

1 coming up in the record -- those wells, I bet there's four I
2 can think of, there may be five wells on that particular
3 location. The original 206 that has become the monitoring
4 well was drilled two or three times. They were lost in the
5 hole, but hey, that's no big deal. You drill holes in the
6 ground.

7 206-T ended up being a really good thing though.
8 It was supposed to be the test well for that particular
9 location. We stretched the tape, we moved the well over a
10 whopping 70 feet and hit what has in my mind anyway become
11 the most robust well of the Kobeh Valley well field as it
12 consists today for the drilling that we had done at that
13 time.

14 When those wells were constructed we were
15 supposed to be receiving aggregate for the gravel packing
16 from Arizona. Funding did not come from the project
17 management side of the equation and we were stuck looking at
18 a rather lengthy time of standby time on the rigs of a
19 million bucks a month. For what these holes were costing
20 that was unacceptable.

21 So we ended up using made-up gravel from Diamond
22 Valley. And I don't remember Butch's last name, but he
23 delivered it. And it was washed but it apparently wasn't
24 washed to the degree that it needed to be to perform proper
25 testing.

1 Also during that time I had to fly off the handle
2 a little bit during a phone conference with Mr. Smith and
3 Mr. Buqo both about who was running the project because they
4 were never around. There were just a lot of inconsistencies
5 and irregularities with how things were being handled. It
6 wouldn't be something I would want to hang my hat on if I was
7 going to perform a hydrological evaluation.

8 Now, it may be that when they finally went and
9 did the ultimate flow test they acidized and washed, but I
10 did see video of those well conditions and there was a lot of
11 organics in those things. Did it get out in to the
12 formation? Perhaps. Would the tests have shown up better
13 for General Moly's purposes --

14 MR. DE LIPKAU: I'm going to have to object to
15 this line of testimony. Number one, it's not under protest.
16 And number two, a professional employed by a company I think
17 has the inherent professional duty to keep the company's
18 dirty laundry to himself if he believes it exists.

19 Most importantly, this evidence is all
20 irrelevant, what went wrong on the project, matters of that
21 type. I would like to confine Mr. Tackett's objections to
22 the items set forth in his protest as is customarily done.

23 THE WITNESS: And since I have no representation
24 may I say something?

25 HEARING OFFICER WILSON: You may.

1 THE WITNESS: I agree with what you say.
2 However, these things that I am stating, I'm not airing so
3 much as dirty laundry with the company and GMO, I am making
4 these statements because I think that they could potentially
5 have effect with how this evidence is perceived, et cetera.
6 And it may not make a hill of beans, but that's not my job.
7 That's the job of the State Engineer. I'm just providing
8 this. If you want to strike it from the record that's
9 y'all's business.

10 HEARING OFFICER WILSON: Thank you. We're going
11 to discuss this. Be off the record for a minute.

12 (Discussion was held off the record)

13 HEARING OFFICER WILSON: In reviewing your
14 protest, Mr. Tackett, we would like you just to move on from
15 the drilling.

16 THE WITNESS: That's fine. That was all I had to
17 say about that.

18 HEARING OFFICER WILSON: Move on from the
19 drilling irregularities and back to the protest issues.

20 THE WITNESS: No problem.

21 HEARING OFFICER WILSON: Thank you.

22 THE WITNESS: That was just part of it. In
23 reviewing the binders, all the literature presented in the
24 proceedings Antelope Valley is considered as part of the
25 Diamond Valley flow system. And everything states

1 monitorings to include Diamond, Pine, Kobeh and surrounding
2 areas. A pack was created to look at springs and water
3 resources affecting the flow systems, et cetera and no
4 monitoring has ever been performed other than what I alluded
5 to earlier with regard to our springs there, nor did GMO
6 continue to monitor any of the springs as promised.

7 This is in binder one, on page 132, table two
8 shows pumpage in Antelope Valley up to the year 2000.
9 There's more current data available since that time. The
10 Segura Ranch has been operating and pumping pivots so I think
11 that should be revisited.

12 The only other data from Antelope Valley that
13 existed in this package, appendix 1-3, page 47 and this is
14 data from 1936 and from Rush and Everett in 1964. So we're
15 looking at 80 and 46-year-old data respectively.

16 What's the current data say? Is there any
17 current data? And my answer is no because it didn't show up
18 in the evidence.

19 Also in appendix 2, USGS item 132 was produced in
20 2004 shows the direction of groundwater flow from Antelope to
21 Kobeh Valley. And based on that assertion I would think this
22 should wholeheartedly have been included as part of the
23 system and monitors as such. Again, no studies were
24 performed and this is going to be a recurring theme
25 throughout the rest of this.

1 In original spring and seeps inventory, and this
2 is page 133, I believe, of binder number one, I believe it's
3 SRK, Klobe is missing from the inventory and this is even
4 though the project hydrologist at the time, Mr. Bugo and
5 Mr. Smith and representatives came out and followed 2007.

6 The monitoring plans that have been discussed and
7 were supposed to be designed to ensure early warning of
8 detrimental effect to the springs, and yet in the case of
9 Antelope Valley I'm not going to know it until the springs
10 just dry up.

11 Given the previous reference studies, both
12 groundwater and surface waters flow to Kobeh. I would think
13 General Moly would want to know how much water is being
14 provided in to that system since they're looking at tapping
15 it and physically needing the water.

16 Now, Everett and Rush in 1964 made comment, this
17 is maybe why studies weren't done. I don't know. The report
18 states that there is a young east trending fault in north
19 Antelope Valley and it could potentially reduce flows from
20 Antelope and Kobeh Valley at some depth. A statement was
21 made in that paper. There was another paper and I didn't
22 write it down. It was dated 1996. Through aerial photos,
23 lineaments, easterly lined lineaments were identified as
24 well. But again, no study was made.

25 Also the well water data does not show flows at

1 the ranch proper and they admit to not understanding the
2 artesian system as existed even though they show page
3 discharge, one cubic foot is all that they listed.

4 Table five talks about evapotranspiration to the
5 phreatophytes of 4200 acre-feet in the basin. Table four
6 shows 4100 feet of recharge annually.

7 The system effectively is shown imbalance but it
8 appears, they state that it's fault constrained and yet no
9 studies have been done to prove this out.

10 Page 26 talks about perennial yield. That's in
11 the Everett and Rush again. It states that, "Large scale
12 pumping in Kobeh would possibly affect the northern Monitor
13 Valley and reduce yield of the upstream unit." Same
14 situation could occur in Antelope Valley and again it was not
15 studied.

16 To this point in time there is no evidence to
17 lead to any disbelief that Kobeh pumping will not adversely
18 affect the water table and springs in the Antelope Valley.

19 Page 31 of the report also states, "It is unknown
20 as to why temperature differences occur." You've got two
21 separate wells on my property. One is the flowing spring and
22 the other is an old well water. And technically I guess in
23 the past there was hot and cold running water on the
24 property. One was a windmill. One was the spring.

25 I don't know if I'm sitting on a fault line or

1 what, but there's not a whole lot of water coming out of that
2 other well born now and in fact it's been plugged back.

3 Table 10 in this paper shows that back in 1949
4 the well was drilled to a depth of 32 feet. In documents
5 that were transferred from Luke Wise when we bought the ranch
6 I have in my files back at the house this well was supposedly
7 drilled to a depth of about 497 feet. A typical oil well
8 drilling practices a conductor is usually driven so the well
9 bore doesn't fall apart. The typical joint pipe is about 32
10 feet. My guess, their assertion as to the depth of well for
11 this paper is a function of the length of that piece of pipe
12 and the well has just collapsed below that point. So that's
13 my feeling there.

14 That study showed in 1964 a rate of 500 gallons a
15 minute. Right now I'm running about six quarts a minute
16 under that well bore. I know it's an artesian system. I
17 know artesian systems tend to degrade over time. However,
18 that was in 1964. And other than the fact that Diamond
19 Valley was dedicated in 1964 and started pumping at that time
20 there really hasn't been any significant additional drawdown
21 to my knowledge.

22 I got to wonder is there connectivity between the
23 Antelope Valley, Kobeh Valley, Diamond Valley system and the
24 drawdown that started in Diamond Valley has actually reached
25 that point. Other than that there hasn't been any other

1 stressor on that spring, so I find it odd seeing that.

2 Okay. I covered that. This is item, I believe
3 it's going to be item 142, Mr. Buqo's paper that was
4 submitted. On page 13 there was mention that GMO is going to
5 run full production test, 20-inch well bore. And it's my
6 belief that that hasn't happened yet at 206-T. I don't know
7 the particular reasons why. But it would sure be nice to run
8 that well and pump it before we have a full blown mine that
9 we've got to provide water to. The 206-T was the most robust
10 well we had out there and it didn't make the 31-day pump
11 test.

12 Binder number four, Item 501 shows a two-foot
13 drawdown and it could adversely affect flows evidenced in the
14 Everett and Rush paper. Paragraph two states that the State
15 Engineer should require comprehensive monitoring and
16 mitigation program. I absolutely agree. And Antelope Valley
17 should be included.

18 What else have I got here? This is -- Where did
19 it go? Item 5 -- Sorry about that. Still on Item 501, page
20 15 of 30, Figure ES-5 shows Klobe as a reference spring on
21 the project and yet no data was ever gathered. And they had
22 ample opportunity to come in and construct weirs, et cetera
23 so we could have that background information.

24 Page 21 of 30 states drawdown will be larger than
25 the model predicts in the adjacent basin. Antelope wasn't

1 included.

2 The wells that were drilled on it says in 24 of
3 30, south central Kobeh, some wells were drilled west of Lone
4 Mountain and the aquifer properties show warm water at depth
5 and suggested more flow to Diamond Valley than predicted.

6 Also the fact that that's a hot water system, it
7 was flowing I think 140 degrees at the time it came to the
8 surface. Gee, that's about the temperature I'm flowing at my
9 place. So are those systems interconnected? If GMO taps
10 that deeper aquifer what is it going to do to the hot water
11 system, which is a completely different model than what we've
12 been discussing and looking at today.

13 Again, the springs were not included and my
14 springs were not included as part of the monitoring program.

15 I basically feel that the Klobe Springs/Hot
16 Springs Ranch should be considered every bit as stringently
17 as Tonkin Springs, as any of the other springs that are in
18 these systems. We've already missed the opportunity, as Jake
19 mentioned this morning, to establish baseline data. And
20 again, everything I've read, there is no explanation why
21 Antelope Valley wasn't included in any of these studies.

22 Item 504, assessment of beneficial uses
23 basically only lists cropping. It doesn't attest to the
24 value of Hot Springs. Therapeutic values, the wildlife
25 habitat that's created below the springs, et cetera, wasn't

1 included.

