we do not get our  
15 permits and we do not have a board of directors resolution to  
16 commence construction, there will be no funding of the trust  
17 because there will be no money and there will be no water  
18 pumping. So that's correct.

19 Q. And then directing your attention to some of your  
20 earlier testimony where you indicated that Eureka Moly had  
21 settled with co-op?

22 A. Yes.

23 Q. Do you recall that testimony?

24 A. Yes.

25 Q. And do you recall that prior to advising the

1 commission that Eureka Moly had settled with the co-op that  
2 Eureka Moly had prepared a press release announcing  
3 settlement with the county?

4 A. You'll have to break that down a little bit more.  
5 I don't know which part you're talking -- it is it's  
6 confusing question to me. I'm sorry.

7 Q. Well, you recall your testimony that Eureka Moly  
8 had settled with the co-op; correct?

9 A. I testified that was the case, correct.

10 Q. And would you agree that Eureka Moly had  
11 internally prepared a press release announcing that Eureka  
12 Moly had settled with the county prior to the county even  
13 being aware that Eureka County had settled with the co-op?

14 A. We never prepared a press release stating that  
15 Eureka Moly, LLC, settled with Eureka County. Is that what  
16 you're asking me?

17 Q. Yes.

18 A. No.

19 Q. You're not aware of that?

20 A. We may have discussed -- We were very encouraged  
21 having settled with the cooperative and it was our belief and  
22 understanding that a settlement with the county would be much  
23 easier and less difficult and we may have circulated some  
24 drafts about what if the county and Eureka Moly settled. But  
25 we didn't finalize for release for dissemination of a draft.

1           It seems to me that we did plan a scenario that  
2   if it did happen, a settlement with the county, that we would  
3   put together a press release and we would have probably as we  
4   did with the cooperative circulated it with the county if we  
5   got to that point for their input and participation. But we  
6   never released a press release.

7           Q.   Has anyone from Eureka County or representing  
8   Eureka County ever expressed a concern to you that the mine  
9   doesn't follow through on what it says it's going to do?

10          HEARING OFFICER WILSON: Can you put that in some  
11   type of context?

12          THE WITNESS: I don't know what you're talking  
13   about. Over the past four years have I ever heard anything  
14   like that from --

15          MS. PETERSON: Yes, anything.

16          HEARING OFFICER WILSON: Wait. We don't know  
17   what you're talking about. Hasn't followed through in what?  
18   Tell us what.

19          MS. PETERSON: Anything that it's promised to do.

20          HEARING OFFICER WILSON: I mean it's a vague  
21   question. Give us something.

22          MS. PETERSON: With regard to --

23          THE WITNESS: When we were --

24          HEARING OFFICER WILSON: Wait, Mr. Branstetter.

25          THE WITNESS: Sorry.

1 MS. PETERSON: With regard to monitoring that  
2 Eureka Moly agreed to do.

3 THE WITNESS: Has anybody at the county ever  
4 accused us of not following through with something on  
5 monitoring that we said we would do, is that your question?

6 MS. PETERSON: Yes.

7 THE WITNESS: Nobody has ever relayed that to me  
8 as a county official or county representative. No, I have  
9 not heard that.

10 Q. (By Ms. Peterson) Has General Moly ever  
11 presented a draft of a settlement agreement to Eureka County?

12 A. Yes. An outline of a conceptual arrangement to  
13 settle the county's issues, yes.

14 Q. A settlement agreement that someone could sign?

15 A. I believe it was in a form sufficient to sign  
16 subject to the definitive agreement. It outlined everything  
17 we were willing to do and it also outlined what I believe was  
18 the recommendation of the negotiating committee. And that  
19 was presented to the county commissioners. That's my  
20 understanding.

21 MS. JOSEPH-TAYLOR: I'm going to interject a  
22 question. Tell me how this is relevant to the decisions the  
23 State Engineer is going to make. Settlement negotiations are  
24 generally done outside the context of a hearing.

25 MS. PETERSON: I agree. And I'm not trying to

1 get to the terms of any settlement negotiations. But it is  
2 relevant because the State Engineer, the practice that's  
3 evolved or the policy that's evolved is that the State  
4 Engineer does not usually allow a protestant to be involved  
5 in a monitoring, management and mitigation plan that he  
6 orders unless the applicant and the protestant have agreed to  
7 that in some kind of settlement.

8 And after the hearing starts and the State  
9 Engineer issues his ruling, he doesn't include protestants in  
10 managing, monitoring and mitigation plan. And so if for some  
11 reason, whatever reason, the protestant and the applicant  
12 cannot settle their manner, the protestant is out of luck in  
13 trying to be involved in that process. And so it is very  
14 important because there are certain circumstances when a  
15 protestant should be allowed to participate in the  
16 monitoring, management and mitigation plan.

17 MS. JOSEPH-TAYLOR: Isn't that more a legal  
18 argument than asking him about all of your settlement  
19 negotiations?

20 MS. PETERSON: I'm not asking him about all the  
21 settlement negotiations.

22 MS. JOSEPH-TAYLOR: That's how it appears from up  
23 here that we're spending a whole lot of time on settlement as  
24 opposed to getting to the merit of the questions before us.

25 MS. PETERSON: Well, I think there was some

1 questioning on direct about settlement and a lot of testimony  
2 over everybody that they settled with.

3 MS. JOSEPH-TAYLOR: I'm not sure how relevant  
4 that was. I was just sitting here trying to keep my mouth  
5 shut. But we've spent about an hour on this and I don't know  
6 that it's getting us anywhere.

7 Mr. King.

8 THE STATE ENGINEER: I agree.

9 MS. PETERSON: I don't have a lot more.

10 MS. JOSEPH-TAYLOR: Okay.

11 MS. PETERSON: That's it.

12 HEARING OFFICER WILSON: Thank you.

13 Cross, Ms. Ure.

14 MS. URE: Yes. Thank you.

15 CROSS-EXAMINATION

16 By Ms. Ure:

17 Q. My name is Therese Ure and I represent Ken  
18 Benson. How are you today?

19 A. Just fine. Thank you.

20 Q. Thank you. Isn't it Eureka Moly's position that  
21 there's currently water available for appropriation in Kobeh  
22 Valley?

23 A. Yes.

24 Q. And then isn't it Eureka Moly's position that  
25 there's currently water available for appropriation in

1 Diamond Valley?

2 A. We own water in Diamond Valley. I don't know if  
3 that's what you're getting at.

4 Q. Okay. Can you please turn to Exhibit 28.

5 A. Yes.

6 Q. And you testified earlier that the agricultural  
7 sustainability trust has been formed; is that correct?

8 A. That's correct. Well, it's been organized and  
9 filed as a legal entity. There are still items to be  
10 developed and worked on the internal documents for the actual  
11 programs and operations for the trust.

12 Q. Okay. So it has not been funded; correct?

13 A. It has been funded by the first required payment  
14 of \$25,000 to work on the organizational aspects of the  
15 trust.

16 Q. Okay. So would you say that it's the purpose of  
17 the trust to develop programs to serve to enhance the  
18 sustainability and well-being of the agricultural economy in  
19 Diamond Valley?

20 A. Yes.

21 Q. So however, isn't it true that the true purpose  
22 of the trust is the actual water rights acquisition program?

23 A. That provision that you just recited also says  
24 that the programs may include purchasing and relinquishing  
25 water rights in the Diamond Valley. What that mix will be I



1 don't know. That will be developed by the trust itself, the  
2 board of the trust. It was not our intention to dictate any  
3 of the terms to them, but we'll participate in the  
4 development of the programs themselves and the mix between  
5 relinquishing water rights and developing conservation plans.

6 Q. Okay. Can you please turn to Exhibit 30.

7 A. Yes.

8 Q. Have you reviewed this document?

9 A. Yes.

10 Q. Can you turn to page two please, Roman Numeral  
11 one.

12 A. Yes.

13 Q. Doesn't this document say the trust is for the  
14 purpose of reducing water pumping and use by purchasing and  
15 relinquishing certain groundwater rights?

16 A. And implementation of other water conservation  
17 measures in Diamond Valley. That's what it says on that page  
18 of Exhibit 30.

19 Q. Isn't purchase and relinquishment of water rights  
20 counter to the sustainability of agriculture?

21 A. No.

22 Q. What would -- How would you relinquish the water  
23 rights? Would they be put back in to the pool with the State  
24 Engineer's office?

25 A. No. They would be retired.

1 Q. So therefore they're put back in to the pool of  
2 water rights that may become available in the future?

3 A. Our intention is that the State Engineer not  
4 reissue those retired water rights, not grant applications  
5 for them to address the overpumping in Diamond Valley. Once  
6 retired, done.

7 Q. But you have no ability to contract with the  
8 State Engineer's office to prohibit that; correct?

9 A. That's right.

10 Q. So going back to the trust, does the trust apply  
11 to all parties -- like would the provisions of the trust or  
12 the program set-up apply to all irrigators? Would everyone  
13 have access to that program?

14 A. Yes. Nobody would be excluded from participating  
15 in whatever programs are created.

16 Q. So are you saying that protestant Ken Benson  
17 would be available to participate in that program?

18 A. Yes. It is not exclusively for co-op members.

19 Q. So you don't believe that the provision in  
20 Exhibit 28 at F-2 inhibits Mr. Benson's ability to conduct  
21 his agriculture operation with other members that happen to  
22 be part of the co-op? What I'm asking is would you agree  
23 that this provision hurts Mr. Benson's ability to operate?

24 A. No.

25 Q. Even though it prohibits members of the EPC to do

1 business with him?

2 A. That isn't what it says. It says if -- He  
3 resigned from the co-op for his own reasons right before the  
4 vote for this agreement. Upon his resignation we decided  
5 that we would go forward with this agreement but we would  
6 make a provision for Mr. Benson. We knew he was going to  
7 protest. We knew he did not like this project. So we didn't  
8 want to see a penalty necessarily imposed, a draconian  
9 penalty imposed on the co-op for Mr. Benson's activities. So  
10 we carved out a provision for Mr. Benson that recognizes that  
11 we will protest and he will oppose the project. And the only  
12 condition we had is that if you allow him to become a member  
13 again after having resigned and oppose the agreement and he  
14 becomes a member again there should be a financial penalty  
15 for the funding. So we put together a plan for reduction by  
16 25 percent.

17 Q. So are you saying --

18 A. All reductions cannot exceed 50 percent, so we're  
19 not going to get to that point.

20 Q. So are you saying that to date that Mr. Benson's  
21 protests have not affected the allocation and funding of the  
22 trust?

23 A. Mr. Benson's?

24 Q. Yes.

25 A. Not at all. He was not called out as a

1 protestant who had to remove his protest for the funding to  
2 occur. What you're looking at is if he's allowed to become a  
3 member again that's what that was tied to.

4 Q. Mr. de Lipkau asked you if General Moly would  
5 agree to meet with protestant Eureka Moly; Is that true? Do  
6 you recall that?

7 A. Protestant Eureka County?

8 Q. Yeah. To meet with them to discuss monitoring  
9 and mitigation issues.

10 A. Yes, he asked me that, yes.

11 Q. And is General Moly willing to meet with them?

12 A. We have tried to meet with them.

13 Q. Okay.

14 A. We have tried to discuss these issues. I believe  
15 we're still open to doing it. But the time to resolve things  
16 is dissipating.

17 Q. Would General Moly agree to meet with Mr. Benson  
18 to discuss monitoring and mitigation issues?

19 A. We would meet with Mr. Benson to discuss  
20 resolving his protest. There would have to be a complete  
21 resolution of his protest. And if that involved talking  
22 about monitoring and mitigation as a topic, we could discuss  
23 with him, yes.

24 Q. So you're saying that you are willing just like  
25 you're willing to meet with the county on that point?

1 A. Yes.

2 MS. URE: Okay. I have no further questions.

3 HEARING OFFICER WILSON: Thank you. Redirect?

4 REDIRECT EXAMINATION

5 By Mr. de Lipkau:

6 Q. Mr. Branstetter, could you please get back to  
7 Exhibit 30.

8 A. Yes.

9 Q. What is Exhibit 30?

10 A. It's entitled request for conservation plan,  
11 Applications 79911-79942 inclusive. So it lays out or it  
12 discusses --

13 Q. Before you start there, why was it prepared?

14 A. It was prepared as a result of a position taken  
15 by Eureka County or other protestants that a conservation  
16 plan is needed. And that's something we've heard many times.  
17 We don't agree. But I asked counsel to prepare something on  
18 that issue and discuss conservation plans.

19 Q. So Exhibit 30 is a contemplated or proposed  
20 conservation plan should the State Engineer change his mind  
21 and decide to enact one?

22 A. Yes.

23 MR. DE LIPKAU: No further questions.

24 HEARING OFFICER WILSON: Thank you. Recross?

25 MS. PETERSON: Mr. Branstetter, do you agree that

1 this is an interbasin transfer case?

2 THE WITNESS: I don't know. I'm not a water law  
3 expert in Nevada. I defer to Mr. de Lipkau and certainly the  
4 State Engineer on that.

5 MS. PETERSON: No further questions.

6 HEARING OFFICER WILSON: Thank you.

7 MS. URE: I have none.

8 HEARING OFFICER WILSON: No recross on behalf of  
9 Mr. Benson. Questions of the State Engineer?

10 THE STATE ENGINEER: I don't.

11 HEARING OFFICER WILSON: All right. We have no  
12 questions for you, Mr. Branstetter. You may step down.  
13 Thank you.

14 Let's talk about the exhibits that  
15 Mr. Branstetter went over.

16 MR. DE LIPKAU: Yes. I'd like to admit 26, 27,  
17 28, 29, 30, 41.

18 HEARING OFFICER WILSON: Did we talk about 31?

19 MR. DE LIPKAU: No. 30 and not 31.

20 HEARING OFFICER WILSON: Let's just look at 26  
21 through 30. Any objection?

22 MS. PETERSON: Yes.

23 HEARING OFFICER WILSON: Let's go through them  
24 one by one. Exhibit 26, any objection?

25 MS. PETERSON: No.

1 HEARING OFFICER WILSON: That will be admitted.  
2 Exhibit 27?

3 MS. PETERSON: No.

4 HEARING OFFICER WILSON: That will be admitted.  
5 Exhibit 28?

6 MS. PETERSON: No.

7 HEARING OFFICER WILSON: That will be admitted.  
8 Exhibit 29?

9 MS. PETERSON: No.

10 HEARING OFFICER WILSON: That will be admitted.  
11 Exhibit 30?

12 MS. PETERSON: Yes.

13 HEARING OFFICER WILSON: Okay. State your  
14 objection please.

15 MS. PETERSON: This was not prepared by this  
16 witness, Exhibit 30. And it's basically, it appears to be a  
17 legal memorandum unsigned prepared by Mr. de Lipkau and  
18 there's no foundation for this witness to even discuss the  
19 contents of it. He didn't even know whether this proceeding  
20 involved an interbasin transfer or not.

21 HEARING OFFICER WILSON: Mr. de Lipkau, would you  
22 like to respond?

23 MR. DE LIPKAU: Yes. At the hearing before the  
24 State Engineer in 2008 and before the Court January of 2010,  
25 one of the main points raised by Eureka County was the State

1 Engineer was wrong in not creating a conservation plan  
2 pursuant to NRS 533.370(6). We affirmatively stated that a  
3 conservation plan was not required. However, since Eureka  
4 County insisted one be prepared, we offered this, Exhibit 30.  
5 I think Exhibit 30 should be admitted and the weight to be  
6 placed upon it to be decided by the State Engineer. If the  
7 State Engineer follows through in the same fashion as the  
8 prior hearing, he would say it's not necessary under the law.

9           However, if it is necessary and the State  
10 Engineer changes his mind then we offer Exhibit 30.  
11 Therefore I think it should be admitted to have weight placed  
12 upon it as best determined by the State Engineer.

13           HEARING OFFICER WILSON: Okay. Ms. Ure, are you  
14 joining in this objection?

15           MS. URE: I am.

16           HEARING OFFICER WILSON: And do you have an  
17 argument?

18           MS. URE: It's legal argument, the first page and  
19 a half of it is, and it shouldn't be as an exhibit. That  
20 would be my objection.

21           HEARING OFFICER WILSON: Thank you. Let's take a  
22 short break. We'll be off the record until -- Let's make it  
23 five minutes.

24                           (Recess was taken)

25           HEARING OFFICER WILSON: We had an objection to



1 Exhibit Number 30. We've reviewed this. It does look like  
2 legal argument. And we are going to exclude Exhibit 30 as an  
3 exhibit. And you can certainly make that legal argument in  
4 your closing. Exhibit 30 will not be admitted.

5 Were you going to offer the next exhibit, 401?

6 MR. DE LIPKAU: 41.

7 MS. JOSEPH-TAYLOR: 41.

8 HEARING OFFICER WILSON: Exhibit 41, any  
9 objection?

10 MS. PETERSON: Well, the only issue from my  
11 standpoint would be it's my understanding that Mr. Zimmerman  
12 prepared that. And so if Mr. Zimmerman is going to testify  
13 with regard to that exhibit then I don't have any objection  
14 right now. But if he's not going to testify then I have an  
15 objection.

16 MR. DE LIPKAU: Mr. Zimmerman will be acting as  
17 counsel of record further on in these proceedings. He will  
18 not testify. The document was submitted for the assistance  
19 of Eureka County and possibly the State Engineer. It's  
20 strictly based on public records in this office. If Eureka  
21 County wants it to be rejected, we will withdraw the exhibit.

22 MS. PETERSON: Thank you.

23 HEARING OFFICER WILSON: Okay. That will not be  
24 admitted.

25 Did you want to offer the rest of the exhibits

1       that Mr. Branstetter talked about?

2               MR. DE LIPKAU:  Yeah.

3               HEARING OFFICER WILSON:  Exhibit 401?

4               MR. DE LIPKAU:  401, yes.

5               HEARING OFFICER WILSON:  Any objection to Exhibit  
6       401?

7               MS. PETERSON:  Yes.

8               HEARING OFFICER WILSON:  Please state your  
9       objection.

10              MS. PETERSON:  That's the legal memorandum.

11              HEARING OFFICER WILSON:  Yes.

12              MS. PETERSON:  And again, it would be the same  
13       objection that it's a legal memorandum and it's not evidence.  
14       And if you want me to address the legal arguments in 401 i  
15       can.  Because I wasn't allowed to ask any questions about  
16       them to the witness.

17              HEARING OFFICER WILSON:  I just wanted your  
18       argument as to the objection, supporting your objection.

19              Ms. Ure.

20              MS. URE:  I'll second that objection on the  
21       ground that it's a legal argument.

22              MR. DE LIPKAU:  Of course it's legal argument.  
23       It tends to be legal argument in anticipation of issues that  
24       will be brought up later.  It's for the assistance of the  
25       State Engineer for the State Engineer to apply and place

1       whatever weight he wants on that memorandum as he sees fit.

2               HEARING OFFICER WILSON: And Exhibit 401 will be  
3       excluded and not be admitted. Again, that's a legal argument  
4       you can bring up in your closing if you so choose.

5               I believe the next exhibit was 407 that  
6       Mr. Branstetter talked about. Mr. de Lipkau, would you like  
7       to offer Exhibit 407?

8               MR. DE LIPKAU: Yes.

9               HEARING OFFICER WILSON: Any objection?

10              MS. PETERSON: I have no objection.

11              MS. URE: No objection.

12              HEARING OFFICER WILSON: Thank you. That will be  
13       admitted.

14              Exhibit 409.

15              MS. PETERSON: No objection.

16              HEARING OFFICER WILSON: Go ahead. I assume  
17       Mr. de Lipkau will offer them.

18              MR. DE LIPKAU: I'll offer them all.

19              HEARING OFFICER WILSON: Exhibit 409, any  
20       objection?

21              MS. PETERSON: No objection.

22              MS. URE: No objection.

23              HEARING OFFICER WILSON: Thank you. It will be  
24       admitted. Exhibit 410?

25              MS. PETERSON: No objection.

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MS. URE: No objection.

HEARING OFFICER WILSON: Thank you. It will be  
admitted. Exhibit 413?

MS. PETERSON: No objection.

MS. URE: No objection.

HEARING OFFICER WILSON: Thank you. That will be  
admitted.

And with that let's go ahead and take our lunch  
break. We'll be back at 1:00 o'clock.

(Lunch recess was taken)

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MONDAY, DECEMBER 6, 2010, 1:01 P.M.

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HEARING OFFICER WILSON: I just wanted to mention we had Mr. Lloyd Morrison who couldn't make it here this morning because of the weather, but he is in attendance here today and he does intend to give public comment when his case comes about, presumably on Friday. Is that correct, Mr. Morrison?

MR. MORRISON: Yes.

HEARING OFFICER WILSON: Let's go ahead and continue with the applicant's case. If you could call your next witness.

MR. DE LIPKAU: I would like to call Mr. Patrick Rogers.

(Witness was sworn in)

PATRICK ROGERS

Called as a witness on behalf of the Applicant, having been first duly sworn,  
Was examined and testified as follows:

DIRECT EXAMINATION

By Mr. de Lipkau:

Q. Please state your full name.

A. Patrick Rogers.

1 Q. What is your business address?  
2 A. 2255 North Fifth Street in Elko, Nevada.  
3 Q. What is your occupation?  
4 A. I'm the director of environmental permitting for  
5 General Moly.  
6 Q. And how long have you been in that capacity?  
7 A. It will be four years in first of January.  
8 Q. All right. And what experience do you have in  
9 mining and permitting?  
10 A. Approximately 20 years. Most of that in,  
11 essentially all of it in northern Nevada.  
12 Q. Are you aware of the water rights map filed in  
13 support of Application 79911 through 79142?  
14 A. Yes.  
15 Q. And that application -- Pardon me. That exhibit,  
16 which is a State Engineer exhibit, shows the proposed place  
17 of use requested to be the place of use within which to use  
18 the water rights; is that correct?  
19 A. Yes, that's correct.  
20 Q. Why is the place of use as exhibit, as set forth  
21 on the supporting map larger than the area within the plan of  
22 operation?  
23 A. A few reasons. One is that our claim block  
24 covers a larger area than the plan of operation so we want to  
25 have the flexibility to use water for exploration, drilling.