2 Page six of Item 505, hydrographic study area
3 includes Antelope Valley on the map but no data was ever
4 gathered.

5 Page 34 of Item 506 states Eureka County
6 monitoring and mitigation plan is to include all major
7 springs. Antelope Valley was excluded, therefore my spring
8 was not included.

9 Page 41, I feel the Hot Springs Ranch should also
10 be included as a sensitive receptor in the data set and the
11 model. And as such, sentinel wells per Mr. Bugenig's
12 comments should be constructed between the well field in to
13 Antelope Valley not only to protect my springs but also the
14 flowing artesian well located at Kitchen Meadows.

15 There is a potential impact to recreational
16 resources in Antelope Valley. There's bird habitat as a
17 result of my springs, the hot springs, et cetera. And if
18 that's all drawn down, those wet meadows that exist may very
19 well disappear.

20 This was an interesting tidbit that I picked up
21 and Mr. Massey touched on it this morning. Private land in
22 Kobeh Valley, there are potentially 2899 2.5 acre lots
23 available. Per his assertion, town growth in Eureka County
24 is going to travel north and west.

25 If you're going to try and include that 29 -- 28,

1 2900 lots and the water is allocated in Bean Flat, Bartine
2 and the drawdown projected for the mine, where are you going
3 to get water for residential? So that I feel is really not
4 something that should even be considered. But if it's going
5 to be considered, you've got to be able to water those
6 houses.

7 Economic benefit. My forest service permits come
8 in on line. If I don't have water it can't happen. I think
9 Eureka County is in a prime position to capture bleed-through
10 from people going to Moab to ride their bikes and all that
11 kind of stuff.

12 And in my instance, given the nature of my permit
13 and my future business plans, if I don't have water, those
14 economic benefits are not going to come to Eureka County.

15 Throughout all of this stuff, this morning's
16 testimony, all the study and literature that we have seen,
17 Antelope Valley was not included in the flow system even
18 though I was personally promised by representatives of the
19 mine, potential mine that they would take a look at it.

20 So that's the end of my research and my spiel
21 with regards to Hot Springs Ranch. My hope is that resulting
22 from this meeting that in fact Hot Springs Ranch will be
23 included in to the record, it will be recognized as part of
24 the Diamond Valley flow system and it will be treated
25 accordingly. Thank you.

1 HEARING OFFICER WILSON: Thank you. Any
2 questions, Mr. de Lipkau?

3 MR. DE LIPKAU: One moment. No questions.

4 HEARING OFFICER WILSON: Thank you. Questions of
5 staff?

6 EXAMINATION

7 By The State Engineer:

8 Q. Mr. Tackett, are you taking measurements of Klobe
9 Hot Springs?

10 A. Am I taking measurements?

11 Q. Yes.

12 A. I sit in it pretty regularly. They are
13 qualitative, not quantitative. So it's unfortunate. Have I
14 seen change over the time that we've owned the springs over
15 the last ten years? Not greatly. But, and this is
16 anecdotal, I don't have weird data to support me, it appears
17 that the system is considerably more active than one would
18 think.

19 I see higher flows when water is flowing off the
20 mountain in the spring time. It's not much but I know where
21 my pipes are running and if they're clogged and if they're
22 not, what my reservoir is doing. It seems to be that robust
23 and active a system. It's not -- I'm surprised that meteoric
24 water on a seasonal basis is visible. So I can give you
25 that, but I don't have any hard data.

1 Q. Would it be hard for you to measure?

2 A. No, not at all. It's just if you think of
3 constructing weirs and doing that, that's not what I do. I
4 constructed some of the weirs under instruction over the
5 telephone out in the Kobeh area. It can be done and I'm
6 happy to help. But I also expect promises to be kept so we
7 can make sure that the system is complete.

8 THE STATE ENGINEER: Okay. Thank you.

9 MR. FELLING: That was my question. So no
10 questions.

11 HEARING OFFICER WILSON: Mr. Tackett, I'm looking
12 at a Nevada map atlas just to see where you are. And there
13 is a spot that says Hot Springs Ranch.

14 THE WITNESS: That's it.

15 HEARING OFFICER WILSON: That is?

16 THE WITNESS: Faulkner Creek. It's just south of
17 there actually. It's on the turn-off road to Kitchen
18 Meadows. That road is on the property.

19 HEARING OFFICER WILSON: F-a-u-l-k-n-e-r.

20 THE WITNESS: It's effectively, the house is
21 effectively and it depends whose odometer you're looking at,
22 11 miles south of Highway 50.

23 HEARING OFFICER WILSON: Exactly what do you have
24 there now?

25 THE WITNESS: Now? I've got a bunk house, a

1 two-story bunk house, wrap-around porch, restaurant, kitchen,
2 sun porch, fine China, crystal, linen, a piano, occasional
3 banjo picker, a mandolin player. We've got a constructed
4 concrete hot tub, another area for bathing that's not soaking
5 waters, a reservoir that contains the hot water for
6 distribution and a permit for the United States Forest
7 Service for 2.3 million acres of national forest. That is
8 base camp for my future efforts.

9 HEARING OFFICER WILSON: And how big is your
10 water reservoir there?

11 THE WITNESS: Oh, golly.

12 HEARING OFFICER WILSON: Just approximately.

13 THE WITNESS: A couple of D-4 blades wide, three
14 feet deep and it's probably got, Lloyd, 330 yards long, give
15 or take? Yeah. So the reservoir is not huge. I'm hoping to
16 expand that in the future.

17 HEARING OFFICER WILSON: The hot water from the
18 spring flows in to the reservoirs and do you use the water
19 out of there?

20 THE WITNESS: Correct. And in the wintertime
21 when the wind is blowing and temperatures are up, the
22 ancillary springs, the soaks that are piped to don't stay hot
23 enough. You have to be in the reservoir.

24 HEARING OFFICER WILSON: And do you have plans,
25 ultimately your plan is to expand further; is that correct?

1 THE WITNESS: Yeah. I've got plans on the books
2 right now for garage shop, six cottage units attached
3 thereto. I'm looking at plans for another ten to 12 cottages
4 for lease purposes, retreat purposes, yoga studio, et cetera.
5 I'm going to be around for a while. No hot water. It all
6 goes away.

7 HEARING OFFICER WILSON: And I apologize. I
8 missed this, I know you had mentioned you did recently get a
9 water right permit from our office.

10 THE WITNESS: Yeah, I did. It was purchased with
11 the property but I didn't understand the system and I hadn't
12 done the paperwork to actually reconvey the right. And so
13 that was the work that I completed and that came down -- I
14 got that in the mail, heck, probably this year some time.
15 It's in the file.

16 HEARING OFFICER WILSON: And you also have a
17 domestic well for your house?

18 THE WITNESS: No. I draw my water with buckets
19 out of the reservoir. Yeah. That old well that was drilled
20 in '49 flows down a small creek to the reservoir and there's
21 also spring activity below the reservoir but there's no where
22 to build a dam.

23 HEARING OFFICER WILSON: The field well is just
24 artesian right now?

25 THE WITNESS: Yeah. Well, the whole system is

1 artesian. The well bore itself flows out six quarts a
2 minute. It's 150 degrees but it's six quarts a minute.

3 HEARING OFFICER WILSON: Thank you. I appreciate
4 that. Any further questions? All right. No further
5 questions. You can step down. Thank you.

6 I just want to ask for the record if Mr. Allen
7 Chamberlain is here? I'll note for the record that he is not
8 here. As I mentioned yesterday, I did receive a phone call.
9 He was scheduled to put on a case Thursday. He did call me
10 Wednesday and say that he would not be here Thursday. And I
11 want to note for the record that he is not here on Friday as
12 well and apparently is not going to present his case.

13 I wanted to take care of just some paperwork
14 items. Mr. Tackett, I went ahead and copied your protest and
15 made them exhibits. The protest, the three applications,
16 Exhibit 18 is Protest 79914. Exhibit 19 is Protest
17 Application 79918. Exhibit 20 is your protest application,
18 79925. And I'll ask Mr. De Lipkau if there's any objection
19 to entering those three as exhibits?

20 MR. DE LIPKAU: No objection.

21 HEARING OFFICER WILSON: Exhibits 18, 19 and 20
22 will be entered. I want to take care of Exhibit 17. It was
23 the -- I did representative protest for Lloyd Morrison from
24 file 79911 and 72695 and mark those as Exhibit 17. Is there
25 any objection to Exhibit 17?

1 MR. DE LIPKAU: No objection.

2 HEARING OFFICER WILSON: Hearing no objection,
3 Exhibit 17 will be admitted.

4 I'm just going to check my exhibit list real
5 quick.

6 MS. URE: Hearing Officer Wilson?

7 HEARING OFFICER WILSON: Yes.

8 MS. URE: I was noticing that on the exhibit list
9 Mr. Benson is listed as only having three protests and I
10 believe he had six. They were to Applications 79934 through
11 79939.

12 HEARING OFFICER WILSON: Let me check one of my
13 lists. I suspect I forgot to turn my list over to a
14 two-sided page. That is correct, he is also a protestant to
15 79937, 38, and 39. And I will mark and enter those as
16 exhibits and we'll continue on with the numbering if I can
17 get to it. In order they'll be Exhibit 315, 316 and 317. I
18 will make those copies and mark those protests so they are
19 part of the record. Is there any objection to Exhibits 315,
20 316, 317?

21 MR. DE LIPKAU: No.

22 HEARING OFFICER WILSON: Those exhibits will be
23 admitted.

24 Mr. de Lipkau, did you want to bring up any
25 further issues?

1 MR. DE LIPKAU: No. We will not be requesting
2 rebuttal evidence by any of our prior witnesses.

3 HEARING OFFICER WILSON: Thank you. And Ms. Ure,
4 you were concluded with your case?

5 MS. URE: Yes.

6 HEARING OFFICER WILSON: Same with Eureka County?

7 MS. URE: Yes.

8 HEARING OFFICER WILSON: I'd like to move on to
9 public comment. The State Engineer did get a letter from
10 Verna and James Groth. That was read in to the record
11 previously by Dusty Moyle. And I do have the other written
12 public comments that she submitted.

13 And we do have one more that was requested. Vera
14 Baumann apparently was here this morning and had some written
15 comment that she wanted to read in to the record and she
16 wasn't feeling well and left and asked us to read that in and
17 I'd like to do that at this time. The letter is signed by
18 James E. Baumann, B-a-u-m-a-n-n, and Vera L. Baumann, V-e-r-a
19 L. B-a-u-m-a-n-n.

20 "In our protest letter dated November 14th 2008,
21 we conveyed to you that there was not enough reliable data to
22 prove that the water flow in Kobeh Valley is not connected to
23 the Diamond Valley water basin. In that, serious
24 consideration should be given to that likely connection and
25 the potential effect of granting water rights to General Moly

1 would have on the farming industry in Diamond Valley.

2 We also suggested in our November 14th 2008
3 letter that General Moly should do the right thing and be a
4 good neighbor by approaching the Diamond Valley farmers and
5 offering to buy their existing wet water rights rather than
6 putting the farmers out of business by drying up their water.

7 Similar to Barrick and Newmont Mining Companies,
8 General Moly did purchase a ranch with water rights in
9 Diamond Valley. Since then, General Moly has skirted the
10 obvious problem and purchased surface water rights from the
11 outlying areas, purchased a farm with water rights in Kobeh
12 Valley and finally purchased a farm in Diamond Valley simply
13 for the water rights. However, the farm hasn't been
14 irrigated for several years, so no one would question the
15 validity of those water rights.

16 The fact is that rather than squandering all the
17 money, estimated 12 million dollars, on the unnecessary
18 purchases of land and water rights, General Moly would have
19 been further ahead by approaching the farmers in Diamond
20 Valley and buying their existing wet water rights.

21 Had General Moly been a good neighbor and
22 purchased Diamond Valley water rights, there wouldn't have
23 been a need for the protest, hearings with the State
24 Engineer, district court hearings and settlements and the
25 mine would probably have had their record of decision by now.

1 We strongly recommend that you consider the
2 dilemma that the Diamond Valley farmers are in should the
3 mine's pumping of water have the expected effect on the water
4 table in Diamond Valley.

5 Many farmers have invested a lifetime in their
6 farms in Diamond Valley and that is their only retirement.
7 With the water already being overadjudicated in Diamond
8 Valley and now the possibility of the mine adding more to the
9 drawdown to the water table, the farmers don't even have the
10 opportunity to sell their farms. Anyone in their right mind
11 won't buy a farm in Diamond Valley with the strong
12 possibility of not having enough water in a few short years.

13 By allowing General Moly their water rights you
14 will be devaluing the farms in Diamond Valley and affecting
15 the livelihood of many, many people.

16 Sincerely, James E Baumann, Vera L. Baumann."

17 And that is the last of the written comments we
18 were asked to read in to the record. I do have all the
19 written comments that were submitted here as part of the
20 record.

21 And at this time I realize there are some people
22 that would like to give oral public comment and I'd like to
23 have them come forward.

24 MR. MOYLE: Hello. My name is Mark Moyle for the
25 record. Just checking this chair out. I haven't seen

1 anybody sit here be very uncomfortable in the last week, so I
2 thought there might be something wrong with it.

3 Anyway, my name is Mark Moyle, M-o-y-l-e for the
4 record. I've been farming in Diamond Valley for 30 years
5 now. And I'm not here to represent Mark Moyle Farms but I am
6 here to represent Diamond Natural Resources Protection and
7 Conservation Association. And I want to give you a little
8 background of what it is and explain what we're trying to do.

9 I'd like to, I'll just read it. I'd like to
10 inform the hearing committee about the Diamond Natural
11 Resources Protection and Conservation Association, DNRPCA.
12 It is important that you understand how we become organized
13 and what we hope to accomplish.

14 Two years ago, Mr. King, you had a meeting in
15 Eureka and at that time you expressed your concerns with the
16 drawdown in Diamond Valley. And you asked the irrigators if
17 they would work as a group to provide feedback to you as what
18 we might do to resolve the different, the water drawdown
19 problem.

20 And so we as irrigators acted on your request and
21 began to meet on a regular basis to discuss ideas and
22 resolutions to this challenge. We applied for federal money
23 to set aside land for water conservation. We've had meetings
24 with NRCS, state and local officials to brainstorm ideas and
25 funding. We've met with Senator Harry Reid's aide in an

1 attempt to find solutions. And we've been extremely active
2 in the process of working for resolution to the Diamond
3 Valley water drawdown problem.

4 It was about this same time that General Moly and
5 its subsidiaries, Eureka Moly, Kobeh Valley Ranch, et cetera,
6 began their acquisition of water in Kobeh and Diamond Valley.
7 And our group became involved in this process because further
8 water usage in the Diamond Valley flow system is of great
9 concern to us.

10 Following the 2008 water hearings, the State
11 Water Engineer's office granted General Moly the water rights
12 it needed for its mining operation.

13 At that time Eureka County and Eureka Producers
14 Cooperative, Tim Halpin and others filed an appeal in the
15 district court appealing the decision of the State Engineer's
16 office. Most of the irrigators in Diamond Valley contributed
17 financially for legal counsel on that appeal.

18 The district judge ruled in favor of Eureka
19 County, Eureka Producers Co-op and Tim Halpin and others and
20 ordered a rehearing.

21 Following this ruling, General Moly has been
22 meeting with and attempting to settle with protestants in the
23 matter. During this time, the water committee that was
24 elected by the irrigators has met many times and worked long
25 hours to attempt to work on solutions to the water usage

1 proposed by General Moly.

2 We as a group met many times and brainstormed
3 many possible solutions to this challenge. There were people
4 from Eureka Co-op and many other irrigators that worked
5 together on this project.

6 During the winter and early spring of 2010 our
7 group met with Tim Arnold and Pat Roberts on several
8 occasions and discussed possible resolution.

9 In June of 2010 our committee met with Tim Arnold
10 and Pat Roberts and at this meeting Tim Arnold presented the
11 group with a proposal that included offers that would be paid
12 if certain things were accomplished that were outside the
13 ability of the group to control.

14 These being that if the DEIS is done by 10-31,
15 2010 and the record of decision was done by April of 2011,
16 Tim said that the mine felt that there were people in the
17 room that could make this happen. There were people in the
18 room that were on the county NEPA committee.

19 It was the belief that the mine representatives
20 were attempting to manipulate the EIS process. I felt as did
21 others of our committee that this was an unethical proposal.

22 It was at that time that the most unbelievable
23 thing happened. There were not anymore meetings of our water
24 irrigation committee to discuss the proposal or anything else
25 with the mine. In mid-July it was announced that Eureka

1 Producer Co-op had settled with the mine. The members of our
2 community that had worked on this for two years did not even
3 know what had happened. We still don't know what happened.

4 It was at this time that our water committee
5 moved forward and formed the DNRPCA. That represents about
6 70 percent of the irrigators in Diamond Valley. We are the
7 same group of the majority of irrigators that are mostly
8 concerned with preservation and conservation of the Diamond
9 Valley flow system. We are committed to work with General
10 Moly to preserve and protect Diamond Valley flow systems and
11 have engaged legal counsel to work on this process. Our
12 counsel has notified General Moly of this. We believe that
13 General Moly can move forward with their mine but only if
14 they commit to real and meaningful solutions to the Diamond
15 Valley flow system challenges, that they will contribute
16 challenges, that they will contribute to if they open their
17 mind.

18 We do not feel that the agreement with Eureka
19 Producers Co-op is anything less than suspect. It is our
20 belief that this agreement falls short of a good faith
21 solution.

22 It is the intent of our association to continue
23 to work with the State Engineer and find solutions for
24 Diamond Valley. And we do appreciate that you have asked us
25 to be a part of that process.

1 It is important that your decision on the General
2 Moly water permits does not in any way adversely affect the
3 Diamond Valley flow system or the people in southern Eureka
4 County.

5 The evidence that has been presented at this
6 hearing indicates that there is water flow from Kobeh Valley
7 in to Diamond Valley. If you allow General Moly to use this
8 upstream water from Diamond Valley without requiring them to
9 be a major participant in the conservation and protection of
10 Diamond Valley then you are contributing to a challenge, not
11 helping them.

12 In closing, I would like to mention that the
13 State Engineer has a responsibility for protecting the
14 existing water users and the existing people that reside in
15 the State of Nevada and in this case southern Eureka County.
16 Let's not lose fact that General Moly is located in Denver,
17 Colorado and is getting finance from China, Korea and India
18 and other sources, I assume.

19 The moly that they intend to remove will go to
20 these foreign countries. Why should we not at least hold
21 this company responsible for any harm or damages that they
22 will cause in their quest to mine our country.

23 It is our hope that you will make the right
24 decision and I'm glad I'm not sitting in your position and
25 have to make that. But it seems it would be reasonable that

1 the mine would step forward and help to alleviate these
2 challenges so that you don't have to mandate that they do.
3 And that's all I have to say and I appreciate your time.

4 HEARING OFFICER WILSON: Thank you, Mr. Moyle.

5 THE WITNESS: Thanks.

6 HEARING OFFICER WILSON: I'd like to ask for
7 anyone else. Mr. Bailey, go ahead and come forward.

8 MR. BAILEY: My name is Tim Bailey. Last name is
9 spelled B-a-i-l-e-y. I live and farm in Diamond Valley. I
10 have a wife and four children who are part of the farm
11 operation. My family has been farming and ranching in
12 Diamond Valley since the late 1800s.

13 At present I farm with my father Welford Bailey
14 and my brother Fred Bailey and his family. We have 12 water
15 wells in Diamond Valley that range in depth of 180 to 400
16 feet. We use these water wells for stock water use,
17 irrigation use and domestic use.

18 Without the water that these wells provide, our
19 way of life in Diamond Valley would cease to exist. Idaho
20 General Mines, Incorporated, also known as General Moly,
21 Eureka Moly, Nevada Moly, Kobeh Valley Ranches, Limited
22 Liability Corporation, who I will now refer to as General
23 Moly, has a map on file at the State Engineer's office dated
24 December 5th 2005. It is labeled proposed points of
25 diversion, place of use.

1 On this map it shows proposed place of use which
2 is right against my brother's property which is located, my
3 brother's property being located 21 north, Range 53 east,
4 Section 6. So this means that the proposed place of use is
5 less than one mile from five of my brother's wells.

6 My mother and father live on the southeast corner
7 of said Section 6, Township 21 north, Range 53 east. So this
8 puts their domestic well within less than one mile of the
9 proposed place of use.

10 And I live at Township 21 north, 53 east, south
11 half of Section 3. All four of my wells are two to three
12 miles from General Moly's proposed place of use.

13 My father's ranch is located at 24 north, 52
14 east, Section 36. It has two wells and is located six miles
15 north of General Moly's proposed place of use.

16 I just wanted to let it be known for the record
17 where we're all located there and that's all I've got to say.

18 HEARING OFFICER WILSON: Thank you, Mr. Bailey.
19 We appreciate it.

20 MR. BAILEY: Thank you for your time.

21 HEARING OFFICER WILSON: Do we have anybody else
22 with public comment? I'm looking to our overflow room too.
23 I don't see any indication. Someone might be coming from our
24 overflow room also.