1 In addition, we have several notices with the BLM which allow  
2 surface disturbance which might use some additional water.  
3 In addition, we anticipate that we may use small amounts of  
4 water elsewhere, primarily in Kobeh Valley, which is the area  
5 most of which the application goes beyond the plan of  
6 opposite boundary. We may use small amounts of water for  
7 dust suppression or environmental mitigation or exploration  
8 drilling.

9 Q. What's notice?

10 A. A notice is an authorization level that the BLM  
11 administers. It's for surface disturbance that's less than  
12 five acres.

13 Q. Does that require a permit?

14 A. It requires approval and posting of a reclamation  
15 bond.

16 Q. And are all the desired areas to be included  
17 within a notice included within the place of use of the  
18 supporting water rights map?

19 A. Are you asking are all the notices within the  
20 place of use?

21 Q. Yes.

22 A. I believe so. I would have to look at the map.  
23 But largely, yes.

24 Q. And if the place of use as depicted on the  
25 supporting map did not include these areas how would water

1 lawfully be conveyed to such uses?

2 A. We would apply for change applications to allow  
3 use from the approved place of -- water from the approved  
4 place of use to be used in those other areas.

5 Q. Right. So if the State Engineer were to grant  
6 the permits limiting the place of use to the plan of  
7 operation would that cause a hardship to the company?

8 A. It would cause additional administrative filings,  
9 permit approvals. It would constitute a hardship, yes.

10 Q. With this agency, meaning the State Engineer's  
11 office?

12 A. Yes, it would be this office.

13 Q. And the BLM?

14 A. Not for the water rights, not with the BLM.

15 Q. But you would need some sort of a notice?

16 A. Yes.

17 Q. Did you review -- Pardon me. You testified at  
18 the October 8th hearing before the State Engineer, did you  
19 not?

20 A. Yes.

21 Q. Did you review that testimony?

22 A. Yes.

23 Q. Do you wish to make any changes or alterations to  
24 your prior testimony?

25 A. There's one small thing I would change. You



1 asked at that hearing on what I anticipated in terms of  
2 personnel requirements to administer the monitoring program.  
3 And I think at that time I said probably one full time  
4 person. And I think now after the monitoring plan is  
5 developed more and in consideration of that database I think  
6 it would be somewhere between two and three people now.

7 Q. All right. Other than increase in monitoring  
8 personnel do you affirm your prior testimony?

9 A. Yes.

10 Q. What type of monitoring program do you intend to  
11 utilize?

12 A. We intend to monitor water levels in groundwater,  
13 water flows in surface water. We'll collect meterological  
14 data, vegetation monitoring. I think that's the primary.

15 Q. All right. Would you please turn to Exhibit 32.  
16 What is Exhibit 32?

17 A. It's an environmental permit matrix. It's  
18 basically a spread sheet that summarizes all of the permits  
19 that we're required to obtain for the Mount Hope project.  
20 There's about 30 of those permits. It's an in-home tracking  
21 tool that I use with my staff. We review it and update it  
22 periodically to assess where we are on each individual  
23 permit, what the status is, anticipated application submittal  
24 times and who's responsible for that permit within our staff.

25 Q. Permits are both state and federal; is that

1 correct?

2 A. Correct.

3 Q. And to some degree local?

4 A. I don't believe there are any local permit  
5 requirements.

6 Q. But there are state and federal?

7 A. Yes.

8 Q. Okay. And could you briefly go through this  
9 exhibit and describe the major permits that are currently  
10 under way?

11 A. Sure. From the top of the list on the federal  
12 permits there's the plan of operation directed decision.  
13 That's the EIS. That is probably the most extensive and  
14 intensive permitting effort that we have underway. We also  
15 have a right of way application for the 230 KV power  
16 transmission line that will also be approved by the BLM. We  
17 also --

18 Q. Is that within the plan of operation?

19 A. No, it is not within the plan of operation but it  
20 is being analyzed as part of the EIS.

21 Q. Please continue.

22 A. Next we've got a couple of permits that are on  
23 this matrix that have already been completed. There's a  
24 right of way for communication tower and a radio frequency  
25 authorization. Next, a federal permit from the Bureau of

1 Alcohol, Tobacco and Firearms to allow us to have explosives  
2 and use explosives on the property. We have completed our  
3 hazardous waste ID registration with the EPA. We have  
4 several notice levels with the BLM, those areas that are,  
5 several areas that are each less than five acres and we are  
6 anticipating that we'll be engaged in section seven,  
7 consultation with the US Fish and Wildlife service. Those  
8 are the federal permits.

9 On the state side we are working on a water  
10 control permit with NDP, Bureau of Mining, air quality  
11 permit. We will get a reclamation permit that is  
12 administered jointly, if you will, between the BLM and the  
13 NDEP. We have recently received an authorization to  
14 construct from Division of Water Resources what we call a dam  
15 safety permit. We are anticipating also having to file  
16 notice of intent to construct with empowerments that are less  
17 than 20 acre-feet of water.

18 Q. Did you say this State Engineer's office granted  
19 a dam permit?

20 A. They granted us an authorization to construct.

21 Q. Thank you. Please continue.

22 A. We will also be required to get a potable water  
23 permit which we have started working on, from the State of  
24 Nevada, hazardous material storage permit, a septic system  
25 permit. We'll get radioactive material licenses because some

1 of the densitometers that we use in the circuit have small  
2 nuclear gauges in them. We will have a permit for our  
3 on-site land fill. We'll have a permit with an approved plan  
4 to manage petroleum contaminated soils which are created when  
5 you have oil spills on a property. We'll have a storage  
6 permit for our liquified petroleum gas. We have, we think,  
7 we're working with Nevada Department of Wildlife to see  
8 whether we'll be required to have an artificial industrial  
9 pond permit based on some of the empowerments that we'll  
10 have. We'll also have a Utilities and Environmental  
11 Protection Act permit which is the State of Nevada equivalent  
12 of NEPA. It's essentially EIS for the power transmission  
13 projects. Encroachment permits to allow us to build access  
14 off of Highway 278.

15 As needed, we get permits to drill wells from  
16 this office. Temporary discharge permits associated with  
17 pump testing may be required to have open burn waivers, burn  
18 materials. There's also some registration such as mine  
19 registry forms. We are not required to have a stone water  
20 discharge permit but we track that as a permit. We want to  
21 make sure we have concurrence from the state that we're  
22 exempt from that requirement. We'll have water  
23 appropriations from the Division of Water Resources and a  
24 fire and life safety permit from the state fire marshal.

25 Q. The exhibit you just discussed is basically up to

1 date, is it not?

2 A. It was up to date as of middle of October.

3 Q. And how does that exhibit compare to the  
4 permitting that you discussed at the October 2008 hearing?

5 A. We advanced quite a bit on the EIS on getting  
6 approval for our hydrological model was a very large step.  
7 We've actually had a preliminary draft EIS that's been sent  
8 to the BLM and the cooperating agencies. And we've received  
9 comments on that. So we've made substantial progress on  
10 that. We have a draft of our air quality permit and we have  
11 the authorization to construct our tails imboundment.

12 Q. So is it a true statement that progress on the  
13 permitting has occurred within the last several years?

14 A. Yes.

15 Q. And you mentioned the phrase cooperating agency.  
16 What does that mean?

17 A. A cooperating agency is an agency, government  
18 agency, that is, participates in development of the  
19 environmental impact statement. In this case we have three  
20 cooperating agencies. There's Eureka County, division of --  
21 Nevada Department of Wildlife and the National Park Service.

22 Q. Are these three governmental entities fully  
23 apprised of the status of the various environmental  
24 permitting steps?

25 A. Yes. We have the regular conference calls and

1 they're copied on technical reports as they're generated.

2 Q. As they're generated?

3 A. As they're generated.

4 Q. Would you please turn to Exhibit 33. Do you have  
5 that in front of you?

6 A. Yes, I do.

7 Q. Would you please comment on Exhibit 33.

8 A. This is a summary of some of the interaction and  
9 submittals that have been made on the hydrology report with  
10 Eureka County.

11 Q. Would it be a true statement that Exhibit 33  
12 involves the 2010 model?

13 A. It predates the 2010. It includes submittals  
14 that were made of versions of that hydrology report prior to  
15 the 2010 model.

16 Q. Okay. So the report involves the model of 2010?

17 A. Yes.

18 Q. Okay. Please continue.

19 A. It summarizes the times at which various versions  
20 of this report were submitted. When we submit these reports  
21 we submit them to the BLM for approval because we're required  
22 to have BLM approval but we also submit them to the  
23 cooperating agencies. And the cooperating agencies as well  
24 as the BLM technical experts as well as the third party  
25 contractor all comment on that version of the report and it's

1 then revised to address those comments, consider those  
2 comments and then resubmit it. So this tabulates those  
3 submittals.

4 Q. Did Eureka County take an active role in the 2010  
5 model?

6 A. Yes, very active. They had comments on every  
7 version of the report. They attended meetings. They  
8 provided a lot of constructive comments.

9 Q. Were all of their comments accepted?

10 A. No, they were not. All of them were considered.  
11 A lot of them were accepted. When I say accepted I mean  
12 incorporated so that the next model version adopts those  
13 comments but not all of them.

14 Q. Eureka County was not excluded from any of these  
15 meetings, was it?

16 A. No.

17 Q. Can you say whether or not Eureka County was an  
18 active participant?

19 A. They were an active participant in review of the  
20 hydrology modeling report, yes.

21 Q. And that would be starting in June of 2008?

22 A. Actually before that, yes. This summarizes since  
23 the last hearing.

24 Q. Could you please turn to Exhibit 34. What's  
25 Exhibit 34?

1           A.     This is a copy of the June 2010 version of the  
2 water resources monitoring plan that was submitted as part of  
3 the plan of operations to the BLM. It constitutes what we  
4 are proposing as monitoring to meet BLM's criteria for  
5 approval of the project.

6           MS. PETERSON: Excuse me. I have a question.  
7 There are certain figures that are referenced in Exhibit 34,  
8 I think it's figures one through seven, and they reference  
9 that they're attached and I don't have any figures with my  
10 copy. And so I'm just wondering if there were figures  
11 attached to Exhibit 34 that are referenced in there.

12           MS. JOSEPH-TAYLOR: Not in the exhibit, and I  
13 have the original, so there's none in the State Engineer's  
14 copy either.

15           MS. PETERSON: Okay. So I didn't know if we were  
16 going to be provided with those figures.

17           MR. DE LIPKAU: Do you have an answer to that  
18 question?

19           THE WITNESS: I can provide those figures, yeah.  
20 They were included in the plan of operations and in the EIS.  
21 At the county's request this monitoring plan was included in  
22 the EIS, in the preliminary draft of the EIS.

23           MS. PETERSON: So do you think that we would get  
24 those figures during this hearing?

25           THE WITNESS: I can get them to you now if you



1 want them.

2 MR. DE LIPKAU: Could we go --

3 HEARING OFFICER WILSON: Let's be off the record  
4 for a minute.

5 (Discussion held off the record)

6 Q. (By Mr. de Lipkau) Mr. Rogers, could you please  
7 discuss Exhibit 34 without the exhibits, without the figures?  
8 I'm sorry.

9 A. Okay. It's a version of the water resources  
10 monitoring plan that we proposed. Like I said, it's the  
11 third or so version of this monitoring plan. We revised it  
12 based on comments primarily from the county that we received.  
13 And we revised it as we understood the hydrology of the area.

14 Q. In general what does the monitoring plan attempt  
15 to do?

16 A. It attempts to provide a frame work for  
17 monitoring actual changes in the hydrological system and to  
18 identify impacts that may occur and to provide a way to  
19 improve and calibrate the hydrology model. It's based on  
20 where we anticipate impacts will occur but it also includes  
21 numerous monitoring points outside the projected ten-foot  
22 drawdown contour.

23 Q. Exhibit 34 will be presented to the BLM; correct?

24 A. It has been.

25 Q. It has been. Has Eureka County provided input to

1 Exhibit 34?

2 A. Yes, they have.

3 Q. Okay. Approximately how many times has there  
4 been involvement between the permit, the applicant today and  
5 Eureka County representing this?

6 A. On this monitoring plan?

7 Q. On this monitoring plan.

8 A. Probably half a dozen times directly with  
9 Mr. Tibbitts and then numerous times with the larger NEPA  
10 committee. The county has a group of volunteers that serve  
11 to participate in the EIS process.

12 Q. And in some of the Eureka County comments  
13 inserted in Exhibit 34?

14 A. Yes. Yes. This version adopts comments, not all  
15 of them again, but incorporates some of the input that Eureka  
16 County provided on a previous version, yes.

17 Q. Okay. We will provide the attachments to this  
18 exhibit to counsel of record and to the State Engineer. Can  
19 we do that by tomorrow?

20 A. Yes.

21 Q. Could you please go to Exhibit 35. Please  
22 describe Exhibit 35.

23 A. This is a schematic of the location of the water  
24 sources and water usage for this project. It shows that the  
25 well field will be located in Kobeh Valley. That well field

1 will comprise approximately 95 percent of the water that's  
2 used for the project. Additional water will be taken from  
3 the pit. To keep the pit dry we'll remove the water as it's  
4 encountered. That water will also be introduced in to the  
5 process circuit. About probably five percent of water will  
6 also be used in Diamond Valley. I should have said in  
7 watering we estimate that about 80 percent of the water that  
8 entered the pit will be recovered and used in the process  
9 will be within Diamond Valley based on the location of that  
10 hydrographic basin.

11 Q. Will that water developed in Diamond Valley be  
12 covered by the existing permits, the 543 acre-feet plus the  
13 616 that is transferred to the pit area but within Diamond  
14 Valley?

15 A. We estimate based on the model that a few hundred  
16 acre-feet will come in to the pit, so yes, it would be, the  
17 amount that comes in to the pit would be less than the water  
18 rights in Diamond Valley that we moved up to the valley.

19 Q. Therefore it would be a completion to the Diamond  
20 Valley aquifer; is that correct?

21 A. So you're asking if the water rights that we have  
22 cover the amount of water that flows in the pit?

23 Q. More than covers, I believe.

24 A. Yes.

25 Q. Could you start with the word source and describe

1       how these arrows are followed?

2               A.     Okay. The well field will have about ten  
3       production wells. All of that water will go to a booster  
4       tank. From there it gets piped to the mill storage tank.  
5       It's commingled with water that's removed from the pit. All  
6       that water becomes the process circuit and -- Excuse me. Not  
7       all of that water. Most of that water is used in the mill.  
8       There's a component that is used in Diamond Valley as well  
9       for suppression, cooling, and domestic uses. The majority of  
10      that water, about 95 percent, gets used in the middle to  
11      process the ore. That water is discharged as a slurry to the  
12      thickener. The actual water contained in that discharge to  
13      the thickener is, I think, about 22,000 gallons a minute.  
14      But a large amount of that water, 8,000 gallons a minute or  
15      so, is reclaimed from that thickener and reused in the mill.  
16      So the fresh water consumption is a total of 7,000 gallons a  
17      minute.

18             Q.     All right.

19             A.     That water is discharged in to the tailings  
20      imboundment. Water is also reclaimed from that tailing  
21      imboundment and used in the mill. But the water consumption,  
22      the vast majority of the water consumption is in the tailing  
23      pond. It's due to evaporation of water that can't be  
24      decanted and drainment of water in the solids that are  
25      exposed there.

1 Q. All right. So the water, would it be a true  
2 statement then that the water consumed in Diamond Valley will  
3 be adequately covered by applications and existing permits on  
4 the Diamond Valley side of the basin?

5 A. Yes.

6 Q. And that the water consumed in Kobeh Valley  
7 consists of approximately 95 percent of all water used in the  
8 cycle?

9 A. Yes.

10 Q. Okay. Let's go to Exhibit 36. What is Exhibit  
11 36?

12 A. Exhibit 36 is a letter from the BLM stating that  
13 cooperating agency input was considered and the hydrological  
14 modeling report was approved for use in the EIS.

15 Q. Are you saying that the 2010 model not yet  
16 introduced as Exhibit 39 was approved by the BLM?

17 A. Yes.

18 Q. What expertise if any did BLM have in going  
19 through, approving and redrafting Exhibit 39?

20 A. They considered comments from the county's  
21 hydrologists. They have their own hydrologists that have  
22 modeling and a lot of mining and permitting experience.

23 Q. Would those be considered in-house BLM employees?

24 A. Yes, their own employees. And there is the third  
25 party contractor who employs a person who does nothing but

1 hydrological review of the report and the model.

2 Q. So is it a true statement that the 2010 model was  
3 approved by the BLM? Is that a true statement?

4 A. Yes.

5 Q. And that the input in to the model was made by  
6 the applicant's consultants, input from Eureka County,  
7 participating consultants, comments by internal BLM  
8 hydrologists and modeling technicians and by the outside  
9 third party consultants employed by the BLM?

10 A. That's correct.

11 Q. So is it your testimony then that the 2010 model  
12 has been approved by the BLM?

13 A. Yes.

14 Q. Were comments received by the Eureka County  
15 consultants in total or in part put in to the 2010 model?

16 A. Yes. Some of the comments were.

17 Q. Some comments were approved?

18 A. Many of their comments were used to accommodate  
19 in a subsequent version of the model.

20 Q. All right. Did Eureka County have knowledge at  
21 all times of the progress of the model?

22 A. Yes.

23 Q. And that was previously testified to in your  
24 prior exhibit concerning the meetings?

25 A. Yes.

1 Q. And that would be Exhibit 33?

2 A. Correct.

3 Q. So meetings were had, input was received and the  
4 result is an approved model, 2010 model. And that model was  
5 given to the BLM; correct?

6 A. Yes.

7 Q. All right. Could you go to 402 if you have that  
8 in front of you.

9 A. Yes. This is a memo prepared by the county's  
10 hydrogeologic consult, Ecologic. It was prepared for the  
11 county commissioners. It was regarding their review of the  
12 hydrology report from Mount Hope project. It was submitted  
13 to the BLM by the county commissioners as a means of  
14 commenting on the hydrologic model.

15 Q. And how did you get this?

16 A. This was -- I received this through the EIS  
17 process. I believe the county commissioners mailed it to the  
18 BLM and copied me on it.

19 Q. Okay. And of course this exhibit speaks for  
20 itself?

21 A. It does. It has the statement in there that  
22 Ecologic finds now fatal flaws with the hydrologic model.

23 Q. Okay. Let's go to Exhibit 403. And please  
24 describe Exhibit 403.

25 A. Sure. This is a copy of the power point

1 presentation that the State Engineer's office provided and  
2 presented in Eureka in March of 2009. In that presentation  
3 the State Engineer provided a --

4 Q. Excuse me. Were you at this presentation?

5 A. I was, yes.

6 Q. All right.

7 A. The presentation consisted of an overview of the  
8 history of the overallocation of groundwater resources in  
9 Diamond Valley. Some description of the various ways to  
10 method -- methods used to compute or estimate consumptive use  
11 and pumping and recharge. It also outlined some regulatory  
12 options that the State Engineer has to regulate the basin.  
13 And it included a suggestion or recommendation from the State  
14 Engineer to the agricultural community that they work  
15 together to look for solutions to the overappropriation and  
16 overpumping.

17 Q. In Diamond Valley?

18 A. In Diamond Valley, correct.

19 Q. Are you aware of any subsequent solutions or  
20 proposals submitted to the State Engineer by the growers?

21 A. I am not, no.

22 Q. Are you aware of any further meetings involving  
23 Exhibit 403?

24 A. Yes. The Diamond Natural Resources Protection  
25 and Conservation Association that Mr. Branstetter testified



1 about, they have been meeting and my understanding is they're  
2 working quite diligently on water conservation and other  
3 avenues to reduce water consumption.

4 Q. Let's go to 405.

5 A. This is a publication by Division of Water  
6 Resources from January of this year. It provides revised  
7 estimates on evapotranspiration and agricultural consumptive  
8 use numbers. Of note is the fact that Diamond Valley  
9 estimated at 2.5 acre-feet consumptive and Kobeh Valley is at  
10 2.7, whereas prior, at least in the engineer's Ruling 5966  
11 that number was 2.3 acre-feet per year.

12 Q. In both valleys?

13 A. You're asking what --

14 Q. No. In both valleys, meaning Diamond and Kobeh?

15 A. This report indicates that Diamond Valley is 2.5  
16 and Kobeh Valley is 2.7.

17 Q. And in Ruling 5966 the State Engineer granted the  
18 conversion factor of 2.3 acre-feet per acre; correct?

19 A. In Kobeh Valley?

20 Q. Right.

21 A. Right.

22 Q. Okay. I understand. Let's go to Exhibit 414.  
23 It should be in your booklet. Do you have 414?

24 A. I do not.

25 Q. Could you please describe what Exhibit 414

1 depicts.

2 A. This is an application or, excuse me, this is  
3 a -- this is a protest from Eureka County to an application  
4 by General Moly.

5 Q. Okay. And do you know what the application seeks  
6 water for?

7 A. I am not -- I don't know the specific number, no.

8 Q. Did the applicant file applications for the 3 F  
9 Ranch?

10 A. Yes.

11 Q. Did the applicant file applications to  
12 appropriate water for the Bobcat Ranch?

13 A. Yes.

14 Q. Are you aware that Eureka County did not protest  
15 the series of plaintiff's exhibits filed on the Bobcat Ranch?

16 A. Yes.

17 Q. Are you aware that the protest you have in front  
18 of you involves the water right sought to replace water on  
19 the 3 F Ranch?

20 A. Yes.

21 Q. So is it your testimony then that Exhibit 414 is  
22 the protest filed by Eureka County to the granting of the  
23 subject application for 3 F irrigation water rights?

24 A. Yes, this is a protest to that application.

25 MS. JOSEPH-TAYLOR: Mr. de Lipkau, can I ask a

1 question? You say 3 F but this says on the Bean Flat Ranch.  
2 Are those the same thing?

3 MR. DE LIPKAU: No, it's not. I don't know where  
4 it says Bean Flat.

5 MS. JOSEPH-TAYLOR: The protest says that. The  
6 second line under number one says irrigation and domestic on  
7 the Bean Flat Ranch.