25 MR. MORRISON: My name is Lloyd Morrison and I

1 live in Diamond Valley. And in the at least 40 years that
2 we've been growing hay in Diamond Valley, we've been growing
3 something else there too in southern Eureka. We've been
4 growing a community. And it's one of the last places you can
5 go to find out what a real community is like where people
6 help each other when they have problems.

7 We know that we have a problem right here in
8 Diamond Valley. We know that our water is overallocated.
9 But every bit of water that's pumped out of Diamond Valley is
10 pumped on a state permit and we are willing to do something
11 about this as much as we can. We've got people who want to
12 retire. They'd like to be able to get out of Diamond Valley.
13 Their whole investment, their whole lives and their
14 investment is placed in that piece of property.

15 So naturally, you know, as the second generation,
16 which many of us are, what you're talking to and listening to
17 is a second generation from this area, a second generation
18 farmers we look to our parents and the people of our
19 community that took that desert and made it in to something.
20 So many of these desert land entries fail but ours didn't
21 fail and it didn't fail because we were a community. Our
22 county worked with us. We had people of integrity working
23 out there in the valley and in that town. And that's worth
24 preserving.

25 And we are willing -- we are willing to do the

1 hard thing to try to make Diamond Valley a place where
2 sustainable agriculture can occur.

3 And I appreciate you guys listening to us. I
4 think you're some of the most intelligent people I've ever
5 met. And I know that our future is in your hands.

6 We've had a lot of struggles in our lives. Our
7 parents, we've watched our parents struggle on those dusty
8 farms. And we're not immune to hardship and we're not
9 unknown to it. We know what hardship is.

10 And this is going to be a big task for us. But
11 this community has gone forward and faced big tasks before
12 and I think we're up for this challenge. We're willing to do
13 whatever we can to help you guys turn this in to a good
14 situation. Thank you.

15 HEARING OFFICER WILSON: Thank you, Mr. Morrison.

16 Any other public comment? I'm just going to
17 check and see if they have some.

18 Hearing no further public comments, at this time
19 we would -- we'll declare the hearing closed and -- Well,
20 let's talk about one more motion before I forget. There's a
21 motion before us to submit closing briefs by Ms. Ure.

22 MS. URE: Uh-huh.

23 HEARING OFFICER WILSON: Go ahead.

24 MS. URE: I would move to submit closing briefs
25 approximately 30 days after receipt of the hearing

1 transcript.

2 HEARING OFFICER WILSON: Any comments? From the
3 applicant?

4 MR. DE LIPKAU: How about 20 days?

5 HEARING OFFICER WILSON: Does Eureka County have
6 an opinion?

7 MS. PETERSON: We don't have any objection to
8 either one of those proposals.

9 MR. DE LIPKAU: Mr. Wilson, I may add that last
10 time in the October 2008 hearing there was a date certain
11 upon receipt where the parties submitted simultaneous briefs.
12 They all had to be in the mail on Friday, the whatever. That
13 worked quite well. So I would suggest that we have a date
14 certain. Perhaps we can find a date certain. Again, I'll
15 say 20 days after the court reporter submits the either
16 electronic or hard copy transcripts.

17 HEARING OFFICER WILSON: We won't have an exact
18 date of when we get the transcript. We require -- It's
19 required within 30 days.

20 MS. JOSEPH-TAYLOR: So that puts you to January
21 17th, which is a Monday. 20 days is February 6th. Split the
22 baby at Friday, February 11th.

23 MR. DE LIPKAU: That's acceptable with me.

24 HEARING OFFICER WILSON: Would everyone agree to
25 Friday, February 11th?

1 MS. PETERSON: Yes.

2 MS. URE: Yes.

3 MR. DE LIPKAU: Everybody drop in the mail or
4 hand deliver if they want.

5 MS. JOSEPH-TAYLOR: I don't think that's clear,
6 Mr. de Lipkau. When we say February 11th, that's file
7 stamped in this office. That's not in the mail box.

8 MR. DE LIPKAU: Last time I made the point it was
9 to be mailed that day. That's an exception to yours.

10 MS. JOSEPH-TAYLOR: Whichever you guys want. It
11 just wasn't clear. You said hand deliver or in the mail.

12 MR. DE LIPKAU: Right. What would you prefer?

13 MS. PETERSON: I think your main point is you
14 want simultaneous briefs.

15 MR. DE LIPKAU: Correct.

16 MS. PETERSON: So everybody has their brief
17 either filed or in the mail on February 11th.

18 MR. DE LIPKAU: Okay. Fine.

19 MS. PETERSON: Is that acceptable to the State
20 Engineer's office?

21 MS. JOSEPH-TAYLOR: Uh-huh.

22 HEARING OFFICER WILSON: That will be fine.

23 MR. DE LIPKAU: Thanks for the correction.
24 That's exactly what I meant.

25 HEARING OFFICER WILSON: And for the audience

1 that's here, we will allow public comment through that same
2 time period as well, written public comment. So if you still
3 feel that you would like to submit something but you didn't
4 feel comfortable speaking up in front of everyone, feel free
5 to submit public comment by February 11th 2011.

6 And with that, we'll deem the matter closed and
7 submitted to the State Engineer for determination. Thank
8 you.

9 (Hearing concluded at 3:42 p.m.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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:

_____	Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada
_____	Hand-delivery - via Reno/Carson Messenger Service
_____	Facsimile
_____	Federal Express, UPS, or other overnight delivery
<u> X </u>	E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures

fully addressed as follows:

Bryan L. Stockton	bstockton@ag.nv.gov
Senior Deputy Attorney General's Office	
Nevada Attorney General's Office	
100 North Carson Street	
Carson City, NV 89701	

Ross E. de Lipkau	rdelipkau@parsonsbehle.com
Parsons Behle & Latimer	
50 West Liberty Street, Ste 750	
Reno, NV 89501	

Therese A. Ure	t.ure@water-law.com
Laura A. Schroeder	schoeder@water-law.com
Schoeder Law Offices, P.C.	
400 Marsh Avenue	
Reno, NV 89509	

X Placing a true copy of a CD-ROM version thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada

fully addressed as follows:

John R. Zimmerman jzimmerman@parsonsbehle.com
Parsons Behle & Latimer
50 West Liberty Street, Ste 750
Reno, NV 89501

Francis M. Wikstrom
Parsons Behle & Latimer
201 South Main Street, Ste 1800
Salt Lake City, UT 84111

DATED this 21st day of December, 2012.

/s/ Nancy Fontenot

1 grants any of these applications so that the -- if the
2 applications are granted by the State Engineer that they mesh
3 with the project as approved by the BLM.

4 Q. And do you have any comment to the State Engineer
5 regarding the five-foot contour and the BLM process?

6 A. We heard testimony that the BLM set the standard
7 to analyze the impacts. I know you're not concerned about
8 the BLM process because you have your own regulatory
9 obligations.

10 However, even with that being said, NEPA is
11 disclosure. That's what it is. It's transparency
12 disclosure. So I argue that, and we have argued this with
13 the BLM, that ten-foot drawdown contour to analyze impacts
14 does not disclose all the impacts. And that's true here. It
15 does not disclose the full range of potential impacts that
16 could be related to the Mount Hope pumping. And if shown
17 that through many other wells, springs, especially in the
18 Grub Flat area of Kobeh Valley.

19 And so the BLM can mandate anything or ask for
20 anything. But nothing -- They are analyzing the proposed
21 action. They are analyzing what the EIS analyzes, the
22 proposed action of EIS. There is nothing that precludes the
23 applicants from disclosing more than what is asked by the BLM
24 in their reports. There is nothing that precludes the
25 applicant from themselves implementing changes to the water

1 modeling, the calibration, whatever else. They just cannot
2 do anything less stringent than the BLM would ask.

3 Q. And is there anything in the BLM process that
4 would somehow preclude the State Engineer from ordering a
5 five-foot contour with regard to this project?

6 A. No.

7 Q. Okay. So let me take you out of the EIS process
8 and ask you some questions, biological questions.

9 A. Okay.

10 MS. JOSEPH-TAYLOR: Can I ask a question on the
11 EIS process?

12 MS. PETERSON: Sure.

13 MS. JOSEPH-TAYLOR: Does the issue of the
14 availability of water go in to the EIS process? Do they need
15 to know that water rights have been permitted or not?

16 THE WITNESS: First I need to acknowledge that we
17 have the memorandum of understanding with BLM that precludes
18 us from discussing any pre-decisional information.

19 MS. JOSEPH-TAYLOR: I'm just asking the process.

20 THE WITNESS: So I'm not trying to dance around
21 the issue.

22 MS. JOSEPH-TAYLOR: Let's put it in hypothetical
23 on a different project.

24 THE WITNESS: No. Anybody can propose an action
25 on public land at any time. The BLM has, they have to

1 analyze it as proposed. So there may be discussions. There
2 are discussions in NEPA documentation about other permits
3 from other agencies. But the BLM has to analyze it as if the
4 water rights were granted.

5 MS. JOSEPH-TAYLOR: Thank you.

6 Q. (By Ms. Peterson) Turning to the biological
7 questions I have. Do any of the streams on the Roberts
8 Mountains contain Lahontan cutthroat trout?

9 A. Yes. Pete Hanson Creek is a Lahontan cutthroat
10 trout stream.

11 Q. And why are we bringing this up as important to
12 the State Engineer for his purposes?

13 A. Well, I think there's a couple of reasons. I'm a
14 biologist. I am, like Steve Walker said, a bugsen bunny.
15 And I tend to look at things more from a biological
16 standpoint. Pete Hanson Creek is the only Lahontan cutthroat
17 trout bearing stream on all of Roberts Mountain. The Nevada
18 Department of Wildlife as well as with the fish -- US Fish
19 and Wildlife Service have designated both Henderson Creek and
20 Vinini Creek as Lahontan cutthroat trout recovery streams.
21 There are not any current populations of those fish in those
22 streams, but they have been designated as recovery streams,
23 streams that could sustain Lahontan cutthroat trout.

24 So from a biological standpoint, fish need water
25 to survive and they need water of sufficient quantity and

1 water of sufficient quality. So it's counter-intuitive to
2 think that the only fish-bearing stream on Roberts Mountain
3 and the two that have been designated as recovery streams
4 would decrease in flow or cease the flow and not support
5 Lahontan cutthroat trout populations for thousands of years.

6 So in my mind from a biological standpoint, those
7 streams have to have a reliable resource such as water in
8 sufficient quantity and quality to be able to sustain these
9 populations. And Pete Hanson has.

10 Q. And you've been to Henderson and Vinini Creeks?

11 A. Multiple times, many times.

12 Q. And I know Mr. Katzer said that he was there in
13 August of 2007. Do you recall that testimony?

14 A. I do.

15 Q. And subsequent to August 2007 have you been to
16 Vinini or Henderson Creeks in the August time frame or late
17 fall time frame?

18 A. Yes.

19 Q. And can you describe the flows that you observed?

20 A. Yes, I can. In August of 2008 I was doing
21 riparian assessments on both Henderson and Vinini Creek. I
22 was with the BLM when we did these assessments. That was
23 August 2008. And both of these streams were flowing at that
24 period of time.

25 In October of 2010, I have, as Mr. Bugenig

1 pointed out, I went on a field visit with him, and we
2 experienced, you know, I won't repeat his testimony, but we
3 did visit the spring source of Henderson at that time. It
4 was flowing, flowing quite a bit. We visited Vinini Creek.
5 We in fact drove up Vinini Creek and over the entire Roberts
6 Mountain. And Vinini Creek was flowing substantially in
7 October of this year.

8 Q. Now we're going to go to another subject, the
9 maps that you prepared.

10 A. Yes.

11 Q. In this proceeding you prepared certain maps that
12 represent water rights owned by individuals in Kobeh Valley;
13 is that correct?

14 A. I did.

15 Q. And those were presented yesterday in this
16 proceeding?

17 A. Yes, they were.

18 Q. And could you please tell the State Engineer and
19 the panel how those maps were prepared, what you did to
20 prepare those maps.

21 A. I prepared those maps on my own. Those were the
22 ones, the maps we spoke about yesterday where each of the
23 ranchers, the people out in Kobeh Valley was to depict their
24 water rights on their allotments and their property. What I
25 did with that is I searched the State Engineer's database was

1 all I did and I plotted those using GIS, using the
2 description, the permit, the application or the certificate.
3 I'm aware of many of those ranches. And as was talked about,
4 there's a long history involved with all of them. There's
5 been multiple names, multiple families, a lot of different
6 people involved. So all I did was look at the names that I
7 knew of, did a search on those names and those are the water
8 rights that I found. And I do need to disclose that many of
9 their rights may not have been depicted. That's just what I
10 found by searching certain names, certain rancher's names and
11 individual's names.

12 A good example is Mr. Kobeh. He testified that
13 he had his ranches under the name of MW Cattle Company. And
14 I knew this from living in Eureka that he had purchased the
15 ranch from Damele Farms and Leo Glen Damele. And so I did --
16 There's a great example is I searched. I did not find
17 anything under MW Cattle Company but I found numbers under
18 Demale Farms. And we had -- That is one that I looked in to
19 a little more, the deed on that, we did pull that from the
20 county recorder. And those water rights were indeed
21 transferred. It just appears that the record of conveyance
22 or the paperwork hasn't been followed up on. So there was
23 some confusion yesterday with people saying I have two wells
24 here, I have a windmill here and those type of things. So
25 that is just to acknowledge that I did those, I didn't get

1 input from them before I made those maps and that's the
2 product.

3 Q. And then I'm going to show you Exhibit 149. Do
4 you have Exhibit 149 in front of you?

5 A. Yes.

6 Q. And that is three pages of maps?

7 A. Yes.

8 Q. And did you prepare those?

9 A. I did.

10 Q. And if you could just briefly explain what those
11 maps depict.

12 A. The first map is entitled KVR June 2010
13 applications. What I did on this is I took the place of use
14 as described in the applications that were a part of the
15 first hearing in 2008 and those are depicted in green. And I
16 overlaid that on top of the June 2010 place of use as
17 described in applications for this hearing.

18 The points of diversion for each of those
19 applications for June 2010 are depicted and you can -- by red
20 dots and you can see the yellow well field, the well field
21 corridor that we've seen many times in this hearing.

22 Q. And actually did the June 2010 place of use
23 applications show a larger place of use --

24 A. Yeah.

25 Q. -- than the 90,000 acres --

1 A. I need to clarify that. The blue is underneath
2 the green. But the blue coincides every where with the
3 green. In addition to the blue you can see five full
4 sections and then there's a little sliver at the southwest
5 corridor, a little sliver of make-up sections or half
6 sections.

7 Q. That have been added?

8 A. That have been added, yes.

9 Q. And your understanding is that this place of use
10 is -- does not strictly adhere to the plan of -- the border
11 of the plan of operations?

12 A. Yes, that's true.

13 Q. And then just explaining quickly what the second
14 map is on Exhibit 149.

15 A. Yes. I prepared this to help ourselves, Eureka
16 County and our consultants as well as the State Engineer. I
17 looked at all of the June 2010 applications and placed them
18 in one of the -- You can see many of those -- There are
19 wells, the points of diversion that were modeled in the
20 hydrology map. And this shows all of the applications, the
21 last 32 change applications from June 2010, the points of
22 diversion where those apply to.

23 Q. And so this map does not indicate all the points
24 of diversion for all the applications that are requested to
25 be granted in this proceeding; is that correct?

1 A. That's correct.

2 Q. And then turning to the third map on Exhibit 149,
3 what does that depict?

4 A. That depicts the proposed place of use, which is
5 green. And it's the sections of the proposed place of use
6 under the original application. This is not the June 2010
7 edition. It depicts the well field corridor, one of the
8 earlier iterations of that. It's in pink. And then those
9 wells were from previous applications. So this doesn't
10 really have reference to the June 2010.

11 But it also depicts what many of the documents
12 that we have reviewed and I believe one of them was submitted
13 for this hearing. It depicts the well field and potential
14 expansion area.

15 Q. And that's that kind of light yellow?

16 A. It's a light yellow crescent shape. It takes in
17 most of Kobeh Valley, parts of Diamond Valley and extends up
18 through the Coils Creek drainage.

19 Q. And this is from the applicant's own exhibits as
20 to their well field and proposed expansion area, that whole
21 big yellow?

22 A. Yes.

23 Q. Most of Kobeh Valley?

24 A. Yes.

25 Q. And then we submitted on a disc, it's Exhibit

1 163, and I'm not asking everybody to pull it out, but we
2 submitted the notices that have been filed with the BLM by
3 the applicant in Diamond Valley?

4 A. That's correct.

5 Q. And just quickly if you can explain again what
6 those notices are.

7 A. The applicants hold many notices not only in
8 Diamond Valley but Kobeh Valley and elsewhere too. As we
9 heard Pat Rogers speak to, they're notices with BLM for
10 surface disturbance and they're bound by certain exhibits
11 that they can disturb for exploration activities, drilling
12 wells, roads, all kinds of things. I think that exhibit we
13 submitted is only the notice on file of BLM that is in
14 Diamond Valley.

15 Q. And what was Eureka County's concern about those
16 notices that were filed in Diamond Valley?

17 A. If you look at that disc you'll find dozens of
18 folders. Every one of these notices it's not a piece of
19 paper. There is amendments made many times to these. The
20 BLM as far as I could see, I never saw an example where the
21 BLM denied any amendment to these notices. Those notices
22 allow again for all kinds of exploration, not only mineral
23 exploration as well as water exploration. It's strictly a
24 disturbance. And they have to post reclamation bonds and
25 there's whole issues with that.

1 But our concern here is having the leeway to
2 continue to explore and disturb areas in exploration of water
3 in Diamond Valley.

4 If I may add something too? One of our major
5 concerns as well is that those notices do not mesh with
6 what's being analyzed under the plan of operations.

7 Q. Okay. And then switching again to another
8 subject.

9 A. Uh-huh.

10 Q. Master plan, Eureka County master plan. And
11 again, I'm not asking everybody to pull it out. But we
12 submitted the master plan, portion of the master plan as
13 Exhibit 153; is that correct?

14 A. Yes.

15 Q. And has the Eureka County master plan -- Well, in
16 2008 the master plan was submitted to the State Engineer; is
17 that correct?

18 A. It was.

19 Q. And it was updated this year; correct?

20 A. Yes, it was updated this year, 2010. We heard
21 Rex Massey speak to him being involved in preparing the
22 original master plans. There are portions of the master
23 plan, specifically our natural resource and federal and state
24 land use planning element, that has been updated at least
25 three times in the last ten years. And this is our most

1 recent update of that plan, but that has been something that
2 has been a living and working document for over ten years.

3 Q. And achieving the goals or implementing the goals
4 of the master plan is very important to the Eureka County
5 Commission; is that correct?

6 A. It is. It provides the policy, goals, direction
7 that the county will take in ensuring sustainable use of our
8 natural resource.

9 Q. And then switch now to future growth and
10 development.

11 A. Okay.

12 Q. And we had submitted Exhibit 151. I don't know
13 if it's in that book or not.

14 A. It is.

15 Q. Okay. And did you prepare Exhibit 151?

16 A. I did.

17 Q. And what does that depict?

18 A. It depicts all of the private land in the
19 vicinity of the Mount Hope project. And specifically when I
20 prepared this I was focusing on private land in Kobeh Valley.
21 You can see a subtitle to that map that states 7,471 acres of
22 private land in Kobeh Valley, Eureka County portion. That
23 should be pointed out because I only had access to the data
24 from Eureka County. So there will be a blue line running
25 from north to south. That is the Eureka County/Lander County

1 border. And there is other private land outside of the
2 Eureka County portion that isn't taken in to account in this
3 acreage.

4 Q. And there is 7,471 acres of private land in Kobeh
5 Valley?

6 A. Kobeh Valley in the Eureka County portion.

7 Q. And then I'm going to direct you to Exhibit 152.

8 A. Yes.

9 Q. And what is Exhibit 152?

10 A. It is water applications for permit to
11 appropriate the public waters of the State of Nevada. And
12 there are three of them, I believe.

13 Q. Yes.

14 A. 79962 through 79964.

15 Q. And those are water right applications on file
16 with the State Engineer's office for water to appropriate in
17 Kobeh Valley?

18 A. Yes.

19 Q. For future growth and development?

20 A. That's right.

21 Q. And then directing your attention to 531, which
22 you may not have in front of you.

23 A. I don't.

24 Q. Do you have that in front of you?

25 A. I do.

1 Q. What is Exhibit 531?

2 A. It's a summary of some of the proposed mining
3 related projects in the Kobeh Valley. This is just -- In my
4 position with the county I receive a lot of notices and other
5 correspondences that speak to exploration activities and
6 other activities in Kobeh Valley. And this is a quick
7 synopsis of some mining-related projects that are exploring
8 and potentially proposing to come in to Kobeh Valley.