8 MR. DE LIPKAU: We believe that to be a typo.  
9 It's wrong.

10 MS. JOSEPH-TAYLOR: All right. Thank you.

11 Q. (By Mr. de Lipkau) Are you aware of the Bartine  
12 Ranch?

13 A. Yes.

14 Q. And do you drive by the Bartine Ranch very often?

15 A. Occasionally.

16 Q. How frequently is occasionally?

17 A. Maybe every couple of months or so.

18 Q. All right. For how long?

19 A. The past four years.

20 Q. Okay. Have you noticed any change in the  
21 irrigated culture on the Bartine Ranch since the State  
22 Engineer issued Ruling 6599?

23 A. No, I haven't. 5966 I think.

24 Q. 5966.

25 A. I have not. Nothing I've noticed, no. No

1 change.

2 Q. No change. Let's go to the protest. Do you have  
3 the protest in front of you?

4 A. I do.

5 Q. You do? Would you please turn to the protest  
6 which is, for the record, marked as Exhibit A-2, Application  
7 799.1 introduced by the State Engineer.

8 MS. PETERSON: Excuse me. The witness is looking  
9 at some documentation apparently, notes or something, while  
10 he's testifying. And I'm just wondering what that's all  
11 about. I thought he's supposed to be testifying based on his  
12 personal knowledge.

13 HEARING OFFICER WILSON: Mr. de Lipkau, would you  
14 like to respond?

15 MR. DE LIPKAU: He is testifying on his personal  
16 knowledge. I think the witness had trouble finding Exhibit A  
17 total protest.

18 Mr. Rogers, I think counsel is upset with your  
19 booklet there. Please close your booklet and we'll refer to  
20 the exhibits. Do you have the protest in front of you?

21 THE WITNESS: It's right here, yes.

22 MR. DE LIPKAU: Okay. Would you please turn to  
23 protest item eight on page three.

24 MS. JOSEPH-TAYLOR: Which exhibit are we on? 414  
25 still?

1 MR. DE LIPKAU: No. We are moving off the  
2 exhibits and we're getting back in to 79911, State Engineer  
3 Exhibit 99.

4 MS. JOSEPH-TAYLOR: Thank you. Which we show as  
5 Application 79911, the application?

6 MR. DE LIPKAU: Right. With the attached  
7 protest.

8 HEARING OFFICER WILSON: The protests were  
9 prefiled by Eureka County and they were under a separate  
10 exhibit number.

11 MS. PETERSON: Are you going to those now, those  
12 protests?

13 MR. DE LIPKAU: Yes.

14 HEARING OFFICER WILSON: The copies of the  
15 protest to the latest change applications are Exhibit 518.

16 Q. (By Mr. de Lipkau) 518. Okay. 518, do you have  
17 a copy of the protest there?

18 A. I have a copy of Exhibit 8 to the protest.

19 Q. Would you please go to number eight, page three.

20 A. Okay.

21 Q. That's a true statement, is it not?

22 A. It says, "The proposed place of use described in  
23 the applications is much larger than the mine's plan of  
24 operation project boundary." Yes, that is true. I already  
25 testified as to the reasons for that.

1 Q. Okay. Let's go to number ten.

2 A. Number ten says, "The dewatering requires pumping  
3 of groundwater from Diamond Valley currently overappropriated  
4 and overpumped."

5 Q. Stop right there. There will be no dewatering,  
6 will there?

7 A. We will remove the water that flows in to the  
8 pit, yes.

9 Q. And the amount of water that flows in to the pit  
10 is covered by existing permits or applications filed by the  
11 applicant; right?

12 A. That is correct.

13 Q. All right. So there will not be additional  
14 pumping of groundwater in Diamond Valley; is that correct?

15 A. There won't be anything additional beyond what  
16 the permits already allow. We have permits to cover the  
17 amount of water.

18 Q. Right. Thank you. Let's go to number 11.

19 A. The proposed points of diversion for the  
20 applications in Basin 139 are the proposed place of use  
21 includes portion of Basin 153 and Basin 53 for the  
22 applications involved a transfer of groundwater out of the  
23 source basin for use in another basin.

24 Q. And you previously described the water cycle in  
25 Exhibit 35, have you not?

1 A. Yes, I did.

2 Q. Could Exhibit 35 be correctly called an exchange  
3 of groundwater with literally no transfer, interbasin  
4 transfer. It's an exchange?

5 A. In terms of amounts, yes. I mean molecules of  
6 Kober Valley water may be used in Diamond Valley and vice  
7 versa. But the amounts used in the various basins are very  
8 similar to the amounts that we pump in the basins.

9 Q. Let's go to the transbasin diversion issue. You  
10 don't have an exhibit in front of you, Mr. Rogers.  
11 533.370(6) contains provisions that the State Engineer must  
12 review in determining whether to grant a transbasin portion.  
13 Are you aware of that statute?

14 A. Yes.

15 Q. You've looked at that statute?

16 A. I have.

17 Q. And you're not a lawyer?

18 A. I'm not a lawyer.

19 Q. You have just testified that even though a  
20 molecule of water from one basin to another may occur, in  
21 essence the water being transferred is basically or can be  
22 looked upon as an exchange; is that correct?

23 A. Yes.

24 Q. Could you please tell us and justify the need to  
25 import water from Diamond Valley to I'll say keep the pit dry

1 in Diamond Valley?

2 A. I'm not sure I understand the question.

3 Q. Why did you transfer water from Diamond Valley  
4 agriculture to the Diamond Valley side of the pit?

5 A. That's where the ore is. We have to mine where  
6 the ore is and water will flow in to that pit. So water  
7 rights from Diamond Valley are required to remove that water  
8 from the pit.

9 Q. Then the water developed for keeping the pit dry  
10 purposes will be sent in to the mill cycle; correct?

11 A. Yes. Although some percent of that water may be  
12 used in Diamond Valley.

13 Q. Right. Can the plant operate other than the way  
14 it is currently designed and set forth on Exhibit 35?

15 A. No, no.

16 Q. You are aware that the State Engineer is given  
17 the statutory authority to award or direct the applicant to  
18 prepare a plan of conservation, are you not?

19 A. That's my understanding, yes.

20 Q. And did you do that?

21 A. We have not developed a formal plan of  
22 conservation as a stand-alone document. We have developed  
23 our process circuit with state of the art technology to make  
24 water use efficient and we have also established the Diamond  
25 Valley trust fund, as Mr. Branstetter testified to.



1 Q. That would be Exhibit 30 then? I represent to  
2 you it was Exhibit 30 that Mr. Branstetter testified to.

3 A. Okay.

4 Q. It was entitled plan operation?

5 A. Plan conservation. Plan of conservation.

6 Q. Plan of conservation, you are correct. Could you  
7 state whether or not the proposed action is environmentally  
8 sound?

9 A. It will need to be environmentally sound to be  
10 approved by the BLM, so yes, I would say yes.

11 Q. Will the contemplated use of water unduly limit  
12 future growth in the basin of origin being both basins?

13 MS. PETERSON: Objection. Calls for an opinion  
14 by this witness who has no expertise on this issue to give an  
15 opinion.

16 HEARING OFFICER WILSON: Go ahead, Mr. de Lipkau.  
17 Do you want to respond?

18 MR. DE LIPKAU: The next question will clarify  
19 that. Let me ask one question. Will the --

20 HEARING OFFICER WILSON: Let's hear your  
21 question.

22 MR. DE LIPKAU: The question is, Mr. Rogers, will  
23 KVR or its parent make water available in Diamond and Kobeh  
24 Valley for future development in both of those two valleys.

25 HEARING OFFICER WILSON: Go ahead. You can

1 answer that.

2 THE WITNESS: Yeah. Mr. Branstetter testified to  
3 that, that we could certainly consider that.

4 Q. (By Mr. de Lipkau) And in the event the State  
5 Engineer determines other factors relevant under this statute  
6 would the applicant comply with such other requirements.

7 A. Absolutely. We will comply with the State  
8 Engineer's direction, yes.

9 Q. Let's go to Exhibit 502. Do you have Exhibit 502  
10 in front of you?

11 A. I do.

12 Q. Would you please turn to page 25.

13 A. Okay.

14 Q. Who was -- Who prepared the technical memorandum?

15 A. It says it was prepared by Dale Bugenig.

16 Q. When was it dated?

17 A. November 24th of 2010.

18 Q. Quite recent?

19 A. Yes.

20 Q. Okay. Would you please turn to page 25 and  
21 discuss the water monitoring mitigation section.

22 A. This is about five pages discussing or four pages  
23 discussing deficiencies or concerns that the author has with  
24 the monitoring plan as it was presented in the 2010 plan of  
25 operations and the preliminary draft EIS.

1 Q. And had the comments been accepted by the BLM?

2 A. These comments in this memo were not submitted to  
3 the BLM specifically. The county did submit a lot of  
4 comments on the preliminary draft EIS including comments on  
5 the monitoring plan. The BLM has not indicated at this point  
6 yet whether they have accepted or will accept those comments.  
7 But Eureka Moly since then has gone in, screened through all  
8 the hundreds of comments provided in that spread sheet,  
9 compiled the ones dealing with the monitoring and mitigation  
10 plan and went down to Eureka County and reviewed those  
11 comments with them and are in the process of updating the  
12 monitoring plan.

13 Q. All right. Would it be a true statement then  
14 that the monitoring plan as currently being sent to the  
15 applicant being KVR and the participating agencies including  
16 the BLM has not yet been finalized, would that be a true  
17 statement?

18 A. That is true, correct.

19 Q. It's being worked on?

20 A. It is being worked on, yes.

21 Q. And the exhibit shows the concern or comments  
22 advanced by Eureka County, would that be a true statement?

23 A. Yes.

24 Q. Do you agree, do you on behalf of KVR agree on  
25 these comments set forth commencing at page 25?

1           A.    Most of them, yes.  I can't recall specifically a  
2           hundred percent of them.  But a lot of them had to do with  
3           specific monitoring locations, frequency of monitoring.  And  
4           when we sat down with the county representatives we agreed to  
5           most of them.

6           Q.    All right.  Before I leave the monitoring  
7           portion, would it be a true statement that there is no agreed  
8           monitoring program between the applicant and Eureka County?

9           A.    That's correct.

10          Q.    And there currently is work on that program; is  
11          that correct?

12          A.    We are continuing to refine the monitoring plan  
13          and we will -- we are required to get BLM approval and we are  
14          committed to accommodating Eureka County concerns.

15          Q.    You are aware that in Ruling 5966 the State  
16          Engineer stated that a monitoring program approved by him  
17          must be and is a condition preceding to production of  
18          pumping, are you not?

19          A.    Yes.  We're aware that a monitoring plan,  
20          monitoring, management, mitigation plan approved by the State  
21          Engineer in addition to the approval by the BLM.

22          Q.    And they will not be identical?

23          A.    Not necessarily identical, no.

24          Q.    Okay.  Would you please turn to Exhibit 507.  
25          Have you reviewed that?

1           A.    Yes.

2           Q.    Have you seen it before?

3           A.    I have.

4           Q.    Briefly stated, what is it?

5           A.    It is a memo from the natural resources manager,  
6       Jake Tibbitts, to the water county resources and the  
7       monitoring plan and the version that had been submitted to  
8       the BLM in June of 2010. It includes a couple pages of  
9       background which summarizes the input that the county has had  
10      and it includes a section by section critique of the current  
11      plan.

12          Q.    All right. So Exhibit 507 somewhat mentions with  
13      our Exhibit 34 the monitoring plan or the program; is that  
14      correct?

15          A.    Yeah. 507, Exhibit 507 is a critique of that  
16      Exhibit 34.

17          Q.    Okay.

18          A.    Yeah, 34.

19          Q.    Mitigation is underway. Let us not beat that any  
20      further.

21          A.    We are developing a monitoring plan. The version  
22      of the monitoring plan that was submitted does not include  
23      mitigation. We were directed by the BLM not to include  
24      mitigation.

25          Q.    Is mitigation part of the environmental impact

1 statement?

2 A. Yes.

3 Q. All right. What does mitigation mean to you?

4 A. Mitigation means addressing impacts to minimize  
5 or reduce their severity or to offset them.

6 Q. Does the applicant agree to carry out whatever  
7 mitigation plans are required by applicable government  
8 authorities?

9 A. Of course, yes. We'll abide by any monitoring  
10 mitigation plans that are stipulated, yes.

11 Q. Neither of the two plans are final; right?

12 A. That's correct.

13 Q. They're all underway?

14 A. That's correct.

15 Q. In your opinion could you state whether or not  
16 the applicant is doing from an environmental point of view  
17 and a permitting point of view everything right?

18 A. I believe so, yes. That's our intent. We have a  
19 very seasoned staff of professionals with distinguished  
20 careers in mining and that's our intent, yes.

21 Q. To obtain all the required permits to operate the  
22 mine?

23 A. That's right.

24 Q. And operate the mine in conformance with all  
25 applicable permit conditions?

1 A. That's correct.

2 Q. That's state and federal?

3 A. All applicable permits, conditions, regulations,  
4 yes.

5 Q. And with continuing negotiations with Fureka  
6 County?

7 A. Yes, we are continually requested that  
8 stakeholders approach us with concerns. We want input, yes.

9 MR. DE LIPKAU: I have nothing further at this  
10 time.

11 HEARING OFFICER WILSON: Let's take a quick break  
12 before we go to cross. Be off the record for the next ten  
13 minutes.

14 (Recess was taken)

15 HEARING OFFICER WILSON: We finished up with the  
16 direct testimony of Pat Rogers. We're on to  
17 cross-examination.

18 MR. DE LIPKAU: Excuse me, Mr. Hearing Officer.  
19 Before we start, the figures to Exhibit 34 are being made as  
20 we speak. Someone ran out to get the applicable color  
21 copies. With permission of the hearing officer and with  
22 counsel we will discuss the several exhibits when they're  
23 available after cross-examination at the convenience of all  
24 parties if that's acceptable to counsel.

25 MS. PETERSON: That's acceptable.

1 HEARING OFFICER WILSON: Is there any problem  
2 with that?

3 MS. PETERSON: No problem.

4 MS. URE: No problem.

5 HEARING OFFICER WILSON: Let's go to  
6 cross-examination.

7 CROSS-EXAMINATION

8 By Ms. Peterson:

9 Q. Thank you. Mr. Rogers, my name is Karen Peterson  
10 and I'm the attorney for Eureka County. And I'm going to be  
11 asking you about the exhibits that you testified to. I'm  
12 going to try to go in the order that you testified to them.  
13 So let's start with Exhibit 32. Do you have that in front of  
14 you?

15 A. Yes.

16 Q. And that's your schedule of your permits?

17 A. This is our permit tracking matrix.

18 Q. Right. And I note that there's a notation on  
19 numbers 13, 16, 17, 20, 21 and 23 under the notes section  
20 that says on hold pending project restart. Do you see that  
21 language?

22 MS. JOSEPH-TAYLOR: What number are you on,  
23 Ms. Peterson?

24 MS. PETERSON: It's Exhibit 32, and number 13,  
25 16, 17, 20, 21 and 23.



1 MS. JOSEPH-TAYLOR: Thank you.

2 MS. PETERSON: And it's under the notes column.

3 THE WITNESS: I don't see on hold, but yeah, I  
4 see the notes on those.

5 Q. (By Ms. Peterson) Well, for example, I mean just  
6 so you're comfortable. Number 13 under the notes section for  
7 that entry, the very last line says on hold pending project  
8 restart.

9 A. Okay.

10 Q. Do you see that?

11 A. I got a different version but I am familiar with  
12 that language in the permits, yes.

13 Q. Okay. And the project is the Mount Hope project?

14 A. Yes.

15 Q. And on hold pending project restart would infer  
16 that the project is not going forward; is that correct?

17 A. No, that's not correct. What that indicates is  
18 that the permitting efforts for that specific permit are on  
19 hold pending the restart of engineering. What we do is some  
20 of our permits require engineering design. We make the  
21 decision whether holding until engineering is restarted will  
22 affect the overall permitting timeline. Like Mr. Chaput  
23 said, permitting is number one priority on any of these  
24 permits. If engineering is required we will release the  
25 funds to do that engineering for that permit.

1 Q. And then directing your attention to Exhibit 33.  
2 And that's the list of all the different versions I guess of  
3 a model that had been submitted to the BLM and then Eureka  
4 County as a participating agency. Would you agree?

5 A. Yes.

6 Q. And I count up that there's been six versions of  
7 the model that have been submitted to the BLM in Eureka  
8 County?

9 A. Yeah. I see six versions since June of 2008,  
10 yes.

11 Q. Okay. And I know that the, on July 2010, number  
12 six, I'm saying number six, accepted as final by the BLM,  
13 that's under the notes section. Do you see that?

14 A. What are you reading on the notes?

15 Q. Under second page of Table A.

16 A. Uh-huh.

17 Q. July 2010.

18 A. Uh-huh.

19 Q. It says issued July 9th 2010, accepted as final  
20 by the BLM?

21 A. Okay.

22 Q. Do you see that?

23 A. Actually I don't see that on the conversion.

24 Q. Do you -- Well, I don't know if I have an extra  
25 copy. Well, any ways. I don't know that you need the

1 exhibit for my question. You testified that the BLM has  
2 accepted the model as final; correct?

3 A. They've accepted it for use in preparation of the  
4 EIS, yes.

5 Q. And that does not bind the State Engineer to  
6 accept the model as final; is that correct?

7 A. That's correct.

8 Q. And then turning to Exhibit 34. And in looking  
9 at the bottom of the second page it looks like there's a date  
10 June 2010?

11 A. Okay.

12 Q. Would that be the date of this document?

13 A. Yes.

14 Q. June 2010?

15 A. It was, yes.

16 Q. Okay. And you make it very clear in number one  
17 and number two that this plan is only intended for the BLM  
18 process; is that correct?

19 A. That's correct.

20 Q. And do you also make it very clear that it's only  
21 about monitoring and it doesn't have anything to do with  
22 management and mitigation; is that correct?

23 A. That's correct.

24 Q. And since June of 2010 there has not been any  
25 management and mitigation plan that's either been submitted

1 to the State Engineer or submitted to the BLM; is that  
2 correct?

3 A. There has been some mitigation included in the  
4 preliminary draft of the EIS that the third party contractor  
5 prepared for the BLM. We have not submitted any mitigation  
6 or management to the BLM or the State Engineer.

7 Q. Okay. And then turning to page three of Exhibit  
8 34 under number 11, there's an overview of the predicted  
9 impacts. Do you see that?

10 A. Yes.

11 Q. Okay. And the first one states that one of the  
12 impacts is that significant groundwater consumption in Kobeh  
13 Valley is expected to remove water from storage and lower  
14 groundwater elevations in portions of Kobeh Valley?

15 A. Yes.

16 Q. Do you see that?

17 A. I see that.

18 Q. And do you agree that that is one of the  
19 predicted impacts?

20 A. Yes.

21 Q. Okay. And then going to page four, number 16.  
22 This is the bullet point that proposes, as I stated in my  
23 opening, that Eureka modeling proposes that it will update  
24 the model every third year for the first six years following  
25 initiations of oil field well pumpings; is that correct?

1 A. Yes.

2 Q. And thereafter you propose to update the model  
3 every five years; is that correct?

4 A. Yes.

5 MS. PETERSON: And then I guess I would just  
6 reserve my time on cross-examination on the figures when we  
7 get the figures.

8 HEARING OFFICER WILSON: That's fine.

9 MS. PETERSON: Okay. You testified about Exhibit  
10 41 which is the proposed place of use where the  
11 applications --

12 THE WITNESS: 41?

13 MS. PETERSON: Yes.

14 MR. DE LIPKAU: 42.

15 MS. PETERSON: 42, I'm sorry.

16 THE WITNESS: That's the place of use map?

17 MS. PETERSON: Yes.

18 THE WITNESS: Yes.

19 Q. (By Ms. Peterson) Do you have that in front of  
20 you? And this is the map that's on file with the State  
21 Engineer's office with your application?

22 A. That's what I understand, yes.

23 Q. Okay. And if you look at the place of use it's  
24 noted that the place of use for these applications is  
25 proposed to be Pine Valley, Kobeh Valley and Diamond Valley;

1 is that correct?

2 A. That's correct, yes.

3 Q. And so would you agree that based on the filing  
4 with the State Engineer that the proposed place -- Well, the  
5 points of diversion are located in Kobeh Valley; is that  
6 correct?

7 MR. DE LIPKAU: Objection. Objection because the  
8 points of diversion on that map are located also in Diamond  
9 Valley.

10 HEARING OFFICER WILSON: Let's have the witness  
11 answer the question. Go ahead, Mr. Rogers.

12 THE WITNESS: There are applications -- Could you  
13 repeat the question.

14 Q. (By Ms. Peterson) The applications on file with  
15 the State Engineer's office and the point of diversions  
16 actually are on the next page of this map?

17 A. Uh-huh.

18 Q. Are located in Kobeh Valley?

19 A. Yes.

20 Q. Is that correct?

21 A. Yes.

22 Q. The production wells?

23 A. Yes.

24 Q. And the place of use on the map that was filed  
25 with the State Engineer's office shows that the place of use

1 is going to be in Kobeh, Diamond and Pine; is that correct?

2 A. Yes.

3 Q. And going to Exhibit 35, your schematic?

4 A. Uh-huh. Yes.

5 Q. Let me just back up to a little bit of your  
6 testimony. At the very beginning of your testimony you  
7 testified that place of use of these applications was the  
8 90,000 acres, is that correct, as depicted on the place of  
9 use map that we just saw in Exhibit 42?

10 A. I testified that the place of use was per the map  
11 on the application, yes.

12 Q. Okay. And it's about 90,000 acres; is that  
13 correct?

14 A. I believe that is correct, yes.

15 Q. In any event you testified that the place of use  
16 was larger than your plan of operations; is that correct?

17 A. That's correct.

18 Q. And there was testimony at the last hearing that  
19 the plan of operations they had encompassed about 13 or  
20 14,000 acres; is that correct?

21 A. Yes.

22 Q. And you testified that your place of use needed  
23 to be larger than your plan of operations because it would  
24 create a hardship on the company; is that correct?

25 A. That's correct.

1 Q. And then I look at your schematic which is  
2 Exhibit 35, and I don't see any operations occurring in Pine  
3 Valley on Exhibit 35, which is your schematic.

4 A. Uh-huh.

5 Q. But your applications show that your place of use  
6 is in Pine Valley?

7 A. Uh-huh.

8 HEARING OFFICE WILSON: You need to answer yes or  
9 no.

10 THE WITNESS: Excuse me. That's correct. If I  
11 understand the question, yes, you're right, the plan -- the  
12 place of use incorporates a small piece of Pine Valley.  
13 There are no points of diversion in Pine Valley, if that's  
14 the question.

15 Q. (By Ms. Peterson) And so are your notices that  
16 you filed with the BLM in Pine Valley?

17 A. I am not sure if any of them overlap in to Pine  
18 Valley.

19 Q. But the notices are definitely in Diamond Valley;  
20 is that correct?

21 A. There are notices that enter in to Pine Valley  
22 and Kobeh Valley, yes.

23 Q. And I believe you testified that the reason you  
24 needed the broader scope is because of the notices, is that  
25 correct, for your place of use?



1 A. Among other reasons, yes.

2 Q. And that part of the water that you would be  
3 needing would be for minor purposes. And I think you said  
4 dust suppression and maybe construction water?

5 A. It could be for -- I don't think I said  
6 construction water. It could be dust suppression. It could  
7 be environmental mitigation. It could be water use for  
8 drilling for exploration.

9 Q. And so what's water drilling for exploration?

10 A. When a drill rig drills a hole, typically they  
11 use some water.

12 Q. And what would those -- What would those holes  
13 be -- would they be looking for water?

14 A. Could be looking for water, could be drilling a  
15 monitoring well, could be doing geotechnical stability, could  
16 be doing soil investigation. There's a number of things.

17 Q. Is the company -- Is the company exploring for  
18 water in Diamond Valley to be used in the mining process?

19 A. No.

20 Q. Okay. Then going back to your schematic.

21 A. Uh-huh.

22 Q. And I wasn't quite sure if I understood exactly  
23 what you were saying about how this mine process would work.  
24 And you say that there's a well field in Kobeh Valley; is  
25 that correct?

1           A.    That's correct.

2           Q.    And then it looks like that there's a pipeline  
3           and a booster that goes in to Diamond Valley; is that  
4           correct?

5           A.    That's correct.

6           Q.    On the schematic?

7           A.    The mill will be located in Diamond Valley as  
8           will the supply tank, yes.

9           Q.    And the mill will use water?

10          A.    The mill will use water, yes.

11          Q.    Okay. And it looks like the thickener uses water  
12          also, is that correct, based on the schematic?

13          A.    Water is pumped through the thickener.

14          Q.    Okay.

15          A.    Water is pumped to the tank to the middle to the  
16          thickener and then to the tails.

17          Q.    Okay. And then with regard to Exhibit 36, you  
18          testified that this was the letter from the BLM accepting the  
19          model; is that correct?

20          A.    I testified that this was the letter from the BLM  
21          stating that the model was suitable for use in the EIS, yes.

22          Q.    And would you agree that the BLM regulatory  
23          authority and purposes are different than the State  
24          Engineer's regulatory and purposes?

25          A.    Yes, I would.

1 Q. Turning to Exhibit 414. Exhibit 414 is the  
2 protest that's been filed by Eureka County to certain water,  
3 a water application that was filed by General Moly for  
4 groundwater and irrigation -- Sorry, irrigation and domestic  
5 purposes; is that correct?

6 A. Yes.

7 Q. And that application was filed by General Moly in  
8 Kobeh Valley?

9 A. Yes.

10 Q. And this is one of the applications that Eureka  
11 Moly is proposing water could be used by Eureka County for  
12 future growth and development; is that correct?

13 A. This application is for agricultural use. But we  
14 have agreed that we don't want to limit future growth in that  
15 basin and should there be a need for water associated with  
16 future growth we would certainly entertain conveying or  
17 leasing this water should it be granted to the person or  
18 entity that wanted to construct whatever it is that would  
19 promote that growth.

20 Q. Is it fair to say that General Moly is not  
21 intending to use this application for irrigation purposes?

22 A. No. We are intending.

23 Q. You also testified earlier that BLM had directed  
24 you, the mine, I'm sorry, not to develop a mitigation plan at  
25 this time? Did I hear that correctly?

1           A.    That's not entirely correct. They instructed us  
2   that our monitoring plan is part of our plan of operations  
3   and that it is as part of the plan of operations it's not to  
4   include a mitigation plan. The mitigation plan was to be  
5   developed in conjunction with the cooperating agencies and  
6   the BLM. It was not to be simply proposed by Eureka  
7   modeling.

8           Q.    But would that direction from the BLM would that  
9   have prohibited General Moly from prohibiting a plan to the  
10   State Engineer in this program?

11           MS. JOSEPH-TAYLOR: Mitigating what,  
12   Ms. Peterson? I don't know what you're really talking about.

13           Q.    (By Ms. Peterson) Well, the testimony seemed to  
14   imply that the mitigation plan wasn't submitted in this  
15   proceeding because the, you haven't come to a finalization of  
16   such a plan with the BLM yet.

17           A.    That's not it. I certainly didn't intend to  
18   imply that. We understand that a monitoring and mitigation  
19   plan will be required by the State Engineer before we pump  
20   water. We will comply with that stipulation.

21           Q.    And is it fair to say that stopping pumping would  
22   not be one of the mitigation techniques or steps that General  
23   Moly would propose in the mitigation plan?

24           MR. DE LIPKAU: Objection. That's way outside  
25   the scope of direct.

1 MS. PETERSON: Well, there was a lot of testimony  
2 about a mitigation plan and being willing to adopt and agree  
3 to anything that had been proposed for mitigation or ordered  
4 by the State Engineer. So I think it is a fair question  
5 within the scope of direct examination.

6 HEARING OFFICER WILSON: I'll let you answer. Go  
7 ahead.

8 THE WITNESS: Could you repeat the question  
9 please.

10 Q. (By Ms. Peterson) The general -- Well, in the  
11 last hearing there was a lot of testimony that stopping  
12 pumping was not an effective mitigation effort for General  
13 Moly. Do you recall that testimony?

14 A. Yes.

15 Q. And is that true today as we sit here today?

16 A. Is it true that stopping pumping would not be  
17 effective mitigation?

18 Q. Would not be a mitigation step or point that  
19 General Moly would propose in a mitigation plan.

20 A. I don't know what we would propose in a  
21 mitigation plan. A mitigation plan hasn't been developed  
22 yet. It would be speculative to say what we would or would  
23 not propose.

24 Q. Okay. Do you know exactly how the mine's pumping  
25 is going to come on line? I mean are all the wells going to

1       come on at the same time, whenever the start date is of  
2       pumping?

3             A.    I don't know that.  Do you mean -- I don't think  
4       I know that.

5             Q.    Okay.  And the mine owns the Bobcat Ranch; is  
6       that correct?

7             A.    That's correct.

8             Q.    And are you aware that the pivots have been moved  
9       off the Bobcat Ranch?

10            A.    Yes.

11            Q.    And how long ago did that happen?

12            A.    I don't recall.

13            MS. PETERSON:  That's all the questions I have.

14            HEARING OFFICER WILSON:  Thank you.

15            Cross, Ms. Ure?

16            MS. URE:  Yes.  Thank you.

17                       CROSS-EXAMINATION

18       By Ms. Ure:

19            Q.    Mr. Rogers, can you please turn to Exhibit 34,  
20       the monitoring plan.  In the monitoring plan it discusses  
21       some use of the USGS information.  Are you aware if that  
22       information has been available and incorporated in to the  
23       monitoring plan?

24            A.    I don't quite understand your question.  I think  
25       what the -- Would you please rephrase it?

1 Q. Yes. So paragraph 12 on page four and also 14.  
2 A. Yes.  
3 Q. They talk about data being collected by the US  
4 Geological Survey.  
5 A. Uh-huh.  
6 Q. Has that information been incorporated in to the  
7 monitoring plan? The information that has been already  
8 collected by USGS, has that been incorporated?  
9 A. In to the monitoring plan?  
10 Q. Uh-huh.  
11 A. The monitoring plan identifies what data will be  
12 collected. It doesn't put data -- The monitoring plan  
13 doesn't have data in it. I don't quite understand the  
14 question.  
15 Q. I guess what I'm getting at is in the -- Is this  
16 USGS information the type of information that will be  
17 included in your monitoring plan?  
18 A. That's what we have proposed. We've proposed to  
19 include USGS and other publically available data as part of  
20 the database that we'll maintain as part of this monitoring  
21 plan.  
22 Q. Does the monitoring plan selectively pick and  
23 choose which parts of that information are used in the  
24 monitoring? So they either use it all or none or do they  
25 pick and choose? Let me back up a little bit. Are you aware

1 that there is a study going on by USGS and Kobeh Valley and  
2 Diamond Valley?

3 A. Yes.

4 Q. And are you aware that that study --

5 MR. DE LIPKAU: Objection. We're going to get in  
6 to the same problem we got in to last time and that is we  
7 know there's a study going on. There will always be a study  
8 going on. I don't think any reference whatsoever should be  
9 made by any parties to about and concerning the study that is  
10 currently underway. So I'm going to object to this line of  
11 questioning.

12 HEARING OFFICER WILSON: I'll sustain your  
13 objection.

14 MR. DE LIPKAU: Thank you.

15 MS. JOSEPH-TAYLOR: I'm going to ask you a  
16 question because I think the confusion I'm hearing from  
17 Ms. Ure is you're wondering what historic data goes in the  
18 monitoring plan and I think you're saying a monitoring plan  
19 is what we're going to do forward. So I don't think you're  
20 communicating. Does that help at all? I think that's where  
21 the confusion is coming. Because in my mind the monitoring  
22 plan is what we collect going forward. It may be a baseline  
23 data and maybe that's what you're asking is historic  
24 information used as baseline data.

25 MS. URE: Right.



1 MS. JOSEPH-TAYLOR: Can you answer that?

2 THE WITNESS: Yeah. We have already compiled  
3 historic data as part of the hydrological modeling effort.  
4 We would continue to collect publically available data, add  
5 it to that database, that would become the product of our  
6 monitoring plan would be used to assess impacts, update the  
7 model, improve our understanding of the hydrology.

8 Q. (By Ms. Ure) Okay. So then you do acknowledge  
9 that that information is part of the baseline, I guess?

10 A. Yes.

11 Q. Okay. On -- Going back to page two in paragraph  
12 eight, it states that the monitoring plan will identify and  
13 characterize changes to the hydraulic environment that would  
14 be caused by groundwater withdrawals. What types of  
15 hydraulic changes are you contemplating identifying here just  
16 generally?

17 A. Changes in water levels in groundwater, changes  
18 in surface water flows.

19 Q. Have there been controls identified as part of  
20 the monitoring plan, I guess like a threshold level saying  
21 our monitoring plan will watch certain wells and if they drop  
22 by X amount then we will go in to a mitigation effort? Has  
23 there -- Does the mine have a policy like that?

24 A. We will work with the regulatory agencies and the  
25 stakeholders to identify triggers to the extent that we can.

1 But in the past I've cautioned people against using just a  
2 numerical trigger. We say if the water level drops ten feet  
3 it sounds good and we favor that because we like a bright  
4 line where we know we're responsible for. But there's a lot  
5 of other factors. Climatic conditions, pumping from other  
6 sources. So to say one numeric standard is not always a good  
7 answer. But again, it's somewhat speculative to say what's  
8 going to be in the final version of this.

9 Q. Okay. Turning to Exhibit 35, your schematic.

10 A. Uh-huh.

11 Q. Is it my understanding that the mine uses a  
12 floatation recovery process to extract the ore?

13 A. Yes. Floatation circuit, yes.

14 Q. Can you briefly describe why this process takes  
15 such a huge number, 11,300 acre-feet of water?

16 A. It's a very large mine. We will process about  
17 60,000 tons of ore every day. All of that ore gets crushed  
18 from big rocks to very fine grains and gets mixed with water.  
19 That's a lot of water.

20 Q. Okay. And there's no other process available to  
21 mine for molybdenum?

22 A. Floatation is the standard preferred really only  
23 proven technology.

24 MS. URE: I have no further questions.

25 HEARING OFFICER WILSON: Thank you. Redirect.

1 MR. DE LIPKAU: Very briefly, yes. I think at  
2 this time we'll hand out the figures to Exhibit 33.

3 HEARING OFFICER WILSON: 34.

4 MR. DE LIPKAU: 34. I'm sorry.

5 HEARING OFFICER WILSON: Let's go off the record  
6 for a minute while we pass those papers around.

7 (Recess was taken)

8 HEARING OFFICER WILSON: I believe we stopped on  
9 redirect, Mr. de Lipkau.

10 MR. DE LIPKAU: Yes. Everyone has now hopefully  
11 received a copy of the figures for Exhibit 34; is that  
12 correct?

13 MS. PETERSON: Yes.

14 HEARING OFFICER WILSON: Yes, Exhibit 34, the  
15 figures, we now have those.

16 REDIRECT EXAMINATION

17 By Mr. de Lipkau:

18 Q. Prior to discussing the figures I asked  
19 Mr. Rogers that if a court of competent jurisdiction ordered  
20 the mine to shut down would the mine comply.

21 A. Yes.

22 Q. Do you understand the points of diversion as set  
23 forth on Figure 35? That's the schematic.

24 A. I don't think there's any points of diversion.

25 Q. We have the wells.

1 A. Yes.

2 Q. I want to make it clear. There will be some  
3 wells in the well field; correct?

4 A. Yes.

5 Q. And there will be some wells perhaps around the  
6 pit in Diamond Valley area; correct?

7 A. It's possible. Right now we think we'll collect  
8 water in sumps.

9 Q. So the Diamond Valley water will either be  
10 developed from groundwater wells around in the pit or perhaps  
11 water will be developed from a sump system at the bottom of  
12 the pit; is that correct?

13 A. That's correct.

14 Q. And I believe you testified that approximately 95  
15 percent of consumption of the water will be consumed in Kobreh  
16 Valley; is that correct?

17 A. That's correct.

18 Q. Do you have the figures in front of you which  
19 were originally missing from Exhibit 34?

20 A. Yes, I do.

21 Q. Okay. Would you please describe figure one.

22 A. Figure one is a comprehensive depiction of the  
23 monitoring points that we have proposed in this June 2010  
24 version. It also shows the projected ten-foot drawdown  
25 contour at five years after pumping. It shows in purple

1 there from the well field drawdown and from the pit area.  
2 This map is color-coded in terms of the reddish dots are  
3 sites that are specifically in Diamond Valley. The blue ones  
4 are in Kobeh Valley. The yellow ones are some in Kobeh  
5 Valley, some in Pine Valley. But that was our monitoring  
6 points there to assess impacts in the Roberts Mountains.

7 In addition there are USGS wells, the half green,  
8 half white. And wells that NDWR monitor are the half yellow,  
9 half black wells.

10 Q. All right. Would you please again tell us where  
11 Exhibit 34 was filed or lodged.

12 A. It was provided as part of our plan of operations  
13 to the BLM. It was incorporated in the preliminary draft of  
14 the EIS that was prepared by the BLM's third party  
15 contractor.

16 Q. So the BLM has a copy of Figure 1?

17 A. Yes.

18 Q. Attached to Exhibit 34?

19 A. Yes.

20 Q. All right. Let's go to Figure 2.

21 A. Figure 2 is the same monitoring locations. The  
22 only difference is we've superimposed the ten-foot drawdown  
23 contour which is based on the 44-year mine life drawdown.

24 Q. So are you saying that the light blue area is the  
25 projections of the 44-year ten-foot contour?

1 A. Yes.

2 Q. And the other points are unchanged, the

3 monitoring points, the red, the green and the yellow dots?

4 A. Correct.

5 Q. Are unchanged?

6 A. Yes, correct.

7 Q. And let's go to Figure 3.

8 A. Figure 3 is simply a blow-up of the Diamond

9 Valley. In fact, all the remaining figures are that where we

10 tried to blow up to allow a reviewer to more closely assess

11 whether impacts in Diamond Valley or Kobeh Valley or the

12 Roberts Mountains were being adequately monitored. So this

13 is just the Diamond Valley locations.

14 Q. On Figure 3 what is the heavy area, heavy lined

15 area basically surrounding the pit?

16 A. I'm not sure if I see a heavy lined area.

17 There's the pit itself. Oh, that's the plan of operations

18 boundary. I'm sorry. Yeah, the heavy line.

19 Q. The heavy line is the plan of operations?

20 A. Yes.

21 Q. And this is the, I'll say the contour lines or

22 drawdowns at the 44-year end of mine life?

23 A. Yes.

24 Q. And Figure 4?

25 A. Figure 4 is a blow-up of the Kobeh Valley

1 monitoring sites and the 44-year drawdown.

2 Q. Okay. And Figure 5?

3 A. Figure 5 is the monitoring locations in the  
4 Roberts Mountains as well as the 44-year drawdown

5 Q. And is the Roberts Mountain drainage depicted on  
6 Figure 5?

7 A. It is not labeled but you can deduce where it is.  
8 It's, if you see those points, number seven, 16, 17, eight,  
9 those points essentially define the Roberts Creek drainage.

10 Q. And is the Diamond Valley drainage depicted?

11 A. Not really a Diamond Valley drainage proper. But  
12 you can see the basin, the basin boundaries are shown in that  
13 reddish-brownish color.

14 Q. So this Figure 5 depicts the drainage lines  
15 between the three basins for which we are concerned?

16 A. That's correct. And those basins are labeled.

17 Q. Pine, Kobeh and Diamond?

18 A. Correct.

19 Q. Thank you. And Figure 6?

20 A. Figure 6 is a map that shows the new wells that  
21 we are in this version the wells that we are proposed to  
22 construct. So in addition to wells that we are proposing to  
23 monitor, there is this handful of I think nine wells that we  
24 were going to drill and complete and monitor.

25 Q. And above the 139 Kobeh Valley there's some I'll

1 call it purple lines; is that correct?

2 A. Yes. That's the well field corridor.

3 Q. And would you please describe what the well field  
4 corridor is.

5 A. The well field corridor is an area that is  
6 proposed for use to provide the power, the piping and the  
7 wells for the water supply system.

8 Q. So it would be the power in to and the pipeline  
9 from the well?

10 A. Correct. And the wells themselves.

11 Q. And the wells are intended to be drilled within  
12 the corridor?

13 A. Yes.

14 Q. And the facility to get the power in and the  
15 water out of it?

16 A. Yes.

17 Q. Let's go to Figure 7.

18 A. Figure 7 is the wells where data is collected by  
19 others. So this was the compilation of publically available  
20 data that we were imposing to incorporate in to our  
21 monitoring plan.

22 Q. I believe the number is 110 points?

23 A. I don't know.

24 Q. Put your glasses on.

25 A. I can't answer. It's possible.



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EUREKA COUNTY, A POLITICAL  
SUBDIVISION OF THE STATE OF  
NEVADA; KENNETH F. BENSON,  
INDIVIDUALLY; DIAMOND CATTLE  
COMPANY, LLC, A NEVADA LIMITED  
LIABILITY COMPANY; AND MICHEL  
AND MARGARET ANN ETCHEVERRY  
FAMILY, LP, A NEVADA REGISTERED  
FOREIGN LIMITED PARTNERSHIP,

Case No. 61324

District Court Case Nos.  
CV 1108-15; CV 1108-156;  
CV 1108-157; CV 1112-164;  
CV 1112-165; CV 1202-170

Electronically Filed  
Dec 27 2012 09:15 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Appellants,

vs.

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

Respondents.