9 MR. DE LIPKAU: Excuse me a moment. I have the
10 wrong exhibit. Which one are you referring?

11 THE WITNESS: 531.

12 MR. DE LIPKAU: Oh, 31. Thank you. I'm sorry.

13 THE WITNESS: This is -- Most of this it's just
14 screen shots from a computer. Looking at these different
15 companies, project descriptions on their websites and putting
16 those descriptions, none of these are my words, these are
17 directly from these companies. And you can see that there is
18 a handful or more, some very close to the Mount Hope project,
19 some further away and some right near or within the well
20 field area.

21 Q. (By Ms. Peterson) And those are all proposed for
22 Kobeh Valley; is that correct?

23 A. They are exploring. They, if you read some of
24 them, they say they are proposing to bring these projects
25 forward. However, I am not aware of any of these companies

1 that have filed application to move forward to permit with
2 the BLM.

3 Q. So you're just presenting evidence of future
4 growth and development possibly in Kobeh Valley; is that
5 correct?

6 A. Exactly. And substantial gross and development
7 in Kobeh Valley.

8 MS. PETERSON: And this might be a good time for
9 a break for me to determine if there's any other exhibits
10 that I need to discuss with Mr. Tibbitts. It would speed
11 things up.

12 HEARING OFFICER WILSON: We can take a short
13 break. Let's come back at 11:15

14 MS. PETERSON: Thank you.

15 (Recess was taken)

16 Q. (By Ms. Peterson) Mr. Tibbitts, in the last
17 hearing Eureka County submitted to the State Engineer copies
18 of the USGS joint funding agreements that had been entered in
19 to from the various years; is that correct?

20 A. Yes.

21 Q. And we've submitted an exhibit for this
22 proceeding updating the agreements that have been entered in
23 to with the USGS for the joint study and the joint
24 monitoring, we've submitted that in this proceeding; is that
25 correct?

1 A. Yes.

2 Q. And that's Exhibit 150?

3 A. I believe so. Yes.

4 Q. Okay. And then turning to Exhibits 175 and 177.

5 There is information presented in those exhibits concerning
6 economic impacts associated with agricultural activity in
7 Eureka County?

8 A. Yes.

9 Q. And would you like to explain those exhibits?

10 A. Yeah. Exhibit 175 is updated, economic updated
11 economic linkages in the economy of Eureka County. This
12 speaks to -- it essentially comes down to what one dollar is
13 worth among different industries. And it creates those
14 economic linkages throughout the economy of Eureka County.

15 So I think what I'm speaking to specifically is
16 Table 13. I don't need to go in to the details of it.
17 Essentially the report speaks for itself. It's updated
18 economic linkages. There was a previous report which was
19 just economic linkages.

20 And both of them come to the same conclusion
21 through different procedures that one dollar of agriculture
22 is essentially worth more than one dollar of any other
23 industry in Eureka County. One job created in the ag
24 industry creates more secondary employment in Eureka County
25 than any other industry. And one dollar return to an

1 individual household returns more money, in the ag industry,
2 returns more economic value to the county than any other
3 industry.

4 And the point -- the reason I wanted these in is
5 because southern Eureka County has been stable because of
6 agriculture. It is true that our current valuation is --
7 relies on mining. But our future relies on renewable
8 agriculture. That's what we can always rely on in to the
9 future. And this study, which was not mine, it does point
10 that out that that value of agriculture is very, very
11 important to Eureka County.

12 Q. And then I'm going to shift gears again unless
13 you wanted to say anything in addition.

14 A. Well, 177, I just wanted to acknowledge what that
15 is. I prepared it. It is pulled the numbers from different
16 censuses of agriculture from 1987 to the most recent in 2007
17 to show the value of agriculture to Eureka County. These are
18 numbers published through the USDA. And it highlights number
19 of farms and ranches and the value of livestock grazing and
20 crop growing in Eureka County. And you can see from this
21 table that those values are very substantial.

22 Q. And then shifting gears again. The State
23 Engineer at the last go around after Ruling 5966 issued
24 certain permits based on the ruling; is that correct?

25 A. Yes.

1 Q. And issued permits for the portion of the Bartine
2 water rights that had not been forfeited, is that correct,
3 issued permits associated with the Bartine rights? I'm
4 sorry.

5 A. Yes.

6 Q. And do you recall the testimony as to the acreage
7 that was subject to cultivation based on the last hearing?

8 A. Yeah. Well, I remember specifically the Ruling
9 5966, there was a table that showed or depicted the cropping
10 inventories at Bartine, at Bartine Ranch. And I believe it
11 was 65 acres, 65-point -- roughly 65 acres.

12 Q. And then to your understanding what is the duty
13 that's associated with that 65 acres, the water right duty?

14 A. The duty associated with those original
15 irrigation permits was four acre-foot per acre.

16 Q. And the State Engineer issued a permit based on
17 the ruling related to the Bartine water right applications;
18 is that correct?

19 A. Yes. I believe the ruling took in to account the
20 consumptive use of those, of those irrigation rights and
21 transferred the consumptive use portion of the full duty
22 across the entire acreage of Bartine, the Bartine Ranch.

23 In my mind, only 65 acres was ever shown to be on
24 any cropping inventory. 65 times four, the four acre-foot
25 duty is 260 acre-foot. 260 acre-foot less the consumptive

1 use should be the only water allowed to be transferred off of
2 Bartine.

3 MS. PETERSON: That's all the questions I have.

4 HEARING OFFICER WILSON: Cross-examination.

5 MR. DE LIPKAU: Yes, sir. Thank you.

6 CROSS-EXAMINATION

7 By Mr. de Lipkau:

8 Q. Mr. Tibbitts, earlier Mr. Fiorenzi stated that a
9 certain bill draft request was submitted by, I believe
10 Mr. Goicoechea, is that your understanding?

11 A. No. My understanding is that there is a bill
12 draft request, BDR 525, which was submitted. It's the local
13 government BDR given to Eureka County. We can submit one
14 BDR.

15 Q. Oh, so the county as an entity and not
16 Mr. Goicoechea?

17 A. That's correct.

18 Q. And what does the BDR request?

19 A. The BDR requests that if the State Engineer
20 orders a study pursuant to certain statutes or mandates a 3 M
21 plan, water resource 3 M plan as a condition of putting water
22 to beneficial use that the local government with the means
23 and the -- that wants to participate in that monitoring,
24 mitigation and motoring plan will be afforded that
25 opportunity.

1 Q. Is that bill draft request a matter of public
2 record?

3 A. It is.

4 Q. It could be obtained through your office or the
5 county offices?

6 A. You can go on county offices or any of the state
7 offices, the Legislative Council Bureau would have that on
8 file.

9 Q. Okay. You stated that you were present at the
10 last hearing the entire time?

11 A. I was.

12 Q. And do you remember Mr. Ithurralde being asked a
13 question to the effect of does Eureka County wish to kill the
14 project?

15 A. I remember something similar to that, yes.

16 Q. And would it be a true statement that in effect
17 the answer was no, it doesn't intend to kill the project, it
18 just wants it done right, do you recall that?

19 A. I recall Mr. Ithurralde, Chairman Ithurralde at
20 the time stating that we wanted to ensure that the project
21 was done right.

22 Q. To your knowledge is that still the position of
23 Eureka County board of county commissioners?

24 A. I don't speak on behalf of the board, but I
25 believe that that is the position of the county.

1 Q. All right. I believe you testified earlier that
2 you acknowledge the statutory authority of the Nevada State
3 Engineer?

4 A. Yes.

5 Q. Would it be a true statement to say that the 3 M
6 program as we've referred to earlier is the real heart of
7 this problem?

8 A. The real -- Can you re--

9 Q. Let me try to rephrase.

10 A. I'm not quite sure what you mean by problem.

11 Q. If the parties were to resolve all 3 M issues,
12 would the water rights protest dispute basically be
13 eliminated?

14 A. I'm not quite sure what you mean by all parties.

15 Q. Well, the county, Eureka County, the
16 stakeholders, other entities, farmers?

17 A. The 3 M plan is very important to Eureka County.
18 Eureka County does want full participation in that 3 M plan
19 and we want all stakeholders included. That is a very
20 important issue to us. However, it is not the only issue
21 that we feel needs to be resolved.

22 Q. What are the other issues that need to be
23 resolved?

24 A. I stated it in my testimony that we have held
25 from 2007 before I was ever employed with Eureka County that

1 we would like to see a reduced project that still mines the
2 Mount Hope mine at the full resource that is there but extend
3 that time frame to reduce not only water concerns but other
4 environmental concerns and socioeconomic concerns.

5 Q. Okay. Do you know whether or not a reduced
6 project would render the project uneconomical?

7 A. I don't know that.

8 Q. Are you familiar with the State Engineer's
9 records?

10 A. Some of them.

11 Q. Have you ever checked this office by way of
12 permit files and the supporting maps?

13 A. My only access to this office on permanent files
14 or supporting maps would have been either through legal
15 counsel providing those, county's legal counsel or obtaining
16 them from the online database.

17 Q. And you've looked at the place of use map for the
18 applications, the subject of today's hearing?

19 A. I have not. I have looked at the description
20 that defines the place of use in the applications.

21 Q. But you haven't looked at the map?

22 A. I have not.

23 Q. Let's turn to Exhibit 531, page one of nine. I
24 think you testified earlier that all of these contemplated
25 projects are in Kobeh Valley, did you not?

1 A. I testified that this is what I had pulled from
2 these people's web site. And on this particular one, RW
3 project, that's why I included all of the language to
4 highlight the proposed projects within Kobeh Valley.

5 Q. All right. Now, Gold Bar clearly is in Kobeh
6 Valley, is it not?

7 A. It is.

8 Q. Where is the Gold Pit?

9 A. On the Roberts Mountains?

10 Q. All right. And from Tonkin Springs north all of
11 the red dots are in Pine Valley, are they not?

12 A. That is correct. Well, and other valleys
13 including Grass Valley.

14 Q. So would it be a true statement that the Gold Bar
15 and possibly the Gold Pit depending on which side of Roberts
16 Mountain it's on are the only two prospects located or
17 possibly located in Kobeh Valley; is that correct?

18 A. No, that is not correct.

19 Q. Okay. Which other ones are there as shown on
20 this plat?

21 A. RW claims.

22 Q. Who owns them?

23 A. Harvest Gold, as stated in the document.

24 Q. Where would RW, the RW plans be in relation to
25 the proposed mine?

1 A. You can turn a page to page two of nine and it
2 shows where those claims are. Mount Hope is actually circled
3 on this figure up on the right-hand side. And the claims,
4 you can see Gold Bar depicted as well as a postulated trend
5 of deposits and you can see the RW claims on the scale.