**JOINT APPENDIX**  
**Volume 2**

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**CHRONOLOGICAL APPENDIX TO  
APPEAL FROM JUDGMENT**

<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL</u></b>	<b><u>JA NO.</u></b>
Petition for Judicial Review	08/08/2011	1	01-06
Notice of Verified Petition for Writ of Prohibition, Complaint and Petition for Judicial Review	08/10/2011	1	07- 08
Verified Petition for Writ of Prohibition, Complaint and Petition for Judicial Review	08/10/2011	1	09-59
Summons and Proof of Service, Kobeh Valley Ranch, LLC	08/11/2011	1	60-62
Summons and Proof of Service, Jason King	08/11/2011	1	63-65
Affidavit of Service by Certified Mail	08/11/2011	1	66-68
Notice of Petition for Judicial Review	08/11/2011	1	69-117
Summons and Proof of Service, Kobeh Valley Ranch, LLC	08/15/2011	1	118-120
Summons and Proof of Service, Jason King	08/15/2011	1	121-123
Summons and Proof of Service, The State of Nevada	08/17/2011	1	124-128
First Additional Summons and Proof of Service, State Engineer, Division of Water Resources	08/17/2011	1	129-133
Order Allowing Intervention of Kobeh Valley Ranch, LLC, to Intervene as a Respondent	09/14/2011	1	134-135

<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL</u></b>	<b><u>JA NO.</u></b>
Partial Motion to Dismiss, Notice of Intent to Defend	09/14/2011	1	136-140
Order Allowing Intervention of Kobeh Valley Ranch, LLC, as a Party Respondent	09/26/2011	1	141-142
Answer to Verified Petition for Writ of Prohibition, Complaint and Petition for Judicial Review by Kobeh Valley Ranch, LLC	09/28/2011	1	143-149
Answer to Petition for Judicial Review by Kobeh Valley Ranch, LLC	09/29/2011	1	150-154
Answer to Petition for Judicial Review by Kobeh Valley Ranch, LLC	09/29/2011	1	155-160
Order Directing the Consolidation of Action CV1108-156 and Action No. CV1108-157 with Action CV1108-155	10/26/2011	1	161-162
Summary of Record on Appeal	10/27/2011	2-26	163-5026
Request for and Points and Authorities in Support of Issuance of Writ of Prohibition and in Opposition to Motion to Dismiss	11/10/2011	27	5027-5052
Order Setting Briefing Schedule	12/02/2011	27	5053-5055
Reply in Support of Partial Motion to Dismiss and Opposition to Request for Writ of Prohibition	12/15/2011	27	5056-5061

<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL</u></b>	<b><u>JA NO.</u></b>
Kobeh Valley Ranch's Reply to Conley/Morrison's Request for and Points and Authorities in Support of Issuance of Writ of Prohibition and in Opposition to Motion to Dismiss	12/15/2011	27	5062-5083
Kobeh Valley Ranch's Joinder in the State of Nevada and Jason King's Partial Motion to Dismiss	12/15/2011	27	5084-5086
Petition for Judicial Review	12/29/2011	27	5087-5091
Petition for Judicial Review	12/30/2011	27	5092-5097
Summons and Proof of Service, The State of Nevada	01/11/2012	27	5098-5100
First Additional Summons and Proof of Service, State Engineer, Division of Water Resources	01/11/2012	27	5101-5103
First Amended Petition for Judicial Review	01/12/2012	27	5104-5111
Opening Brief of Conley Land & Livestock, LLC and Lloyd Morrison	01/13/2012	27	5112-5133
Petitioners Kenneth F. Benson, Diamond Cattle Company, LLC, and Michel and Margaret Ann Etcheverry Family LP's Opening Brief	01/13/2012	27	5134-5177
Eureka County's Opening Brief	01/13/2012	27	5178-5243
Eureka County's Summary of Record on Appeal - CV1112-0164	01/13/2012	28	5244-5420
Eureka County's Supplemental Summary of Record on Appeal - CV1108-155	01/13/2012	29-30	5421-5701

<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL</u></b>	<b><u>JA NO.</u></b>
Order Granting Extension	01/26/2012	31	5702-5703
Answer to Petition for Judicial Review	01/30/2012	31	5704-5710
Answer to First Amended Petition for Judicial Review	01/30/2012	31	5711-5717
Supplemental Petition for Judicial Review	01/31/2012	31	5718-5720
Petition for Judicial Review	02/01/2012	31	5721-5727
Summary of Record on Appeal	02/03/2012	31	5728-5733
Record on Appeal, Vol. I, Bates Stamped Pages 1-216	02/03/2012	31	5734-5950
Record on Appeal, Vol. II, Bates Stamped Pages 217-421	02/03/2012	32	5951-6156
Record on Appeal, Vol. III, Bates Stamped Pages 422-661	02/03/2012	33	6157-6397
Answer to Petition to Judicial Review	02/23/2012	34	6398-6403
Answering Brief	02/24/2012	34	6404-6447
Respondent Kobeh Valley Ranch, LLC's Answering Brief	02/24/2012	34	6448-6518
Reply Brief of Conley Land & Livestock, LLC and Lloyd Morrison	03/28/2012	34	6519-6541
Petitioners Kenneth F. Benson, Diamond Cattle Company, LLC, and Michel and Margaret Ann Etcheverry Family LP's Reply Brief	03/28/2012	34	6542-6565
Eureka County's Reply Brief	03/28/2012	34	6566-6638

<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL</u></b>	<b><u>JA NO.</u></b>
Transcript for Petition for Judicial Review	04/03/2012	35	6639-6779
Corrected Answering Brief	04/05/2012	35	6780-6822
Findings of Fact, Conclusions of Law, and Order Denying Petitions for Judicial Review	06/13/2012	36	6823-6881
Notice of Entry of Findings of Fact, Conclusions of Law, and Order Denying Petitions for Judicial Review	06/18/2012	36	6882-6944
Notice of Appeal	07/10/2012	36	6945-6949
Petitioners Benson, Diamond Cattle Co., and Etcheverry Family LP's Notice of Appeal	07/12/2012	36	6950-6951
Excerpts from Transcript of Proceedings	10/13/2008	36	6952-6964

**ALPHABETICAL APPENDIX TO  
APPEAL FROM JUDGMENT**

<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL</u></b>	<b><u>JA NO.</u></b>
Affidavit of Service by Certified Mail	08/11/2011	1	66-68
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Answer to First Amended Petition for Judicial Review	01/30/2012	31	5711-5717
Answer to Petition to Judicial Review	02/23/2012	34	6398-6403
Answering Brief	02/24/2012	34	6404-6447
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Eureka County's Supplemental Summary of Record on Appeal - CV1108-155	01/13/2012	29-30	5421-5701
Eureka County's Summary of Record on Appeal - CV1112-0164	01/13/2012	28	5244-5420
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Eureka County's Reply Brief	03/28/2012	34	6566-6638
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Notice of Entry of Findings of Fact, Conclusions of Law, and Order Denying Petitions for Judicial Review	06/18/2012	36	6882-6944
Notice of Appeal	07/10/2012	36	6945-6949
Opening Brief of Conley Land & Livestock, LLC and Lloyd Morrison	01/13/2012	27	5112-5133

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Supplemental Petition for Judicial Review	01/31/2012	31	5718-5720
Transcript for Petition for Judicial Review	04/03/2012	35	6639-6779
Verified Petition for Writ of Prohibition, Complaint and Petition for Judicial Review	08/10/2011	1	09-59

CERTIFICATE OF APPENDIX (NRAP 30(g)(1))

In compliance with NRAP 30(g)(1) I hereby certify that this Appendix consists of true and correct copies of the papers in the District Court file.

DATED: December 21, 2012.

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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.

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

Respondent.

Case No.: CV 1108-155

Dept. No.: 2

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

Petitioners,

vs.

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

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,

Vs.

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

Respondent,

Case No.: CV 1108-157

Dept. No.: 2

### SUMMARY OF RECORD ON APPEAL

The Record on Appeal in this case is filed concurrently with this summary and consists of a copy of the following documents:

**VOLUME I:** Transcript of Proceedings, Public Hearing, Monday, December 6, 2010, Bates stamped pages 0001 – 000219.

**VOLUME II:** Transcript of Proceedings, Public Hearing, Tuesday, December 7, 2010, Bates stamped pages 000220 – 000414.

**VOLUME III:** Transcript of Proceedings, Public Hearing, Thursday, December 9, 2010, Bates stamped pages 000415 – 000660.

**VOLUME IV:** Transcript of Proceedings, Public Hearing, Friday, December 10, 2010, Bates stamped pages 000661 – 000849.

**VOLUME V:** Transcript of Proceedings, Public Hearing, Tuesday, May 10, 2011, Bates stamped pages 000850 – 000927.

**VOLUME VI:**

1. Certificate of Record, dated August 11, 2011. Bates stamped pages 000928.
2. Exhibit List, Bates stamped pages 000929 – 000933.
3. Notice of Hearing, dated September 21, 2010. Bates stamped pages 000934 – 000939.

- 1      **4.**      Notice of Additional Hearing, dated April 22, 2011. Bates stamped pages 000940 –
- 2                      000942.
- 3      **5.**      Memorandum, dated March 19, 2011. Bates stamped pages 000943 -000949.
- 4      **6.**      Affidavit of Dale Bugenig, dated April 4, 2011. Bates stamped pages 00950 – 000956.
- 5      **7.**      Affidavit of Jake Tibbitts, dated April 4, 2011. Bates stamped pages 000957 – 00963.
- 6      **8.**      Letter from Jarrad C. Miller withdrawing as counsel. Bates stamped pages 000964.
- 7      **9.**      Protestant Morrison submittal, dated October 21, 2010. Bates stamped pages 00965
- 8                      – 000968.
- 9      **10.**     Response to Motions by Applicant, dated November 9, 2010. Bates stamped pages
- 10                    000969 – 000971.
- 11      **11.**     Benson Procedural Motion to submit closing briefs, dated November 8, 2010. Bates
- 12                    stamped pages 000972 – 000974.
- 13      **12.**     Benson Procedural Motion to adopt previous record, dated November 8, 2010. Bates
- 14                    stamped pages 000975 – 000978.
- 15      **13.**     Protest by Lloyd Morrison from files 79911 and 72695, dated August 20, 2010. Bates
- 16                    stamped pages 000979 – 000986.
- 17      **14.**     Protest by Tackett to application 79914, dated August 23, 2010. Bates stamped pages
- 18                    000987 – 000990.
- 19      **15.**     Protest by Tackett to application 79918, dated August 23, 2010. Bates stamped pages
- 20                    000991 – 000994.
- 21      **16.**     Protest by Tackett to application 79925, dated August 23, 2010. Bates stamped pages
- 22                    000995 – 000998.
- 23      **17.**     Application 79938, dated June 15, 2010. Bates stamped pages 000999 – 001003.
- 24      **18.**     Application 79939, dated June 15, 2010. Bates stamped pages 001004 – 001008.
- 25      **19.**     Application 79940, dated June 15, 2010. Bates stamped pages 001009 – 001013.
- 26      **20.**     Application 79941, dated June 15, 2010. Bates stamped pages 001014 – 001018.
- 27      **21.**     Application 79942, dated June 15, 2010. Bates stamped pages 001019 – 001023.
- 28      **22.**     Kobreh Valley List of Witnesses and Evidentiary Material, dated October 19, 2010.
- Bates stamped pages 001024 – 001028.
- 23.**     Notice of Default and Election to Sell. Bates stamped pages 001029 – 001033



24. Warranty Deed (Cedar Ranches). Bates stamped pages 001034 – 001037.
25. Agreement with Eureka Producer's Cooperative. Bates stamped pages 00138 – 001047.
26. Diamond Valley Agricultural Sustainability Trust. Bates stamped pages 001048 – 001049.
27. Halpin Stipulations, dated September 29, 2010. Bates stamped pages 001050 – 001057.
28. Mt. Hope Environmental Permit and Approval Matrix. Bates stamped pages 001058 – 001059.
29. Tables A-C Summary of Eureka Moly, LLC Hydrogeology and Modeling Report Submittals to Eureka County. Bates stamped pages 001060 – 001063.
30. Mount Hope Mine Project Water Resources Monitoring Plan. Bates stamped pages 00164 – 001078.
31. Mount Hope Project Water Flow Illustration. Bates stamped pages 001079.
32. BLM Acceptance letter of July 27, 2010. Bates stamped pages 001080 – 001081.
33. Financial "Package". Bates stamped pages 001082 – 001087.
34. Terry Katzer's Testimony and Appendices A & B. Bates stamped pages 001088 – 001130.

**VOLUME VII & VIII:**

35. Volumes 1 & 2 of Hydrogeology and Modeling. Bates stamped pages 001131 – 001753.

**VOLUME IX:**

36. Report – Kobreh Valley Well Field Data Summary Report 3/8/2010. Bates stamped pages 001754 – 001942.

**VOLUME X:**

37. Proposed Points of Diversion and Place of Use Map. Bates stamped pages 001943 – 001944.
38. Application 72695. Bates stamped pages 001945 – 001947.
39. Application 72696. Bates stamped pages 001948 – 001950.
40. Application 72697. Bates stamped pages 001951 – 001953.

- 1 41. Application 72698. Bates stamped pages 001954 – 001956.
- 2 42. Application 73545. Bates stamped pages 001957 – 001959.
- 3 43. Application 73546. Bates stamped pages 001960 – 001962.
- 4 44. Application 73547. Bates stamped pages 001963 – 001965.
- 5 45. Application 73548. Bates stamped pages 001966 – 001968.
- 6 46. Application 73549. Bates stamped pages 001969 – 001971.
- 7 47. Application 73550. Bates stamped pages 001972 – 001974.
- 8 48. Application 73551. Bates stamped pages 001975 – 001977.
- 9 49. Application 73552. Bates stamped pages 001978 – 001980.
- 10 50. Application 74587. Bates stamped pages 001981 – 001983.
- 11 51. Application 75988. Bates stamped pages 001984 – 001987.
- 12 52. Application 75989. Bates stamped pages 001988 – 001991.
- 13 53. Application 75990. Bates stamped pages 001992 – 001995.
- 14 54. Application 75991. Bates stamped pages 001996 – 001999.
- 15 55. Application 75992. Bates stamped pages 002000 – 002003.
- 16 56. Application 75993. Bates stamped pages 002004 – 002007.
- 17 57. Application 75994. Bates stamped pages 002008 – 002011.
- 18 58. Application 75995. Bates stamped pages 002012 – 002015.
- 19 59. Application 75996. Bates stamped pages 002016 – 002019.
- 20 60. Application 75997. Bates stamped pages 002020 – 002023.
- 21 61. Application 75998. Bates stamped pages 002024 – 002027.
- 22 62. Application 75999. Bates stamped pages 002028 – 002031.
- 23 63. Application 76000. Bates stamped pages 002032 – 002035.
- 24 64. Application 76001. Bates stamped pages 002036 – 002039.
- 25 65. Application 76002. Bates stamped pages 002040 – 002043.
- 26 66. Application 76003. Bates stamped pages 002044 – 002047.
- 27 67. Application 76004. Bates stamped pages 002048 – 002051.
- 28 68. Application 76005. Bates stamped pages 002052 – 002055.
69. Application 76006. Bates stamped pages 002056 – 002059.
70. Application 76007. Bates stamped pages 002060 – 002063.

- 1 71. Application 76008. Bates stamped pages 002064 – 002067.
- 2 72. Application 76009. Bates stamped pages 002068 – 002071.
- 3 73. Application 76483. Bates stamped pages 002072 – 002075.
- 4 74. Application 76484. Bates stamped pages 002076 – 002080.
- 5 75. Application 76485. Bates stamped pages 002081 – 002085.
- 6 76. Application 76486. Bates stamped pages 002086 – 002087.
- 7 77. Application 76744. Bates stamped pages 002088 – 002092.
- 8 78. Application 76745. Bates stamped pages 002093 - 002097.
- 9 79. Application 76746. Bates stamped pages 002098 – 002102.
- 10 80. Application 76802. Bates stamped pages 002103 – 002107.
- 11 81. Application 76803. Bates stamped pages 002108 – 002109.
- 12 82. Application 76804. Bates stamped pages 002110 – 002115.
- 13 83. Application 76805. Bates stamped pages 002114 – 002117.
- 14 84. Application 76989. Bates stamped pages 002118 – 002122.
- 15 85. Application 76990. Bates stamped pages 002123 – 002127.
- 16 86. Application 77171. Bates stamped pages 002128 - 002131.
- 17 87. Application 77174. Bates stamped pages 002132 – 002134.
- 18 88. Application 77175. Bates stamped pages 002135 – 002136.
- 19 89. Application 77525. Bates stamped pages 002137 – 002140.
- 20 90. Application 77526. Bates stamped pages 002141 – 002144.
- 21 91. Application 77527. Bates stamped pages 002145 – 002147.
- 22 92. Application 77553. Bates stamped pages 002148 – 002151.
- 23 93. Application 78424. Bates stamped pages 002152 – 002155.
- 24 94. Application 79911. Bates stamped pages 002156 – 002160.

**VOLUME XI:**

- 25 95. Application 79912. Bates stamped pages 002161 – 002165.
- 26 96. Application 79913. Bates stamped pages 002166 – 002170.
- 27 97. Application 79914. Bates stamped pages 002171 – 002175.
- 28 98. Application 79915. Bates stamped pages 002176 – 002180.
99. Application 79916. Bates stamped pages 002181 – 002185.

- 1 **100.** Application 79917. Bates stamped pages 002186 – 002190.
- 2 **101.** Application 79918. Bates stamped pages 002191 – 002195.
- 3 **102.** Application 79919. Bates stamped pages 002196 – 002199.
- 4 **103.** Application 79920. Bates stamped pages 002200 – 002204.
- 5 **104.** Application 79921. Bates stamped pages 002205 – 002209.
- 6 **105.** Application 79922. Bates stamped pages 002210 – 002214.
- 7 **106.** Application 79923. Bates stamped pages 002215 – 002219.
- 8 **107.** Application 79924. Bates stamped pages 002220 – 002224.
- 9 **108.** Application 79925. Bates stamped pages 002225 – 002229.
- 10 **109.** Application 79926. Bates stamped pages 002230 – 002234.
- 11 **110.** Application 79927. Bates stamped pages 002235 – 002239.
- 12 **111.** Application 79928. Bates stamped pages 002240 – 002244.
- 13 **112.** Application 79929. Bates stamped pages 002245 – 002249.
- 14 **113.** Application 79930. Bates stamped pages 002250 – 002259.
- 15 **114.** Application 79931. Bates stamped pages 002260 – 002264.
- 16 **115.** Application 79932. Bates stamped pages 002265 – 002269.
- 17 **116.** Application 79933. Bates stamped pages 002270 – 002274.
- 18 **117.** Application 79934. Bates stamped pages 002275 – 002279.
- 19 **118.** Application 79935. Bates stamped pages 002280 – 002284.
- 20 **119.** Application 79936. Bates stamped pages 002285 – 002289.
- 21 **120.** Application 79937. Bates stamped pages 002290 – 002294.
- 22 **121.** Eureka County List of Witnesses and Exhibits. Bates stamped pages 002295 –  
23 002307.
- 24 **122.** Eureka County's Proposed Mount Hope Project Water Resources Monitoring  
25 Management and Mitigation Plan. Bates stamped pages 002308 – 002326.
- 26 **123.** CV Dale Bugening. Bates stamped pages 002327 – 002334.
- 27 **124.** CV Carol Oberholtzer. Bates stamped pages 002335 – 002343.
- 28 **125.** CV Steven K. Walker. Bates stamped pages 002344.

**VOLUME XII:**

126. Walker and Associates Report, October 15, 2010. Bates stamped pages 002345 – 002395.
127. Walker and Associates Memorandum. Bates stamped pages 002396 – 002397.
128. Eureka County Public Works, Summary Report June 2008. Bates stamped pages 002398 – 002404.
129. Damale Power Point presentation. Bates stamped pages 002405 – 002431.
130. Eureka County Maps 3 water systems, 2 maps per system. Bates stamped pages 002432 – 002437.
131. KVR June 2010 applications; KVR June 2010 Application Points of Diversion; Mt. Hope Well Field and Place of Use. Bates stamped pages 002438 – 002440.
132. USGS and Eureka County Joint Funding Agreements 2005 – 2010. Bates stamped pages 002441 – 002475.
133. Map of Private land near Mount Hope Project. Bates stamped pages 002476.
134. Wise Family Development, LLC water applications 79962, 79963 and 79964. Bates stamped pages 002477 – 002482.
135. Portion of Eureka County Master Plan, 2010. Bates stamped pages 002483 – 002548.

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136. Eureka County Water Dedication Ordinance. Bates stamped pages 002549 – 002550.
137. State Engineer's Ruling 3569. Bates stamped pages 002551 – 002566.
138. Water Rights Spreadsheet. Bates stamped pages 002567 – 002558.
139. Decree – Pete Hanson Creek, October 8, 1976. Bates stamped pages 002569 – 002593.
140. Kobeh Valley Hydrographic Summaries. Bates stamped pages 002594 – 002605.
141. Pine Valley Hydrographic Summaries. Bates stamped pages 002606 – 002624.
142. Diamond Valley Hydrographic Summaries. Bates stamped pages 002625 – 002677.
143. General Moly Notices of Exploration (original exhibit 163 – cd). Bates stamped pages 002678.
144. Testimony of Jim Gallagher, October 14, 2008. Bates stamped pages 002679 – 002684.

- 1       **145.** Testimony of Tim Halpin, October 13, 2008. Bates stamped pages 002685 – 002709.
- 2       **146.** CV of Rex Massey. Bates stamped pages 002710 – 002711.

3       **VOLUME XIV:**

- 4       **147.** Updated Economic Linkages in the Economy of Eureka County. Bates stamped  
5       pages 002712 – 002773.
- 6       **148.** Eureka County AG Statistics, 1987 – 2007 with attachments. Bates stamped pages  
7       002774 – 002788.
- 8       **149.** Google Earth Map of Protestant's Property. Bates stamped pages 002789.
- 9       **150.** Transcript of Testimony of Ken Benson. Bates stamped pages 002790 – 002793.
- 10       **151.** Water Certificate Nos. 6358, 7874, and 10225. Bates stamped pages 002794 –  
11       002796.
- 12       **152.** Craig Benson Water Certificates 6517 and 6518. Bates stamped pages 002797 –  
13       002798.
- 14       **153.** Water Certificates 7520, 6959, 6960, 6961, 6962. Bates stamped pages 002799 –  
15       002806.
- 16       **154.** USGS contracts evidencing study, FOIA request. Bates stamped pages 002807 –  
17       002827.
- 18       **155.** Benson Protest to Application 79936. Bates stamped pages 002828.
- 19       **156.** Benson Protest to Application 79935. Bates stamped pages 002829.
- 20       **157.** Benson Protest to Application 79934. Bates stamped pages 002830.
- 21       **158.** Benson Protest to Application 79934. Bates stamped pages 002831.
- 22       **159.** Benson Protest to Application 79935. Bates stamped pages 002832.
- 23       **160.** Benson Protest to Application 79936. Bates stamped pages 002833.
- 24       **161.** Benson Protest to Application 79937. Bates stamped pages 002834.
- 25       **162.** Benson Protest to Application 79938. Bates stamped pages 002835.
- 26       **163.** Benson Protest to Application 79939. Bates stamped pages 002836.
- 27       **164.** Submission of Witnesses, A Summary of their testimony and accompanying rebuttal  
28       exhibits. Bates stamped pages 002837 – 002840.
- 165.** ECO Logic Memorandum. Bates stamped pages 002841 – 002851.

1       **166.** Diamond Valley Water Resource Management, March 19, 2009. Bates stamped  
2       pages 002852 – 002917.

3       **VOLUME XV:**

4       **167.** Ruling 2798, dated January 31, 2983. Bates stamped pages 002918 – 002923.

5       **168.** State Engineer publication of January 10, 2010, on consumptive use. Bates stamped  
6       pages 002924 – 002962.

7       **169.** Ruling 4848. Bates stamped pages 002963 – 002986.

8       **170.** Deed wherein KVR acquired Heard Ranch. Bates stamped pages 002987 – 002989.

9       **171.** Dwight Smith report utilizing the 2008 points of diversion – 2010 model. Bates  
10       stamped pages 002990 – 002997.

11       **172.** Letter dated October 1, 2010 addressed to the Eureka Co Commissioners. Bates  
12       stamped pages 002998.

13       **173.** Exxon permits 44431 and 44436. Bates stamped pages 002999 – 003096.

14       **174.** Resume of Jack M. Childress. Bates stamped pages 003097 – 003104.

15       **175.** Corporate Charter and Articles of Incorporation. Bates stamped pages 003105 –  
16       003108.

17       **VOLUME XVI:**

18       **176.** Low, Dennis James, 1982 Geology of Whistler Mountain. Bates stamped pages  
19       003109 – 003252.

20       **177.** Protest to Application 78721, filed by Eureka County on July 10, 2009. Bates stamped  
21       pages 003253 – 003258.

22       **178.** Walker & Associates, November 23, 2010, Technical Memorandum. Bates stamped  
23       pages 003259 – 003267.

24       **179.** Dale C. Bugening, Consulting Hydrologist, LLC November 24, 2010. Bates stamped  
25       pages 003268 – .003297.

26       **180.** Lahontan Geoscience, Inc., November 24, 2010, Technical Memorandum. Bates  
27       stamped pages 003298 – 003313.

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181. Powerpoint of Walker & Associates. Bates stamped pages 003314 – 003326.
182. Powerpoint of Dale C. Bugenig, Consulting Hydrogeologist, LLC. Bates stamped pages 003327 – 003375.
183. Powerpoint of Lahontan GeoScience, Inc. Bates stamped pages 003376 – 003394.
184. Jake Tibbitts, memorandum dated November 29, 2010. Bates stamped pages 003395 – 003406.
185. Protest by Eureka County to Applications 72695-98, 73545-52. Bates stamped pages 003407 – 003409.
186. Protest by Eureka County to Applications 75988-76009. Bates stamped pages 003410 – 003412.
187. Eureka County's Amended Protest to Applications 76005 – 76009. Bates stamped pages 003413 – 003415.
188. Eureka County's protest to Applications 76483 – 76486. Bates stamped pages 003416 – 003418.
189. Eureka County's protest to Applications 76744 – 76746. Bates stamped pages 003419 – 003421.
190. Eureka County's protest to Applications 76802 – 76805. Bates stamped pages 003422 – 003424.
191. Eureka County's protest to Applications 76989 and 76990. Bates stamped pages 003425 – 003428.
192. Eureka County's protest to Application 77171, 77174, 77525-77527. Bates stamped pages 003429 – 003432.
193. Eureka County's protest to Application 77553. Bates stamped pages 003433 – 003438.
194. Eureka County's protest to Application 78424. Bates stamped pages 003439 – 003442.
195. Eureka County's protest to Application 79911-79942. Bates stamped pages 003443 – 003448.
196. Mt. Hope Water Brochure. Bates stamped pages 003449 – 003450.



- 1 197. General Moly Mt. Hope Tour, October 18, 2010. Bates stamped pages 003451 –  
2 003493.  
3 198. Powerpoint of Rex Massey. Bates stamped pages 003494 – 003502.  
4 199. State Engineer's Order 1169. Bates stamped pages 003503 – 003513.  
5 200. Permit 57527. Bates stamped pages 003514 – 003516.  
6 201. Permit 78629. Bates stamped pages 003517 – 003520.  
7 202. Map of Buckingham Land and Water rights. Bates stamped pages 003521.


8 **VOLUME XVIII:**

- 9 203. Map of Etcheverry Family Limited Partnership Land and Water rights. Bates stamped  
10 pages 003522.  
11 204. Map of MW Cattle Co. Land and Water rights. Bates stamped pages 003523  
12 205. Map of Gary Garaventa Land and Water rights. Bates stamped pages 003524.  
13 206. Map of Eureka Livestock Co. Land and Water rights. Bates stamped pages 003525.  
14 207. Map of Federal Reserved Water rights – Stockwater and Domestic. Bates stamped  
15 003526.  
16 208. Future Mining Growth and Development in Kobeh Valley. Bates stamped pages  
17 003527 – 003571.  
18 209. State Engineer's Ruling 6127. Bates stamped pages 003572 – 3613.

19 DATED this 27th of October 2011.

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22 By:

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**CERTIFICATE OF MAILING**

I, Sandra Geyer certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 27th day of October 2011, I deposited for mailing at Carson City, Nevada, postage prepaid, a true and correct copy of the foregoing **RECORD & SUMMARY OF RECORD ON APPEAL**, addressed as follows:

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Sandie Geyer, LSJ  
Office of the Attorney General

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  
Dept. No. 2

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

vs.

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

KENNETH F. BENSON, an individual,  
DIAMOND CATTLE COMPANY, LLC,  
A Nevada Limited Liability Company,  
and MICHAEL AND MARGARET ANN  
ETCHEVERRY FAMILY, LP, a Nevada  
Registered Foreign Limited Partnership,  
Petitioners,

vs.

STATE ENGINEER OF NEVADA,  
OFFICE OF THE State Engineer,  
DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION  
AND NATURAL RESOURCES,  
Respondent.

Case No. CV1108-157  
Dept. No. 2

**STATE ENGINEER'S SUMMARY OF RECORD ON APPEAL**

**VOLUME I:** Transcript of Proceedings, Public Hearing, Monday, December 6, 2010, Bates  
stamped pages 0001 - 000219.

STATE OF NEVADA

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF WATER RESOURCES

BEFORE TIM WILSON, HEARING OFFICER

IN RE:

Applications 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, 76483, 76484, 76485, 76486, 76744,  
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76989, 76990, 77171, 77174, 77175, 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

TRANSCRIPT OF PROCEEDINGS

PUBLIC HEARING

MONDAY, DECEMBER 6, 2010

CARSON CITY, NEVADA

REPORTED BY:

CAPITOL REPORTERS  
Certified Shorthand Reporters  
BY: CHRISTY Y. JOYCE, CCR  
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MONDAY, DECEMBER 6, 2010, 8:30 A.M.

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HEARING OFFICER WILSON: All right. As set forth in the hearing notice of September 21st 2010, this is the time and place noticed for a hearing on Applications 72695 through 72698, 73545 through 73552, 74587, 75988 through 76009, 76483 through 76486, 76744 through 74746, 76802 through 76805, 76989, 76990, 77171, 77174, 77175, 77525 through 527, 77553, 78424, 79911 through 79942.

The authority for this hearing is set forth in Nevada Revised Statute Chapter 533, Subsections 365, 370 and 375.

The purpose of the hearing is to receive testimony and evidence on the protests filed and to receive additional information from the applicant.

As set forth in Nevada Administrative Code 533.220, the court reporter will file an original and one copy of the transcript with the State Engineer. Anyone wanting a copy of the transcript should make arrangements with the court reporter.

I'm Tim Wilson, hearing officer for the Division of Water Resources. To my right is Susan Joseph-Taylor, chief of the hearing section. To her right is Brian Stockton, our deputy AG. To my left is Jason King, the State Engineer. To his left, chief hydrologist Rick Felling. And

1 to his left, Deputy State Engineer Kelvin Hickenbottom.

2 At this time I would like to take appearances for  
3 the record starting with the applicant.

4 MR. DE LIPKAU: Ross de Lipkau and John Zimmerman  
5 on behalf of the applicant. With us, as appeared last time,  
6 is Mr. Michael Branstetter, general counsel to the applicant  
7 hereto and its parent corporation.

8 HEARING OFFICER WILSON: Thank you.

9 MS. URE: Name is Therese Ure. I'm from  
10 Schroeder Law Office representing protestant Ken Benson.

11 MS. PETERSON: Karen Peterson, Allison Mackenzie  
12 law firm appearing on behalf of Eureka County. And on my  
13 left is Ted Beutel, who is the district attorney for Eureka  
14 County.

15 And I'd also like it noted on the record that  
16 three commissioners for Eureka County are present here today:  
17 Chairman Lenny Fiorenzi, Jim Ithurralde and Mike Page.

18 HEARING OFFICER WILSON: All right. I'd like to  
19 ask if there's anybody here on behalf of Lander County.

20 MR. ETCHEVERRY: Yes. Gene Etcheverry.

21 HEARING OFFICER WILSON: And as I understand it,  
22 you're not putting on a case today; is that correct?

23 MR. ETCHEVERRY: Correct.

24 HEARING OFFICER WILSON: Thank you.

25 Baxter Glenn Tackett.



1 MS. PETERSON: It's my understanding, Mr. Wilson,  
2 that Mr. Tackett will be appearing on Friday to present his  
3 testimony in support of this protest.

4 HEARING OFFICER WILSON: I'll just note for the  
5 record there was no prefiled evidence on his behalf and no  
6 indication that he was putting on a full case.

7 Cedar Ranches, LLC? For the record, there's no  
8 one here.

9 Allen Chamberlain on behalf of Cedar Ranches did  
10 indicate he wishes to present a power point presentation.  
11 And he prefiled a few new slides in addition to his original  
12 power point presentation. He was planning on presenting that  
13 when the protestants go on Thursday. He does not intend to  
14 put on a full case.

15 Lloyd Morrison.

16 MS. PETERSON: I know Mr. Morrison was going to  
17 appear today. And I've heard that the weather, there is some  
18 weather problems between here and Eureka County. So I don't  
19 know if that delayed him or not. But I know that he had  
20 intended to be here.

21 HEARING OFFICER WILSON: And we do have a letter  
22 from Mr. Morrison indicating that he was called as a witness  
23 for Eureka County; is that correct? He's on your list?

24 MS. PETERSON: He's on the list but it's my  
25 understanding he's going to be presenting his case as a

1 protestant.

2 HEARING OFFICER WILSON: Okay. There was also a  
3 protest by David S.A. Stine and that protest was stepped in  
4 to essentially by Conley Land and Livestock Company as a  
5 successor. And I talked to Ken Conley prior to the hearing.  
6 He has a statement only that he would like to give on  
7 Thursday when the protestants go and he will not be  
8 presenting a full case.

9 Are there any other protestants in this matter  
10 that I failed to call? For the record there are none.

11 At this time I'd like to go ahead and mention  
12 some of the state's exhibits. Exhibit 1 is the notice of  
13 hearing September 21st 2010.

14 Exhibit 9 is the letter from Jarrad C. Miller.  
15 He is with Robertson Benevento Law Firm and that is a letter  
16 withdrawing as a counsel for any protestants in this matter.

17 Exhibit 10 is the letter I mentioned from  
18 Morrison.

19 Exhibits 21 through 25 and Exhibits 43 through  
20 125 are the applications. And I've already read previous  
21 application numbers in to the record. Is there any objection  
22 to the admission of those exhibits?

23 MR. DE LIPKAU: No.

24 HEARING OFFICER WILSON: Hearing none, they'll be  
25 admitted.

1           As provided for in Nevada Administrative Code  
2   533.300, I'd like to take administrative notice of the files  
3   and records of the office of the State Engineer. And with  
4   that, I'll address some preliminary matters. We had a motion  
5   filed on behalf of Mr. Benson. We'll deal with -- The first  
6   motion was to take the testimony of Craig Benson out of  
7   order. There was no opposition to that motion.

8           MS. URE: We would actually like to withdraw that  
9   motion. He's made alternative arrangements to be here  
10   towards the end of the week so we can withdraw that.

11          HEARING OFFICER WILSON: Mr. de Lipkau, any  
12   comment on that?

13          MR. DE LIPKAU: No.

14          HEARING OFFICER WILSON: There's also a motion on  
15   behalf of Mr. Benson to incorporate the previous record.  
16   There was no opposition to that motion. That is Exhibit 13.

17          MR. DE LIPKAU: I believe we filed a consent to  
18   that motion, Mr. Wilson.

19          HEARING OFFICER WILSON: Thank you. Just notice  
20   for the record Exhibit 14 was to hear the testimony out of  
21   order. Since there is no opposition to that motion we will  
22   approve your motion and incorporate the previous record. And  
23   we'll admit Exhibit 13 in to the record. And since you're  
24   withdrawing the procedural motion to take testimony out of  
25   order we don't need Exhibit 14.

1           The last issue was a motion on behalf of  
2 Mr. Benson to submit closing briefs. We would like to decide  
3 that at the end of the hearing and see how the hearing goes  
4 before we decide that. And I'll just mention that's Exhibit  
5 Number 12. Let's go ahead and admit the motion, Exhibit 12,  
6 and the response from the applicant, Exhibit 11.

7           Are there any other preliminary matters we need  
8 to take care of before we start?

9           MR. DE LIPKAU: I believe there may be one and  
10 that is because the applicant is required in this hearing to  
11 go first it will probably be necessary for us to call  
12 rebuttal witnesses after the protestants proceed.

13          HEARING OFFICER WILSON: We'll deal with that  
14 when the time comes.

15          MS. PETERSON: I would just like to say for the  
16 record that we would object to that request. The notice  
17 clearly sets forth what the schedule was for submitting  
18 evidence and your list of witnesses and that the applicant's  
19 case would go first. So if the applicant is going to present  
20 rebuttal in response to the protestant's case then, you know,  
21 we would be given the opportunity to submit rebuttal to  
22 support our protest also.

23          So my understanding was based on the hearing  
24 notice that the applicant would present all its case on  
25 Monday and Tuesday and the intervenors would present all

1 their case on Thursday and Friday. And the State Engineer  
2 should follow through on the notice of hearing and follow  
3 that procedure.

4 MS. URE: And on behalf of Ken Benson I would  
5 object as well.

6 HEARING OFFICER WILSON: At this time generally  
7 most people like to do their opening statements right in  
8 front of their case or do you want to do opening statements  
9 right in the beginning? I'll give you a choice.

10 MS. PETERSON: I'd like to do my opening  
11 statement now after the applicant's.

12 MS. URE: That's fine.

13 HEARING OFFICER WILSON: Okay. Mr. de Lipkau,  
14 why don't you start with your opening statement and then  
15 we'll follow with the protestants.

16 MR. DE LIPKAU: Thank you. This is not a water  
17 rights case. This case is something else that we will learn  
18 later. As previously stated, we agree wholeheartedly that  
19 all evidence, testimony, including the judicial proceedings  
20 in January of this year before Judge Papez will be  
21 incorporated.

22 Page seven of the transcript before Judge Papez,  
23 counsel for Eureka County said, "So the burden is not on the  
24 protestant. The burden is on the applicant." This statement  
25 is absolutely incorrect. It is in direct violation and

1 contradiction of the State Engineer's policy as set forth in  
2 Ruling 4848, which will be discussed later.

3 We do not know now nor have we ever known what  
4 Eureka County, a governmental entity, really wants. We do  
5 not know why it is so vigorously protesting these  
6 applications and apparently wants to kill the project.

7 It is imminently clear by law that the State  
8 Engineer controls all water in the State of Nevada as found  
9 in NRS 533.301, Subsection 1, which reads, "Subject to  
10 existing rights and except as otherwise provided in this  
11 chapter, all water may be appropriated for beneficial use as  
12 provided in this chapter and not otherwise." Thus the State  
13 Engineer controls all water in the State of Nevada. The 16  
14 counties in Nevada plus Carson City do not control the water  
15 within their jurisdiction.

16 It is quite clear at the last hearing that KVR,  
17 the applicant, required in excess of 16,000 acre-feet of  
18 previously permitted and certificated groundwater rights as  
19 the source.

20 The water we are seeking here today has already  
21 been appropriated by the State Engineer's office twice. That  
22 is we have administrative res judicata.

23 One, back in 1983 the State Engineer approved  
24 what we will refer to as the Exxon permits for approximately  
25 8700 acre-feet. A review of the public records would

1 indicate that at the time those two permits were granted the  
2 previously appropriated groundwater in Kobeh Valley exceeded  
3 12,000 acre-feet. Thus in 1983 the State Engineer granted  
4 permits in excess of 20,000 acre-feet without -- Pardon me --  
5 by finding pursuant to NRS then 533.370, Sub 3, now Sub 5.  
6 That one, there was unappropriated water in the proposed  
7 source of supply. And two, the pumping of the Exxon permits  
8 would not tend to impair existing rights. That is finding  
9 one.

10 Finding two is the State Engineer's Ruling 5966  
11 which found the same thing. Remember, that finding was made  
12 for the purpose of the judicial ruling was for the State  
13 Engineer to hear evidence on the 2010 model erroneously  
14 referred to as the BLM model. We'll refer to it as the 2010  
15 model.

16 There's no dispute, as previously set forth in  
17 the prior hearing, that the recharge to Kobeh Valley is in  
18 the magnitude of 16,000 acre-feet. There is no question that  
19 the volume sought to be developed by Kobeh Valley, KVR for  
20 the life of the mine will not exceed 11,300 acre-feet  
21 annually. The facts previously submitted where there are 543  
22 acre-feet previously permitted at the mine site, the source  
23 being Diamond Valley and that 610 -- pardon me -- 616  
24 acre-feet were transferred to the mine site in Diamond Valley  
25 from previously existing certificated groundwater rights from

1 what is known as the Gail Ranch.

2 I'd like to expressly incorporate the findings  
3 the State Engineer made in Ruling 5966.

4 We will prove that the 2010 numerical model as  
5 required by Judge Papez to be presented to the State Engineer  
6 will indicate a zero effect, meaning no measurable effect on  
7 the groundwaters of Diamond Valley or upon the surface waters  
8 in nearby sources.

9 An agreement was made with the farm growers  
10 cooperative. Pursuant to that agreement, which will be  
11 discussed later, certain funds have been set aside for the  
12 retirement of groundwater rights in Diamond Valley or for the  
13 purpose of coming up with new water conservation advice.  
14 Under no circumstances will any groundwater owner in Diamond  
15 Valley be able to legitimately claim that there will tend to  
16 be an impact to his water rights.

17 We will specifically prove the following: Number  
18 one, there is unappropriated water in the proposed source of  
19 supply. NRS 533.370, Sub 5. There will be no conflict to  
20 domestic wells or to any prior rights caused by the pumping  
21 of 11,300 acre-feet annually.

22 The applicant is in full compliance with NRS  
23 533.370, Sub 6, which is the transbasin diversion, which we  
24 will describe in detail later. Neither Eureka County nor any  
25 protestant or individual will have his or her due process



1 rights violated. The ultimate decision of the State Engineer  
2 will not be arbitrary, capricious and unreasonable.

3 Eureka County is absolutely incorrect in its  
4 belief that the State Engineer can grant a groundwater permit  
5 only if and provided that the development of groundwater is  
6 almost immediately dries up an equal volume of phreatophyte.  
7 This is simply not founded in law or in fact. There will be  
8 no model flaws, but experts of equal experience and  
9 qualifications will always disagree upon the literally  
10 millions of figures and computations within the model. The  
11 model being the 2010 model is most acceptable as we will  
12 prove has been approved by the Bureau of Land Management.

13 A model is one of many means of predicting the  
14 effect of pumping upon a nearby source. A model is merely  
15 one of many tools to arrive at the effect. We will prove  
16 through three independent means, the fourth one being the  
17 model, that there will be no adverse effect upon a person's  
18 rights being up Roberts Mountain on both sides and to Kobeh  
19 Valley, no impact upon existing rights.

20 A mitigation plan, which apparently is the heart  
21 of this case or perhaps is the heart of this case, will be  
22 entered in to. It will be agreed to by the BLM. It will be  
23 agreed to by the State Engineer. There will be input and we  
24 encourage input from Eureka County on the model.

25 I want to again reiterate that the State Engineer

1 conveys the water in the state.

2 Financial ability, which we will prove today, is  
3 abundantly clear. The project is not a scam. It is not a  
4 fraud. It is a world class scale molybdenum mining operation  
5 which will definitely proceed forward.

6 There is no conflict with the place of use and  
7 the points of diversion. For the benefit of all parties, we  
8 have prepared a chart which will be introduced later  
9 describing the water rights, the subject of today's hearing,  
10 a chart that was simply prepared off the public records and  
11 we will not be discussing it.

12 Transbasin diversion will be fully mitigated.  
13 There is no attempt to prohibit future development in either  
14 Diamond Valley or Kobeh Valley. As will be testified later,  
15 water will be made available by the applicant for future  
16 development in both valleys.

17 A conservation plan as set forth in the statute  
18 was not required to be submitted in Ruling 5966, however, for  
19 the benefit of all the parties you will and have submitted a  
20 conservation plan which will be discussed.

21 There will be no unreasonable luring of the  
22 stagnant water table. As previously stated, we will prove to  
23 four different independent needs that number one, the water  
24 is available, and two, there will be no impact.

25 Again, to the point of being repetitious, a model

1 is merely one means of determining the effect of groundwater  
2 pumping.

3 As I previously stated, the precedent has already  
4 been set by this office for the permitting of the water  
5 right. Number one is the Exxon permits. And number two is  
6 5966.

7 I previously stated that 543 acre-feet exist at  
8 the site and that 616 acre-feet were successfully transferred  
9 with the consumptive discount in Ruling 5966. They are owned  
10 by the company, by the applicant. 473 acre-feet of  
11 groundwater remaining at the Gail Ranch and the Herd Ranch  
12 was recently acquired for -- it came with 692 acre-feet for a  
13 total volume held and owned by the applicant in Diamond  
14 Valley in excess of 1150 acre-feet annually.

15 So with that I would like to call our first  
16 witness, Mr. David Chapman. Mr. Chapman.

17 HEARING OFFICER WILSON: Mr. de Lipkau, we were  
18 going to do the opening statements for the protestants. As  
19 you recall, they wanted to go ahead and do theirs now.

20 MR. DE LIPKAU: Oh, they wanted to go ahead now.  
21 I misunderstood. That's fine.

22 MS. PETERSON: Thank you.

23 HEARING OFFICE WILSON: Go ahead.

24 MS. PETERSON: NRS 533.370, Subsection 5 provides  
25 that where there's no unappropriated water in the proposed

1 source of supply or the proposed use conflicts with existing  
2 rights or protectable interest in domestic wells or threatens  
3 to prove detrimental to the public interest the State  
4 Engineer shall, shall reject the application and refuse to  
5 issue the requested permit.

6 So in reviewing the applications before you, you  
7 need to look at all sections of the statutes and not ignore  
8 certain sections of the statute as the applicant is  
9 requesting that you do. And the same holds true for the  
10 interbasin transfer statute. The interbasin transfer statute  
11 has certain requirements and findings that the State Engineer  
12 must make and if the State Engineer cannot make these  
13 findings, the State Engineer cannot grant the applications  
14 and cannot grant the interbasin transfer. And existing right  
15 holders, existing right holders should be able to rely on  
16 you, the State Engineer, to uphold the mandates of the  
17 statute.