6 Q. Thank you very much. Page one is not to scale.
7 Are you aware there is a spring on -- Pardon me -- a
8 measuring device on Nichols Spring?

9 A. I'm not aware of that.

10 Q. Okay. Are you aware that Mr. Katzer in his
11 testimony today stated he spent approximately 50 days in the
12 last year hiking and observing and measuring the water
13 sources on Roberts Mountain?

14 A. I remember him saying that.

15 Q. All right. And do you think the data obtained by
16 Mr. Katzer would be the finest version of the baseline study?

17 A. I do not believe that Mr. Katzer collected data
18 on all of his visits. Many of those were field observations.

19 Q. Do you think it's a good start for a baseline?

20 A. Mr. Katzer's data?

21 Q. Yes.

22 A. I have not seen Mr. Katzer's data. It has never
23 been provided to Eureka County.

24 Q. Okay. Would it be a true statement the data is
25 not provided for you?

1 A. Some data is.

2 Q. All right. So in the effort of cooperation you'd
3 like all data, would that be true?

4 A. If I understand what framed these questions are
5 it started out with the 50 or so days that Mr. Katzer spent
6 in the field.

7 Q. No. Going to the baseline. There seems to be
8 some miscommunication. I'm trying to put it together.

9 A. Some areas there is baseline data, I would agree
10 with that point.

11 Q. Baseline data?

12 A. Yes. Many areas there is not baseline data.

13 Q. And we still have a difference of, I'll call it
14 disagreement between the professionals on the 3 M plan;
15 correct? Does that have to be worked out?

16 A. Yes.

17 Q. All right. Anything else?

18 A. Regarding disagreement?

19 Q. Yes. We don't want any federal issues.

20 A. I think those have all been highlighted
21 throughout the hearing this week.

22 MR. DE LIPKAU: All right. No further questions.

23 HEARING OFFICER WILSON: Thank you. Redirect?

24 MS. PETERSON: None.

25 ///

1

2

3

7

13

14

19

1 the future?

2 A. Yes. I think even if we weren't here today at
3 this hearing it would be that if I was in this position as
4 the natural resources manager. And the funding of the USGS
5 study was contemplated well before the applicant proposed
6 this project. We started that when Dr. John Hutchings was in
7 my position. And I feel I would have continued that process
8 to monitor and define the water resource.

9 Q. I haven't read your draft plan. Is there a
10 dispute resolution process, I'll call it, in this plan? And
11 I'm getting to the point where you have a protestant in this
12 hypothetical situation where a water right is actually
13 issued, a 3 M plan is required, a protestant is a participant
14 in the 3 M plan, there is argument between the protestant and
15 the applicant. What is a -- What would be a dispute
16 resolution process?

17 A. There is a dispute resolution. Do you want me
18 turn to it?

19 Q. No. Just briefly describe.

20 A. Yeah, there are provisions for dispute resolution
21 and decision making. And it speaks about if there are
22 disagreements between any of the parties that any of the
23 parties can in writing, it specifically highlights in
24 writing, to inform you of those disputes and the final
25 determination is left up to your authority.

1 THE STATE ENGINEER: Thank you.

2 HEARING OFFICER WILSON: All right. Thank you,
3 Mr. Tibbitts.

4 Can we take care of some of the exhibits?

5 MS. PETERSON: That would be great. Thank you.
6 Exhibit 126.

7 HEARING OFFICER WILSON: That's the Eureka County
8 proposed monitoring plan. Any objection to 126?

9 MR. ZIMMERMAN: No objection.

10 HEARING OFFICER WILSON: Exhibit 126 will be
11 admitted.

12 MS. PETERSON: Exhibit 149.

13 HEARING OFFICER WILSON: Is the map showing
14 applications, points of diversion and place of use, I
15 believe. Any objection to Exhibit 149?

16 MR. ZIMMERMAN: No objection.

17 HEARING OFFICER WILSON: Exhibit 149 will be
18 admitted.

19 MS. PETERSON: Exhibit 150.

20 MR. ZIMMERMAN: No objection.

21 HEARING OFFICER WILSON: Was that brought up by
22 Mr. Tibbitts?

23 MS. PETERSON: Yes.

24 HEARING OFFICER WILSON: Exhibit 150 will be
25 admitted.

1 MS. PETERSON: Exhibit 151.
2 HEARING OFFICER WILSON: Exhibit 151, map of
3 private land near Mount Hope. Any objection?
4 MR. ZIMMERMAN: No objection.
5 HEARING OFFICER WILSON: 151 will be admitted.
6 MS. PETERSON: Exhibit 152.
7 HEARING OFFICER WILSON: Wise family development
8 water applications?
9 MR. ZIMMERMAN: No objection.
10 HEARING OFFICER WILSON: Exhibit 152 will be
11 admitted.
12 MS. PETERSON: Exhibit 153.
13 HEARING OFFICER WILSON: It's the portion of the
14 Eureka County master plan, 2010. It's -- Any objection to
15 Exhibit 153?
16 MR. ZIMMERMAN: No objection.
17 HEARING OFFICER WILSON: It will be admitted.
18 MS. PETERSON: And I had other exhibits that
19 basically are matters of public record. I mean we've
20 provided them in our document exchange. I don't know if you
21 just want to go through Mr. Tibbitts now.
22 HEARING OFFICER WILSON: Let's just do
23 Mr. Tibbitts now.
24 MS. PETERSON: Okay. I would like to talk about
25 those other documents though.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING OFFICER WILSON: Okay.

MS. PETERSON: 163.

HEARING OFFICER WILSON: That's General Moly's notice of exploration. Any objection to 163?

MR. ZIMMERMAN: No objection.

HEARING OFFICER WILSON: That will be admitted.

MS. PETERSON: 175.

HEARING OFFICER WILSON: The updated economic linkages report. Any objection to 175?

MR. ZIMMERMAN: No objection.

HEARING OFFICER WILSON: 175 will be admitted.

MS. PETERSON: 177.

HEARING OFFICER WILSON: Eureka County agricultural statistics with attachments. Any objection to 177?

MR. ZIMMERMAN: No objection.

HEARING OFFICER WILSON: 177 will be admitted.

MS. PETERSON: 507.

HEARING OFFICER WILSON: I think I show 507 as already being in.

MS. PETERSON: Oh, okay. Thank you. 531.

HEARING OFFICER WILSON: 531 is the future mining growth and development in Kobeh Valley that Mr. Tibbitts spoke about. Any objection to 531?

MR. ZIMMERMAN: No objection.

1 HEARING OFFICER WILSON: Exhibit 531 will be
2 admitted.
3 MS. PETERSON: Thank you.
4 HEARING OFFICER WILSON: That's everything I
5 have.
6 MS. PETERSON: And then my other exhibits --
7 HEARING OFFICER WILSON: Yes.
8 MS. PETERSON: -- of public record. 155.
9 HEARING OFFICER WILSON: 155, State Engineer's
10 Ruling Number 3569. Any objection?
11 MR. ZIMMERMAN: No.
12 HEARING OFFICER WILSON: Exhibit 155 will be
13 admitted.
14 MS. PETERSON: 157.
15 HEARING OFFICER WILSON: Is the Pete Hanson Creek
16 decree. Any objection to 157?
17 MR. ZIMMERMAN: No objection.
18 HEARING OFFICER WILSON: That will be admitted.
19 MS. PETERSON: 160.
20 HEARING OFFICER WILSON: 160 is Kobeh Valley
21 hydrographic summaries from our database. Any objection to
22 160?
23 MR. ZIMMERMAN: No objection.
24 HEARING OFFICER WILSON: Exhibit 160 will be
25 admitted.

1 MS. PETERSON: 161 and 162.

2 HEARING OFFICER WILSON: 161 is the Pine Valley
3 hydrographic summaries. 162 is the Diamond Valley
4 hydrographic summaries. Any objection?

5 MR. ZIMMERMAN: No.

6 HEARING OFFICER WILSON: Exhibits 161 and 162
7 will be admitted.

8 MS. PETERSON: 164.

9 HEARING OFFICER WILSON: I have that as testimony
10 of Jim Gallagher, October 4th and 5th 2008. That's from the
11 previous hearing; right?

12 MS. PETERSON: Right.

13 HEARING OFFICER WILSON: Any objection?

14 MR. ZIMMERMAN: No objection.

15 HEARING OFFICER WILSON: 164 will be admitted.

16 MS. PETERSON: 165.

17 HEARING OFFICER WILSON: That is previous
18 testimony of Tim Halpin. Any objection?

19 MR. ZIMMERMAN: No.

20 HEARING OFFICER WILSON: Exhibit 165 will be
21 admitted.

22 MS. PETERSON: And then going to 508. 508
23 through 518 are our protests that you asked us to provide.

24 HEARING OFFICER WILSON: Yes.

25 MS. PETERSON: And those haven't been admitted

1 yet. We would like those admitted.

2 HEARING OFFICER WILSON: Let's see, I believe we
3 spoke about 518 and had that one admitted. We will admit
4 Exhibits 508 through 517. I'm assuming no objection.

5 MR. ZIMMERMAN: No objection.

6 HEARING OFFICER WILSON: Exhibits 508 through 517
7 will be admitted. And as I mentioned, 518 was previously
8 admitted.

9 MS. PETERSON: And I would like the opportunity
10 to at least compare my notes with what you have as being
11 admitted just in case I overlooked something. But other than
12 that, that's all we would have on behalf of Eureka County.

13 HEARING OFFICER WILSON: Okay.

14 MS. PETERSON: Maybe I can do that during the
15 next break.

16 HEARING OFFICER WILSON: We'll work something out
17 during the break.

18 Did you have another witness or was Eureka County
19 done with the witnesses?

20 MS. PETERSON: We're done.

21 HEARING OFFICER WILSON: Ms. Ure, I understand
22 you wanted to try to get Craig Benson on before lunch; is
23 that correct?

24 MS. URE: That's correct.

25 HEARING OFFICER WILSON: So we are ready to

1 proceed with your case. Let's go ahead and have Craig Benson
2 come forward.

3 (Witness was sworn in)
4

5 CRAIG BENSON

6 Called as a witness on behalf of the
7 Protestant, having been first duly sworn,
8 Was examined and testified as follows:
9

10 DIRECT EXAMINATION

11 By Ms. Ure:

12 Q. Mr. Benson, can you please state your name for
13 the record and spell your last name.

14 A. Craig Benson, B-e-n-s-o-n.

15 Q. Can you briefly describe your education.

16 A. I have two Bachelor degrees from Colorado State
17 University, one in animal science, one in agricultural
18 business.