18 Proposed use conflicts with existing rights and  
19 not grant applications where the evidence shows that the  
20 proposed use does conflict with existing rights but instead  
21 grant the applications subject to a future monitoring,  
22 management and mitigation plan.

23 And the proposed use conflicts with existing  
24 rights or language similar to that has been on the books, in  
25 the statutes in Nevada since 1913.

1                   And in those cases where the State Engineer,  
2                   including you, State Engineer, have determined that there are  
3                   uncertainties with regard to a project or you have determined  
4                   that there needs to be a cautious approach with regard to  
5                   water resource management and that more data needs to be  
6                   collected because of the uncertainty with regard to impacts  
7                   and you need to learn about those impacts.

8                   You've ordered staged gradual water development  
9                   in conjunction with a monitoring, management and mitigation  
10                  plan and not just granting the wholesale appropriation, all  
11                  the appropriation of a large water project and subject to a  
12                  management, monitoring and mitigation plan.

13                  So the evidence before you will show the  
14                  applicant's hydrogeology report that's been submitted in this  
15                  case, which is Exhibit 39 in volume one at pages 188 to 189,  
16                  indicates that the model offers the best available tool for  
17                  making predictions and it suggests a potential for impact to  
18                  spring flows in the Roberts Creek and Henderson Creek.

19                  The report goes on to state, "These impacts are  
20                  projected to occur near the end of mining or decades after  
21                  mining activity ceases."

22                  Further down on page 189 of Exhibit 39 in volume  
23                  one, the report states, "Springs located in lower altitudes  
24                  in the Roberts Mountains such as sites 630 and 640, and those  
25                  are show in Figure 4.4-20, are more likely to be impacted due

1 to closer proximity to the Kobeh Valley central well field,  
2 resulting in a larger predicted drawdown at these locations.

3 Discharge at Mud Springs, site 721, and Lone  
4 Mountain Spring, site 742, located near the southeast edge of  
5 the Kobeh Valley central well field near proposed Well 226  
6 are predicted to be impacted and will likely cease the flow  
7 based on predicted drawdowns of 40 to 50 feet.

8 Both of these springs discharge less than  
9 approximately one gallon per minute." Apparently that's  
10 according to the date that they were measured.

11 But when you look at the right on Mud Spring,  
12 site 721, it's Application 12748, Certificate 5880 currently  
13 owned by the Etcheverry Family Limited Partnership. The  
14 application was filed in 1948 and the certificate was issued  
15 in 1965. The amount of the appropriation under the  
16 certificate is 0.015 CFS or sufficient water for 500 cattle,  
17 5,000 sheep and 50 horses.

18 So while the spring discharge may be considered  
19 minor to some on the date that the spring was measured, the  
20 right allows water sufficient to water 500 cattle, 5,000  
21 sheep and 50 horses.

22 In the protest filed by Eureka County to the  
23 recent applications that were filed by General Moly and Kobeh  
24 Valley Ranch, the very first protest of Eureka County states,  
25 "The proposed use conflicts with or will impair and interfere

1 with existing rights or protectable interest in existing  
2 domestic wells and threatens to prove detrimental to the  
3 public's interest."

4 So in presenting evidence, Eureka County  
5 presenting evidence in support of its protest, Eureka County  
6 will have before you water right users and holders from Kobeh  
7 Valley and Pine Valley whose rights will be affected by the  
8 mine's pumping based on its model or based upon the five foot  
9 contour that Eureka County advocates that the State Engineer  
10 considers impacts to existing rights or based upon the  
11 alternative well field sites that are in Exhibit 39, there is  
12 a north alternative site and a west alternative site that  
13 shows different impacts for proposed well fields or based on  
14 Exhibit 116 from the last hearing, which now the applicant  
15 has incorporated by reference in to this proceeding.

16 So Martin Etcheverry's family, and he will be  
17 testifying, has been ranching in Roberts Creek since 1947.  
18 He will testify that the ranch is the closest property to  
19 Well 206. The Roberts Creek Ranch has always used water from  
20 Roberts Creek, Vinini Creek and Henderson Creek for  
21 irrigation and stock watering purposes. They have a domestic  
22 well at Roberts Creek.

23 One of the Etcheverry certificate water rights  
24 shown in Table 4.4-10, and that's in Exhibit 39, it's  
25 highlighted in blue and there's a lot of springs that are

1 highlighted in blue. The blue highlighting indicates "it is  
2 a spring near the proposed pit area that may have permanent  
3 water level impact."

4 And when you look at the water right that that's  
5 referring to, it's Application 4768, Certificate 1986. The  
6 application was filed in December 1917, close to a hundred  
7 years ago. And per the certificate, the amount of the  
8 appropriation is 0.10 CFS. There was a dam constructed  
9 across the channel leading from the spring creating a  
10 reservoir. The water is conveyed from the reservoir by means  
11 of a one and a half inch pipe to troughs located in the same  
12 legal subdivision as the point of diversion. The use is for  
13 stock watering purposes. And the duty balance that's shown  
14 on the State Engineer's website for this is 24.21 acre-feet  
15 per season.

16 You'll also hear that Roberts Creek runs year  
17 round to the ranch, through the ranch and to the bottom.  
18 Portions of Vinini and Henderson Creek are always running.  
19 95 percent of the mine's well field is within the Etcheverry  
20 family's BLM allotment. And Mr. Etcheverry will describe all  
21 the improvements on the infrastructure of that that his  
22 family has put in and they use for their water.

23 Mr. Garaventa is a third generation Nevadan.  
24 He's lived in Eureka since 1976. He has 160 acres in Kobeh  
25 Valley and he has two groundwater stock watering wells in



1 Kobeh Valley.

2 In addition, Rutabaga Creek runs through his two  
3 properties and it provides pasture for his livestock.

4 Jim Etcheverry has owned the Three Bar Ranch  
5 since 1954. 90 percent of his water from his operation comes  
6 from the springs in the Coils Canyon area. His ranch is  
7 northwest of Mud Springs and his springs for stock watering  
8 are Jack, Meadow and Rutabaga.

9 And John Colby will testify. He has numerous  
10 stock watering wells in Grub Flat. He owns the Ferguson and  
11 Santa Fe Ranch and he's lived in Eureka County for nine  
12 years. He will testify that taking any of his water will  
13 cause a hardship and will hurt him. He bought his ranch  
14 because of easy flowing water, water close to the surface.

15 There will be other water right users that will  
16 also testify and they will testify that water is vital to  
17 their operations and without water their operations are  
18 nothing.

19 The tables and figures in Exhibit 39, volumes one  
20 and two, show that the impacts projected to occur will occur  
21 at the end of the mining or for decades after the mining  
22 operation ends. And the proposed life of this mine is 44  
23 years. That's two generations. And in 44 years from now I  
24 don't think many of us here are going to be the ones that are  
25 going to be monitoring the mines that are pumping, two

1 generations from now. And we need to make sure that those  
2 who are monitoring the mine pumping 44 years from now are not  
3 going to ask how could this have happened if these impacts  
4 were predicted or are worse than the predicted impacts.

5 And you have experience with mining operations in  
6 Nevada. There's been mining operations in Eureka County and  
7 there's been mining operations in White Pine County. And you  
8 know that models needs to be updated. They need to be  
9 modified. They need to be approved during the pumping. You  
10 know that mine pumping can impact water resources that are  
11 miles away from the mine pumping. And you also know even  
12 most recently that the Robinson Creek affected the City of  
13 Ely's municipal water supply, Murray Springs. Murray  
14 Springs, which is located as the crow flies eight to nine  
15 miles away from the mine's proposed pumping.

16 And notwithstanding all the figures and tables  
17 that are in Exhibit 39 that show the impacts to existing  
18 water rights, which are streams, springs and underground  
19 wells and not withstanding all the text that's in Exhibit 39  
20 that talks about the predicted impacts based upon the best  
21 predictive tool or model that we have available to us right  
22 now. The applicant has not proposed any specific plan or any  
23 concrete steps to mitigate impact to existing rights,  
24 existing rights that by the records in your own office show  
25 that they're nearly a hundred years old.

1           And the report acknowledges that the applicant  
2           has developed a numeric model to simulate groundwater flow  
3           and to predict impacts from its proposed pumping and it also  
4           acknowledges that the water rights affected are very close to  
5           the mine, wells and its proposed well field.

6           But under the applicant's monitoring proposal,  
7           just its monitoring proposal, it does not propose to update  
8           the model until three years, two times every three years  
9           within the first six years of the mine's initial production,  
10          production well level pumping and every five years  
11          thereafter.

12          So using the best predictive tool that the mine  
13          has presented to you and based on the fact that under its  
14          monitoring plan it will be collecting all of this data  
15          probably quarterly and maybe in some instances even more  
16          frequently than quarterly, it proposes that its best  
17          predictive tool, the model, can only be used less than ten  
18          times during the whole course of the mine operation.

19          The proposed use conflicts with existing rights.  
20          Even if you find that there's water available to appropriate  
21          in this source, you've always held that the proposed use  
22          conflicts with existing rights, it's detrimental to the  
23          public interest and you have denied the application. In this  
24          case, the applications must be denied under the statute.  
25          Thank you.

1 HEARING OFFICER WILSON: Thank you.

2 Ms. Ure.

3 MS. URE: Thank you. This case is about water  
4 rights and it is about the impact of use of those mining  
5 water rights on the existing water right holders, their way  
6 of lives, their generations of agricultural interest and it  
7 cannot, you know, the agricultural must continue. Everybody  
8 wants that to continue. They've been there for generations.  
9 Ken Benson has lived in Eureka County all of his life. He's  
10 a farmer. His son is now partaking in that business. And  
11 they want their children to be here and continue taking part  
12 in that family business.

13 Ken Benson protested the Application 79934  
14 through 79939 and all of those related to Well 206 and Kobeh  
15 Valley. While the statutes require the State Engineer to  
16 protect those existing rights, the effects of the proposed  
17 use on Well 206 alone have shown through their modeling  
18 efforts thus far that the effects will go out miles and the  
19 drawdown will be very significant. So there will be an  
20 impact on these existing rights.

21 Further, the water is not available in the  
22 amounts they're requesting. And the studies, the mine and  
23 then the USGS study that's currently in phase three and not  
24 completed yet will show that the Diamond Valley is part of a  
25 regional flow system and not just localized to one area. And

1 we argue that that study should be incorporated in its  
2 entirety when it becomes available.

3 Again, the 11,300 acre-feet of proposed use will  
4 cause an injury. And if it's appropriated then it should be  
5 properly conditioned. The State Engineer has authority to  
6 condition permits and should do so.

7 As Ms. Peterson was just stating, the management,  
8 monitoring and mitigation plans needs to be a constant  
9 evolving document and plan. It can't just be set now and  
10 then, you know, 20 years from now when there are irreparable  
11 harm not be updated.

12 We argue that the monitoring plan should include  
13 wells that transmit data in real time and that they're  
14 publically available and that any mitigation plan includes  
15 checkpoints where water can be shut off or curtailed to  
16 resolve any irreparable harms.

17 Drawdown of a water table and a trans, like a  
18 trans -- I can't remember the term. When the water is being  
19 moved from one equilibrium down to another, that's still  
20 drawing down the water table. Whether you want to call it a  
21 well drawdown or some other language, it's still happening  
22 and it is an irreparable harm that should be accounted for  
23 and mitigated. Thank you.

24 HEARING OFFICER WILSON: Thank you.

25 Ross, I believe we're ready for the applicant's

1 first witness.

2 MR. DE LIPKAU: All right. I'd like to call Mr.  
3 David Chaput.

4 (Witness was sworn in)

5  
6 DAVID CHAPUT

7 Called as a witness on behalf of the  
8 Applicant, having been first duly sworn,  
9 Was examined and testified as follows:

10  
11 DIRECT EXAMINATION

12 By Mr. de Lipkau:

13 Q. Please state your full name.

14 A. David Chaput, C-h-a-p-u-t.

15 Q. Where do you reside?

16 A. I reside in Denver, near the City of Denver?

17 Q. What is your occupation?

18 A. I'm the chief financial officer of General Moly.

19 Q. What is your educational background?

20 A. I have both a Bachelor's degree in business  
21 administration and accounting and finance and a Master's  
22 degree in the specialization of finance.

23 Q. And how many years experience do you have in  
24 mining accounting or mining finance?

25 A. I've been employed in the mining natural

1 resources industries for over 30 years.

2 Q. What are your current duties?

3 A. I'm responsible for all financial administrative  
4 functions of General Moly.

5 Q. And how long have you been employed by General  
6 Moly?

7 A. Since April of 2007.

8 Q. And do you recall testifying before this body in  
9 October of 2008?

10 A. Yes.

11 Q. And have you reviewed the exhibits and the  
12 testimony set forth at that hearing?

13 A. Yes.

14 Q. Do you wish to make any changes to that  
15 testimony?

16 A. No.

17 Q. Would you please turn to Exhibit 37.

18 A. Which one is that?

19 Q. 37. Would you please turn to page two of Exhibit  
20 37 and briefly describe what is set forth on page two.

21 A. Exhibit -- Page two in the exhibit is an overview  
22 of General Moly. It describes the two assets, the main  
23 assets that the company has, the Mount Hope project and the  
24 Liberty project, both of them in Nevada, both molybdenum  
25 mines. The exhibit talks about the significant partnerships

1 that General Moly has with Hanlong, a significant Chinese  
2 investor, ArcelorMittal, the world's largest steel producer  
3 which is a large investor in General Moly and POSCO, which is  
4 a Korean steel producer which owns 20 percent of the Mount  
5 Hope project.

6 It is also goes on to describe that the financing  
7 of the project for Mount Hope has been arranged and the  
8 outtake on the project for the first five years is fully  
9 committed to customers.

10 Q. All right. Would you please describe the  
11 financing as completed on page three of the exhibit.

12 A. Page three is an exhibit of the financing plan.  
13 The total funds required for the project are 1,154,000,000.  
14 And that's described on the top portion of the exhibit. That  
15 is to be funded, but 20 percent by POSCO and 80 percent by  
16 General Moly.

17 The bottom portion of the exhibit is a  
18 description of General Moly's plan to source those funds.  
19 The total needed for General Moly is 923 million on the top.  
20 And on the bottom left-hand side of the schedule we list out  
21 the various sources. The first piece listed is a Chinese  
22 bank loan that's been being arranged by Hanlong, one of our  
23 investors, the Chinese company. We've already spent 163  
24 million dollars out of our cash. We have cash on hand. This  
25 exhibit is as of June 30th, the cash on hand of 23 million.



1 POSCO will pay us 56 million for their third piece of the  
2 purchase price of the 20 percent of the Mount Hope Mine.

3 Q. When will that occur?

4 A. That will occur when we get the EIS permit.  
5 Hanlong is purchasing stock in General Moly for 80 million  
6 dollars. And we've listed 24 million dollars of warrant  
7 proceeds which we have warrants that are due in February of  
8 2011 that will bring in approximately 24 million dollars in  
9 cash.

10 Q. What's a warrant?

11 A. A warrant is essentially an option to buy the  
12 shares. These warrants were issued several years ago to  
13 investors and they give that investor the right to buy shares  
14 of stock at \$3.75.

15 Q. And what is today's price?

16 A. This morning when I checked, the price was almost  
17 six dollars.

18 Q. Would you go to the right-hand column.

19 A. Yes.

20 Q. And under Eureka Moly capital expenditures.

21 A. The total capital expenditures of the project,  
22 these are the uses. The left-hand side of the schedule are  
23 sources. The right-hand side are the uses of those funds.  
24 The uses of the funds for the full project, 1154,  
25 \$1,039,000,000 is for the actual building of the mine. There

1 is 115 million dollars of working capital required also to be  
2 invested. Of that, the share of the funding, the 923 million  
3 dollars that General Moly brings, there's also interest on  
4 the loan of, during the construction period of 49 million and  
5 then 15 million dollars of various fees for a total funding  
6 required of 987 million and to the sources on the left side  
7 for General Moly one billion, one million.

8 Q. And has Hanlong put up all of its cash yet?

9 A. No, they haven't. Their first scheduled 40  
10 million dollar payment is scheduled to come on December 20th  
11 of this month.

12 Q. Has Hanlong invested in other industrial entities  
13 in the United States?

14 A. No, not in the United States.

15 Q. This is the first one?

16 A. Yes.

17 Q. Okay. Do you believe there is enough funds  
18 available and/or committed to carry out construction and  
19 operation of the plant?

20 A. Yes.

21 Q. Is the attempt to obtain water rights from the  
22 State of Nevada speculative in nature?

23 A. No.

24 Q. This is a serious mining operation?

25 A. Yes, it is.

1 Q. Is the mining company moving ahead -- Is the  
2 applicant moving ahead in good faith?

3 A. Yes.

4 Q. Would you please discuss and describe page four.

5 A. Page four is a summary of the Hanlong transaction  
6 that I referred to earlier. It vows Hanlong sourcing and  
7 guaranteeing a 14-year loan at Libor plus two to four percent  
8 in the amount of 665 million. They'll provide 80 million by  
9 purchasing 25 percent of General Moly's fully diluted shares.  
10 40 million of that will be funded this December 20. And they  
11 also make available a 20-million-dollar bridge loan for  
12 interim financing between now and the delivery of the Chinese  
13 bank loan.

14 Q. Excuse me. Did you say that 40 million dollars  
15 would be paid this December 20th in just a couple weeks?

16 A. Yes.

17 Q. Okay. Please continue.

18 A. Also we've entered in to a molybdenum supply  
19 agreement with Hanlong where we will supply in the first five  
20 years of operation about 16 and a half million pounds  
21 annually to Hanlong. 25 percent of that is priced with a  
22 floor price that's approximately between \$12.50 and \$13.50  
23 regardless of even if the molybdenum price is less than that.  
24 And it's 75 percent is based on the stock price of  
25 molybdenum.

1 Q. Can you describe Hanlong please?

2 A. The Hanlong group of companies is headquartered  
3 in Sichuan Province in China. It's a private group. It's  
4 not a government-owned entity. They have approximately  
5 12,000 employees and 30 subsidiaries. They have annual  
6 revenues of 1.4 billion dollars. They're involved in mining  
7 chemicals, power supply, real estate, medical industry,  
8 communications, infrastructure and natural gas. They have  
9 various Chinese mining activities in molybdenum, gold, zinc,  
10 lead, rare earth marble and gold. And they also have a  
11 mining interest outside of China in Australia.

12 Q. Page six depicts the expenditures. Please  
13 describe those.

14 A. Okay. On page three I refer to the 163 million  
15 dollars that has already been spent. Page six is a summary  
16 of the various line items of where we have spent that money,  
17 including buying equipment, hydrology and drilling,  
18 engineering for the plant. We have made some deposits on  
19 power supply. We've spent money on permitting, geology  
20 information systems and we've acquired land and water rights.

21 Q. Paragraph 12 of the protest filed by Eureka  
22 County reads in part as follows: "The applicant has not  
23 provided proof that there is a reasonable expectation of the  
24 applicant's financial ability to construct the work and apply  
25 the water to the intended beneficial use with reasonable

1 diligence." Is that a true statement?

2 A. No.

3 Q. Do you disagree with it?

4 A. Yes.

5 Q. Why?

6 A. Because we've spent a great deal of money on the  
7 project already and we endeavor with a variety of global  
8 partners to enter in to agreements to supply the funding for  
9 the project.

10 Q. Do you believe the funding to commence the  
11 project is in order and lined up?

12 A. Yes.

13 Q. And the project will proceed?

14 A. I believe so.

15 Q. I'd like you now to return to SE document number  
16 532.

17 HEARING OFFICER WILSON: Let's be off the record  
18 just for a minute.

19 (Discussion was held off the record)

20 HEARING OFFICER WILSON: Go ahead.

21 Q. (By Mr. de Lipkau) Mr. Chaput, have you seen  
22 this document before?

23 A. Yes, I have.

24 Q. In fact you signed it, didn't you?

25 A. Yes, I have.

1 Q. And it was signed October 29th 2010?

2 A. Yes, it was.

3 Q. Could you briefly describe what this item is?

4 A. This is a quarterly report required by the

5 Securities Exchange Commission for the public listed

6 companies.

7 Q. How often is a document of this type required?

8 A. This document is filed three times a year.

9 Q. Three times a year. And does the document set

10 forth lists to possible or potential investors?

11 A. Yes. It's a financial report for the quarter and

12 it also lists risks involved if someone, if an investor was

13 to invest in this company, the risks that are involved in

14 investing in the company.

15 Q. Is a schedule or a tabulation of the risks

16 required by the SEC?

17 A. Yes. The risks are present and listed out in a

18 number of places in the document.

19 Q. Who prepared this document?

20 A. It was prepared by our internal staff and then

21 reviewed by our external auditors.

22 Q. Would SEC counsel be involved?

23 A. Not in the preparation. They do periodically

24 review and comment.

25 Q. Do you vouch for the accuracy of the exhibit?

1 A. Yes.

2 Q. Do you believe the applicant is in better  
3 financial condition now than it was in 2008?

4 A. In 2008 we had a plan to require financing.  
5 Since then we have actually entered in to an agreement to  
6 acquire that financing.

7 Q. So the answer would be yes?

8 A. Yes.

9 Q. And with the financing in hand will the project  
10 proceed?

11 A. It will proceed as we get our permits.

12 Q. Right. Pursuant to the various permits that will  
13 be discussed later, the project will go?

14 A. Yes.

15 Q. The financing is there?

16 A. I believe.

17 MR. DE LIPKAU: That's all the questions I have.

18 HEARING OFFICER WILSON: Thank you. Before we  
19 proceed, I just wanted to note on the exhibit list it looks  
20 like I skipped Number 527. And that is a map of MW Cattle  
21 Company land and water rights and then all the others below  
22 that will shift down one number. And you're finished with  
23 his direct?

24 MR. DE LIPKAU: Yes, I am.

25 HEARING OFFICER WILSON: Cross.

1 MS. PETERSON: I was going to start first on  
2 cross. Is that okay? The intervenors have talked amongst  
3 themselves and I was going to go first. Is that okay?

4 HEARING OFFICER WILSON: Okay.

5 CROSS-EXAMINATION

6 By Ms. Peterson:

7 Q. Mr. Chaput, do you still have Exhibit 532 in  
8 front of you? That's the form 10-Q from SEC.

9 A. As of September 30th?

10 Q. Yes.

11 A. Yes.

12 Q. Do you have that?

13 A. Yes.

14 Q. Okay. And if you could turn to page ten. And I  
15 guess it starts at page nine. But it goes from page nine to  
16 ten under the heading "cash conservation plan." Do you see  
17 that?

18 A. Yes.

19 Q. And are you familiar with the cash conservation  
20 plan?

21 A. Yes.

22 Q. And isn't it fair to say that after the last  
23 hearing, and I believe it was in March of 2009, the company  
24 implemented this cash conservation plan?

25 A. Yes.



1 Q. And that's because they had no cash; is that  
2 correct?

3 A. No, ma'am.

4 Q. They had to reduce their expenditures -- Well,  
5 tell me what the purpose of the cash conservation plan was.

6 A. In early 2009 we were informed that we had to do  
7 more hydrology work, working on the EIS, and it was going to  
8 take longer. So we had to slow down the pace of the plan in  
9 conjunction with that was in the middle of the world wide  
10 financial crisis so we slowed down our spending and kept  
11 working on obtaining financing during that period.

12 Q. And in fact you're still in the cash conservation  
13 plan right now; isn't that correct?

14 A. Yes.

15 Q. And during the cash conservation plan, which  
16 includes up until now, some of the permitting has been  
17 totally stopped; isn't that correct?

18 A. Permitting is the one thing that we focused on  
19 during that period and kept working on.

20 Q. Well, some of the engineering has been completely  
21 stopped; isn't that correct?

22 A. Pieces of the engineering were stopped and other  
23 pieces were slowed down in that period.

24 Q. And then directing your attention to page 21 of  
25 Exhibit 532, under the overview, do you see that? It's on

1 the bottom of the page.

2 A. Page?

3 Q. 21.

4 A. Okay.

5 Q. Do you see that?

6 A. Yes.

7 Q. And it says, "We are a development stage company

8 and began the development the Mount Hope project on October

9 4th 2007." Do you see that?

10 A. Yes.

11 Q. And that's referring to General Moly; is that

12 correct?

13 A. General Moly being the developing company, yes.

14 Q. It's a mining development company; is that

15 correct?

16 A. That's correct.

17 Q. And so is there anywhere in this document where

18 General Moly is referenced that it's in the basis of ranching

19 or agriculture?

20 A. I don't believe so.

21 Q. And then referring back to Exhibit 37 and the

22 financing. On page two, the footnote, and there's a same

23 footnote on various other pages of Exhibit 37 that there's

24 certain conditions precedent to the Hanlong financing?

25 A. Yes.

1 Q. And generally what are those?

2 A. The primary condition precedent is having the  
3 environmental impact statement before the bank loan will be  
4 provided.

5 Q. And I notice in looking at the company's website  
6 that there's presentation, there was a Mount Hope tour that  
7 was dated October 18th 2010. Are you familiar with that  
8 presentation?

9 A. I'd have to look at it.

10 MR. DE LIPKAU: I'm going to have to object.  
11 This is not yet in evidence.

12 MS. PETERSON: Well, I'll speed up to November.

13 Q. (By Ms. Peterson) Are you aware that Mr. Hansen  
14 who is the chief executive officer of General Moly attended  
15 the Credit Suisse Metals and Mining Conference November 2nd  
16 and 3rd 2010?

17 A. Yes.

18 Q. And also there was a presentation given to the  
19 JPDIR Metals and Mining Conference November 9th and 10?

20 A. Yes.

21 Q. And also the Dahlman Rose and Company there was a  
22 first annual Global Metals, Mining and Materials Conference  
23 on November 17th and 18th of this year?

24 A. I'm aware of this.

25 Q. And are you aware that there was a Scotia Capital

1 Mining Conference December 1st 2010?

2 A. I'm aware of that.

3 Q. And Mr. Hansen attended all of them?

4 A. I wasn't at all of them but I believe he did.

5 Q. And are the purpose of those conferences to  
6 secure capital for the project?

7 A. The purpose of those conferences are to brief  
8 investors in the company on the status of the company.

9 Q. And to obtain capital for the project?

10 A. I'm sorry. Is that a question?

11 Q. And to obtain capital for the project; is that  
12 correct?

13 A. To brief and update investors in the company.

14 Q. And I noticed on November 5th of this year that  
15 General Moly announced it had filed its universal  
16 registration statement with the SEC. Are you familiar with  
17 that?

18 A. Yes.

19 Q. And that its registration form under the  
20 Securities Act of 1933 that it's going to be issuing more  
21 security; is that correct?

22 A. No.

23 Q. What is the registration statement?

24 A. It's a registration form that if we wanted to  
25 issue securities in the future it would be preregistered. We

1 wouldn't have to start with a fresh registration referred to  
2 as a shelf registration.

3 Q. Right. And that's for the filing of 500 million,  
4 up to 500 million in additional securities that could be  
5 issued by the company?

6 A. Yes. This is essentially a renewal of the shelf  
7 that we did three years ago.

8 Q. And that would indicate that the company is still  
9 trying to raise capital; is that correct?

10 A. That would indicate we're keeping that option  
11 open in the future if we need additional capital.

12 Q. And as the chief financial officer are you  
13 familiar with the projected expenses and revenues of General  
14 Moly?

15 A. Yes.

16 Q. And I notice that you said that there was a 1.15  
17 billion was the cost to construct the capital portion of the  
18 project; is that correct?

19 A. I believe I said one billion, thirty-nine million  
20 was the cost of the capital.

21 Q. And what are the projected revenues from the sale  
22 of moly for the first ten years?

23 A. I don't have that number with me.

24 Q. Is it in the billions?

25 A. For ten years certainly.

1 Q. And you're familiar with the budgets of the  
2 company?

3 A. Yes.

4 Q. What is the mitigation budget for this project?

5 A. I don't know that off the top of my head.

6 Q. Is there a budget for mitigation in this project?

7 A. That would be included in the operating cost of  
8 the mine.

9 Q. And is there a specific component in the budget  
10 for monitoring, management and mitigation, to your knowledge?

11 A. I don't know it off the top of my head.

12 MS. PETERSON: I don't have any other questions.

13 HEARING OFFICER WILSON: Thank you.

14 Cross?

15 MS. URE: I have no questions.

16 HEARING OFFICER WILSON: Redirect?

17 REDIRECT EXAMINATION

18 By Mr. de Lipkau:

19 Q. One question. Mr. Chaput, the statute reads, NRS  
20 533.375 reads as follows: "And a showing of facts necessary  
21 to enable the State Engineer to determine whether the  
22 applicant has the financial ability to carry out the proposed  
23 work and whether the applicant has been made in good faith."  
24 Do you understand those words?

25 A. Yes.

1 Q. Does the applicant have the financial ability to  
2 carry out the works?

3 A. With the arrangements we've entered in to, yes.

4 Q. And the applications were filed in good faith; is  
5 that correct?

6 A. Yes.

7 MR. DE LIPKAU: No further questions.

8 HEARING OFFICER WILSON: Any recross?

9 MS. PETERSON: No recross.

10 HEARING OFFICER WILSON: Thank you. Any  
11 questions of staff? Hearing none you're excused. Thank you  
12 Mr. Chaput.

13 THE WITNESS: Thank you.

14 HEARING OFFICER WILSON: Let's take a break  
15 before we take our next witness. Let's be off the record for  
16 ten minutes. Let's come back at 10:25.

17 (Recess was taken)

18 HEARING OFFICER WILSON: Mr. de Lipkau, you had  
19 your next witness.

20 MR. DE LIPKAU: Before I call Michael Branstetter  
21 I'd like to move for the admission of Exhibit 37. If you  
22 would prefer, we can do them one by one or we can do them at  
23 the end.

24 HEARING OFFICER WILSON: This is fine. Any  
25 objection to Exhibit 37?

1 MS. PETERSON: No objection. But I also move for  
2 the admission of Exhibit 532.

3 HEARING OFFICER WILSON: Exhibit 37 will be  
4 admitted. Any objection to Exhibit 532?

5 MR. DE LIPKAU: No.

6 HEARING OFFICER WILSON: Exhibit 532 will be  
7 admitted.

8 Go ahead and call your next witness.

9 MR. DE LIPKAU: Thank you.

10 (Witness was sworn in)

11

12 MICHAEL BRANSTETTER

13 Called as a witness on behalf of the  
14 Applicant, having been first duly sworn,  
15 Was examined and testified as follows:

16

17 DIRECT EXAMINATION

18 By Mr. de Lipkau:

19 Q. Please state your full name.

20 A. Michael K. Branstetter, B-r-a-n-s-t-e-t-t-e-r.

21 Q. What is your occupation?

22 A. Attorney at law.

23 Q. And by way of today's hearing what is your  
24 connection to the applicant?

25 A. I'm general counsel, outside general counsel and



1 corporate secretary to General Moly and its subsidiaries.

2 Q. Have you reviewed your testimony presented before  
3 the State Engineer in October of 2008?

4 A. Yes, I have.

5 Q. Do you wish to make any changes to that  
6 testimony?

7 A. No. There is something of an update.

8 Q. Could you please give the update.

9 A. I discussed in 2008 in general terms the fact  
10 that an agreement was in place between Eureka County and  
11 General Moly, Eureka Moly for what's called the annex for  
12 development of housing in Eureka. And by mutual agreement  
13 that arrangement has been terminated and we are no longer  
14 developing this area called the annex.

15 Q. And what was the proposed or contemplated purpose  
16 of the annex?

17 A. The annex was for temporary construction, worker  
18 housing and permanent housing near Eureka.

19 Q. Okay. Could you please turn to Exhibit 26.

20 A. All right.

21 Q. Would you please describe Exhibit 26.

22 A. That is a notice of default and election to sell  
23 filed by the lenders associated with the Cedar Creeks Ranch  
24 real estate property and water rights.

25 Q. And would you please go to Exhibit 27.

1           A.   Exhibit 27 is a warranty deed executed by the  
2 manager of Cedar Ranches, LLC conveying the property, the  
3 subject of the notice in Exhibit 26, to the lenders and  
4 releasing and conveying the real estate and water rights to  
5 the lenders.

6           Q.   And who signed that document?

7           A.   It's signed Allen K. Chamberlain, its manager.  
8 Mr. Chamberlain testified at the last hearing and identified  
9 himself as the manager of Cedar Ranches, LLC. And this is a  
10 document that he signed.

11          Q.   So Dr. Chamberlain is, pursuant to those two  
12 exhibits, no longer associated with the real property in  
13 Diamond Valley?

14          A.   That's my understanding and what the documents  
15 would show that the property was conveyed and released to the  
16 lenders.

17          Q.   Okay. Would you please turn to Exhibit 28.

18          A.   Yes.

19          Q.   What is depicted on Exhibit 28?

20          A.   This is an agreement entered in to between Eureka  
21 Moly and the Eureka Producers Cooperative to resolve their  
22 protest of General Moly, KVR's water right applications.

23          Q.   Okay. And would you please describe the  
24 procedure of retiring water.

25          A.   The procedure?

1 HEARING OFFICER WILSON: What page is that?

2 THE WITNESS: Generally Exhibit 28 sets up a  
3 frame work for General Moly, Eureka Moly to provide funding  
4 and financing to finance a trust that would be for the  
5 purpose of retiring water rights and implementing and  
6 developing other conservation measures in Diamond Valley to  
7 enhance the sustainability and well-being of the agricultural  
8 economy in Diamond Valley. So that's the purpose of the  
9 agreement is to resolve the protest, to provide funding. And  
10 the general description I made for the use of the funding is  
11 set forth in the agreement. And it sets forth the  
12 obligations of the party, the parties, the funding and  
13 conditions related to the funding.

14 Q. (By Mr. de Lipkau) And how much funding was  
15 originally contemplated?

16 A. Between eight million dollars under a basic plan  
17 and up to 12 million dollars if other milestones were  
18 reached. So it had a range of eight to 12 million dollars.

19 Q. Has that number been reduced?

20 A. Right now prior to 9:00 a.m. today the minimum  
21 funding to be provided was eight million dollars. Under the  
22 terms and conditions of this agreement, the funding will now  
23 go to four million dollars for the minimum and the other  
24 categories are also reduced 50 percent.

25 Q. Why was the maximum funding reduced 50 percent?

1           A.    Because one of the provisions was that Eureka  
2 County and Tim Halpin also settle and resolve their protest  
3 and Mr. Halpin has but Eureka County hasn't. So today was  
4 the deadline for Eureka County withdrawing its protest. It  
5 did not occur and the funding will being reduced by 50  
6 percent.

7           Q.    That's because Eureka County is continuing with  
8 their protest?

9           A.    They're the last ones called out in the  
10 agreement, that's correct.

11          Q.    And you made some estimates as to how much water  
12 can be retired with four million dollars.

13          A.    Yeah. We look at it from a standpoint of not  
14 only retiring water but also other innovative conservation  
15 measures to be developed. But at eight million dollars  
16 funding in negotiations with cooperative, we felt that it  
17 would be up around 11 -- Let's see. I'm trying to remember.  
18 Eight million dollars would have retired approximately 11,000  
19 acre-feet. So based upon \$700 for an acre-foot of water.  
20 And now with it being reduced it could be up to 5500  
21 acre-feet based upon a value of about \$700 per acre. And we  
22 talked with the cooperative about acre-foot value and in the  
23 negotiations that's where we arrived at a consensus.

24          Q.    And all this water will be acquired and/or  
25 conservation devices installed in Diamond Valley?

1           A.    Yes. This is for Diamond Valley. There will be  
2 a board established, five-member board. One member will be  
3 from Eureka Moly, two from the cooperative and two at large.  
4 The articles of incorporation have been filed with the  
5 secretary of state. So it is an existing entity with tax  
6 identification number. We have provided the initial funding  
7 for the organizing and establishment of the trust of \$25,000.  
8 That's been paid. And Mr. Jarrad Miller, an attorney that  
9 they've also retained that specializes in trust arrangements,  
10 James Pace in Reno is working on it. And the specific terms  
11 of the trust and the internal documents will be established  
12 and we'll have review and input on that.

13               And it's intended to have a broad-based  
14 application in all of Diamond Valley for any water users in  
15 Diamond Valley, any farmers that want to participate in  
16 anything developed under the trust, any farmer that wants to  
17 participate in the retirement of water rights. Those  
18 procedures will all be established and conservation measures,  
19 other conservation measures will be developed and any farmer  
20 in Diamond Valley can participate in those measurements.

21           Q.    Let's make it clear. Are you saying that any  
22 water right holder farmer in Diamond Valley irrespective of  
23 whether or not he or it is a member of the co-op can  
24 participate?

25           A.    Absolutely. We insisted upon that but it wasn't

1 difficult because the cooperative also wanted that. They did  
2 not want this to be simply their agreement. They wanted it  
3 to be available and extend to all the Diamond Valley farmers.

4 Q. Would you please turn to Exhibit 29.

5 A. Yes.

6 Q. What is Exhibit 29?

7 A. That's a copy of the non-profit articles of  
8 incorporation to be filed. I think when the first submission  
9 of evidence was prepared, the actual document had not been  
10 filed and received from the secretary of state. So this is a  
11 copy of what Mr. Miller and Mr. Pace prepared and made  
12 available to us.

13 Q. Your testimony is the corporation is now filed  
14 with the secretary of state, the trust rather?

15 A. Yes. I think there was a second submission of a  
16 document maybe along the line of has the filing number on it.  
17 It's a valid legal entity now.

18 Q. Okay. I'd like you now to turn to Exhibit 41.

19 A. Yes.

20 Q. What is Exhibit 41?

21 A. This was prepared by counsel and is entitled a  
22 hearing applications flow chart. And I understand it lists  
23 all the various permits involved in this proceeding.

24 Q. Did you direct that it be prepared?

25 A. Yes.

1 Q. Why?

2 A. I think it was Eureka County, there may have been  
3 other protestants, expressed some confusion over all the  
4 applications or what the status was at the prehearing  
5 conference. And as a result of that and to assist the State  
6 Engineer's office I asked that counsel prepare a flow chart  
7 of our applications for the benefit of the protestants as  
8 well as the State Engineer's staff.

9 Q. I'd now like you to turn to Exhibit 401.

10 A. All right. I have.

11 Q. What is Exhibit 401?

12 A. That's a legal memorandum prepared by counsel  
13 addressing some of the legal issues either raised by Eureka  
14 County or other protestants or what we anticipate to be legal  
15 issues based upon prior communications with counsel or  
16 statements made by counsel at a prehearing conference.

17 Q. Okay. Would you please turn to Exhibit 407.

18 A. Yes.

19 Q. And what does that depict?

20 A. This is a grant, bargain and sale deed between  
21 Barbara Bird as grantor and General Moly purchasing real  
22 estate and water rights from Barbara Bird

23 Q. And what's the date of that deed?

24 A. The date is December 15, 2009, I think.

25 Q. Okay. The recording date?

1 A. The recording date is December 15th 2009.

2 Q. The grantee therefore has owned the Herd Ranch  
3 for approximately a year; is that correct?

4 A. That's correct.

5 Q. And with the Herd Ranch came 492 acre-feet?  
6 Pardon me. 692 acre-feet?

7 A. That's right. Acre-feet of water.

8 Q. Right. And the permit evidencing the water right  
9 has been the subject of a name change application to the  
10 State Engineer; is that correct?

11 A. That's what I understand.

12 Q. Okay. Could you say whether or not your employer  
13 as general counsel would make a portion of its irrigation  
14 water rights available for future development in either  
15 Diamond or Kobeh Valleys?

16 A. Well, as a matter of principal we would. The  
17 company would not be opposed to that. We would be more than  
18 willing to discuss it with anybody that needed water for  
19 development. As a matter of principal, sure.

20 Q. Okay. Would you please turn to Exhibit 409.

21 A. I see it.

22 Q. What's the date of Exhibit 409?

23 A. A letter dated October 1, 2010.

24 Q. And signed by individuals?

25 A. Yes. There are a number of people listed at the



1 bottom of the page signing it.

2 Q. Are the signatory people farmers, growers, in  
3 Diamond Valley?

4 A. I understand they are, yes.

5 Q. And could you briefly summarize what is set forth  
6 in that letter.

7 A. It's a letter written by what is described as a  
8 water committee board to the Eureka County commissioners  
9 explaining who the group is and what they would like the  
10 county to do in terms of working with General Moly to address  
11 their concerns and then their settlement desires are set  
12 forth. And that is what's laid out. This was furnished to  
13 us in late October by counsel for Eureka County. It was not  
14 sent to us.

15 Q. For those in the crowd that don't have the  
16 document in front of them, what do the signators really want  
17 or actually want?

18 A. What they're asking for -- I'll read it. "It was  
19 the consensus of the Diamond Natural Resources Protection and  
20 Conservation Association to settle with GMO with the main  
21 points being conservation fund established by the association  
22 and funded by GMO, General Moly, to retire a minimum of 33  
23 quarter sections of water, General Moly to fund that. And  
24 number two, annual contribution by General Moly to the  
25 association to fund further conservation practices." This is

1 what the association wanted General Moly to do and it was  
2 presented to the county to strive for that.

3 Q. So would it be a true statement that the signator  
4 parties thereto wanted General Moly to acquire 33 center  
5 pivots?

6 A. That's what I understand is meant by 33 quarter  
7 sections, it would constitute 33 center pivots.

8 Q. And a center pivot is approximately 125 acres?

9 A. That's what I'm given to understand.

10 Q. Okay. Is that group the same group as the  
11 members of the trust agreement as previously testified to by  
12 you?

13 A. No. These farmers listed here are not members of  
14 the cooperative based upon what I seen as a listing of the  
15 cooperative members. These people, four of them,  
16 participated, however, in the negotiations with the  
17 cooperative and were involved with that by signing a  
18 confidentiality agreement related to those negotiations, four  
19 of these people.

20 Q. So to your knowledge then there are two groups  
21 that want to sell water rights; is that correct?

22 A. That's -- We've resolved the issues surrounding  
23 the cooperative and then this group surfaced and got  
24 organized after we settled with the cooperative.

25 Q. Okay. Has any settlement been in place with that

1 group?

2 A. No. We've had no discussions with them towards  
3 settlement. We've reached out to them to talk to them and a  
4 meeting has never been scheduled. We were willing to meet  
5 and talk to them but it's never happened.

6 Q. Okay. Would you please turn to Exhibit 410.

7 A. All right.

8 Q. What is Exhibit 410?

9 A. I understand this is the Exxon corporation  
10 application for permits to appropriate waters.

11 Q. And those permits were in fact granted?

12 A. Yes, they were.

13 Q. And when were they granted?

14 A. 1982 or '83.

15 Q. Okay. And the combined duty of those two permits  
16 set forth in that exhibit is approximately 8700 acre-feet?

17 A. That's what I understand.

18 Q. Okay. Would you now turn to Exhibit 413.

19 A. Yes.

20 Q. What is Exhibit 413?

21 A. This is a copy of the actual filed documents for  
22 the Diamond Valley agricultural sustainability trust that was  
23 created as a result of the settlement agreement with the  
24 Eureka Producers Cooperative. It bears the secretary of  
25 state's filing number.

1 Q. So the sustainability trust is now perfected with  
2 the secretary of state?

3 A. That's correct.

4 Q. Since October of 2008 what activities if any have  
5 you performed for your employer and client on behalf of this  
6 project in financing?

7 A. I've done a lot of work.

8 Q. Okay.

9 A. I've assisted in all the general aspects of  
10 advancing the project. That is the easiest way to summarize  
11 it.

12 Q. Have you assisted in financing?

13 A. Yes.

14 Q. You're aware of the financing as testified to  
15 earlier by Mr. Chaput?

16 A. Not to the level of knowledge and expertise  
17 Mr. Chaput has, but I'm aware of the financing. I'm aware of  
18 the work we've done on water and the project as a whole.

19 Q. Have you assisted in corporate matters?

20 A. Yes.

21 Q. Have you reviewed and/or prepared contracts for  
22 the acquisition of equipment?

23 A. Yes.

24 Q. Have you worked on easements?

25 A. Yes.