19 Q. Okay. Can you please turn to Exhibit 300, which
20 I placed in front of you there.

21 A. Yes.

22 Q. What is that document?

23 A. This is a Google Earth satellite image of a
24 northern portion of -- a northwestern portion of Diamond
25 Valley.

1 MS. JOSEPH-TAYLOR: Hold on.

2 HEARING OFFICER WILSON: Let's be off the record.

3 (Discussion held off the record)

4 HEARING OFFICER WILSON: We were organizing
5 exhibits so we're all looking at the same exhibit. You had
6 Mr. Craig Benson talking about Exhibit 300, I believe.

7 MS. URE: Yeah.

8 HEARING OFFICER WILSON: Go ahead.

9 Q. (By Ms. Ure) Mr. Benson, do you also have in
10 front of you a copy of Exhibit 39, Figure 2.0-1?

11 A. Yes, I do.

12 Q. Can you please use these maps to describe where
13 your property is located?

14 A. Yes, I can. The Google Earth satellite image,
15 which I first referred to, is a closer blow-up of a portion
16 represented on the Exhibit 39 map. If you'll notice there in
17 the Google map there is a yellow push pin with reference to
18 Township 21 north, Range 53 east, Section 4. That will be
19 the left westerly push pin to the center of that section. I
20 own the east half of that Section 4. It's fairly easy to
21 pick out this section on the map of Exhibit 39, 2.0-1.

22 On the right side of your map you'll see a well
23 marked 24012. That corresponds with the blank unfarmed BLM
24 land in the Google map.

25 Q. Thank you.

1 A. So that is the relation on the scale of the
2 larger map of my property.

3 Q. Thank you. How long have you been working in the
4 agriculture industry?

5 A. My entire life. I'm 31 years active
6 participating in agriculture in Diamond Valley.

7 Q. And what do you do?

8 A. I do pretty much whatever needs to be done. Our
9 doors don't lock at 5:00 o'clock. We do whatever needs to be
10 done in the harvesting, management, husbandry of our cattle,
11 budgeting, financial, I go to water hearings, whatever I need
12 to do to ensure the ongoing business that we are part of.

13 Q. Are you part of a hay operation as well?

14 A. Yes, I am. I own a custom hay stacking
15 operation. I've owned that operation and operated it as my
16 business myself since I was 15 years old.

17 Q. Okay. Can you please turn to Exhibit 305.

18 A. Okay.

19 Q. Are these a copy of your water rights that are
20 pertinent to your property?

21 A. Yes, I believe so.

22 Q. And are your water right sources from
23 underground?

24 A. Yes, they are.

25 Q. And can you describe your well?

1 A. This well is a well drilled in 1961. It is 182
2 feet deep and a very well-producing well for me.

3 Q. Do you know the static water level of your well
4 at this time?

5 A. This particular well we have not sounded
6 recently. I would assume I am not outside of the general
7 trend that has been established as to the decline of the
8 entire basin. I imagine that we are -- Our levels are within
9 the observed levels throughout the valley.

10 Q. And in the past since you've owned the property
11 have you ever measured your static water levels?

12 A. Yes, we have.

13 Q. And in those measurements have they ever gone
14 down?

15 A. Yes. We observe through our own measurements
16 with our own tools falling measurements of the groundwater
17 table. We access water for stock water on other parts of the
18 property, my family's operation. And we're the ones
19 responsible for putting the pump in the wells so we're very
20 conscious of the fact that when you add more pipe to the pump
21 your water is falling.

22 Q. Do you have any opinion about the stability of
23 the groundwater level in Diamond Valley?

24 A. It is my opinion that it is in a fairly stable
25 state of decline as of now a product of no outside influences

1 but it's declining at a very concerning rate due to the
2 amount of usage placed on the resource.

3 Q. Does this concern you?

4 A. Oh, it has to be one of my biggest concerns. The
5 access to groundwater is the key to our entire operation.
6 And the further you have to go to access the water, the more
7 expensive and -- the more expensive it gets. It's the base
8 of our entire operation.

9 Q. Okay. What is your understanding of an
10 agricultural economy?

11 A. Through my involvement in both animal and crop
12 agriculture, I really view the agriculture industry as a
13 sustainable industry. As long as photosynthesis is
14 occurring, agriculture will continue.

15 As Mr. Tibbitts eluded to, I believe the
16 agricultural economy is a very stable foundation for our
17 community.

18 Q. Do you have an opinion about withdrawing 11,300
19 acre-feet of water per year out of Diamond and Kobeh Valley?

20 A. Yes, I do. It is my opinion that as Diamond
21 Valley rests as the terminus of the entire flow system that
22 removing such a large amount of water in such a concentrated
23 concerted effort in such a short period of time without any
24 real knowledge of the connectivity of the flow system would
25 place a big strain on the resources of Diamond Valley.

1 Q. Do you consider withdrawing 11,300 acre-feet a
2 year mining water?

3 A. In this instance I do. And I believe it can be
4 considered mining of water because this water is nearly a
5 hundred percent consumptive use. No portion of this water
6 can and shall hopefully be allowed to enter back in to the
7 flow system. The specific process at which the applicant is
8 getting mineral from the soil, water is simply a chemical, is
9 a reagent in a chemical reaction. There is a direct
10 correlation to the amount of water usage to the amount of ore
11 that they mine. And in fact if you look at what they have
12 applied for, I believe you can deduce that on a matter of
13 tonnage they are mining as much water as ore.

14 Q. Okay. Do you have an opinion about what types of
15 monitoring or mitigation the mine should undertake?

16 A. My opinion is that the mining and mitigation is
17 paramount to this project existence. I think we need to
18 drill more wells. I really do like Mr. Bugenig's comments
19 about the sentinel wells. And I think the baseline data
20 needs to be established and the model needs to be calibrated
21 to a much higher degree of accuracy before we put any weight
22 on that model and the predictive tool going forward.

23 I would like to offer that as mitigation there is
24 a lot of outside influences and mitigation is kind of a scary
25 term to me personally because I immediately think mitigation

1 means litigation and that is something that I do not wish to
2 partake in going forward for the rest of my life as an
3 irrigator in Diamond Valley.

4 I think mitigation needs to be proactive. I
5 think that based on the portion of water being taken from the
6 flow system as a whole that General Moly is looking for being
7 a completely consumptive use they must be tasked with
8 mitigating on a consumptive use basis of their impact to the
9 entire flow system.

10 Q. Okay. Were you here yesterday for the
11 presentation of Mr. Bugenig?

12 A. Yes, I was.

13 Q. Would you agree with the monitoring and
14 mitigation plan that he presented in his Exhibit 505, slides
15 33 through 46?

16 A. Yes, I agree that Mr. Bugenig has done an
17 excellent job. I really agree and I would like to commend
18 him on offering up aspects of monitoring.

19 MS. URE: Hearing Officer, Mr. Benson has
20 prepared a brief statement that he would like to read. Would
21 you provide him with that opportunity?

22 HEARING OFFICER WILSON: Sure. That's Exhibit
23 304?

24 MS. URE: His written statement. It's not in the
25 record at this time.

1 THE WITNESS: I would like to read some of my
2 thoughts in to the record.

3 HEARING OFFICER WILSON: Okay.

4 THE WITNESS: As stated, my name is Craig Benson.
5 My wife and I are current land owners and water rights
6 holders in Diamond Valley, Nevada. Our son represents the
7 sixth generation to live in Eureka County.

8 My family came to Eureka County in the 1880s. My
9 maternal great grandfather owned and operated the Thompson
10 Ranch, which we all know of and has been referenced in the
11 value of the drawdown of the Thompson Springs in the north
12 end of Diamond Valley. He came to that ranch in 1946.

13 My ties to our community and agricultural
14 foundation runs deep. I have witnessed first-hand the hard
15 work, perseverance and dedication required to make a living
16 in agriculture and I take pride in maintaining these efforts
17 in order to ensure opportunities for future generations of
18 our family as well.

19 This legacy unfortunately is not without
20 hardships and setbacks. I have witnessed first-hand the
21 effects of a declining water table on the arid landscape due
22 to the original overappropriation of Diamond Valley. The
23 Thompson Ranch now lies in a state of insolvency and serves
24 only as a reminder of the precious balance that we must
25 maintain to guarantee sustainability of water resources.

1 I believe that agriculture at its core is a
2 sustainable injury. Farmers and ranchers rely on the land
3 year after year to sustain their culture and way of life.

4 The same cannot be said for mining. Mining is a
5 practice in a removal of a finite resource, a resource that
6 is not in fact sustainable in its essence.

7 The Mount Hope project expects to mine nearly as
8 much water over the projected time frame as they do ore.
9 This water is not to be used is a life-affirming substance
10 but simply as a reagent in a chemical equation. The water
11 will be polluted and pounded and the total consumption of
12 which will cause a loss of return of flow to the groundwater
13 system.

14 As a certified water right owner I have to rely
15 on the law to protect our common public resource of water
16 which is so precious in this arid landscape.

17 I am very concerned with the monitoring and
18 mitigation responsibilities that General Moly has with
19 regards to this project. We already face unmitigated impacts
20 to the flow system and I urge caution in taking action that
21 may compound existing strains.

22 I urge the State Engineer to view the proposed
23 actions by the applicants as impact to the entire flow system
24 as a whole and to consider impacts to existing rights in
25 Diamond Valley, which is the terminus of the flow system.

1 I would like to urge the State Engineer and his
2 staff to take great caution in rendering this decision. The
3 applicants plan to forever remove a large portion of water
4 should not be allowed to cause detriment to existing users.

5 The residents of our state will undoubtedly live
6 and prosper without another source of minerals but they
7 cannot exist without access to water. That is all. Thank
8 you very much.

9 MS. URE: I have no further questions.

10 HEARING OFFICER WILSON: Thank you.

11 Cross-examination.

12 MR. DE LIPKAU: I'd like to make a comment, and
13 that is Mr. Benson did not file a protest to any of the
14 applications, yet it appeared to counsel as if he was a
15 protestant. That point was previously set forth in my, I'll
16 call it legal memorandum previously filed.

17 CROSS-EXAMINATION

18 By Mr. de Lipkau:

19 Q. With that, do you know how many acre-feet the
20 applicant owns in Diamond Valley?

21 A. I believe you are referring to the Herb property?

22 Q. Yes.

23 A. I believe that is probably around, it's 160
24 acres.

25 Q. Do you know any additional water that can be

1 acquired -- that the applicant owns in Diamond Valley?

2 A. That the applicant currently owns in Diamond
3 Valley?

4 Q. Yes.

5 A. I am not aware of that.

6 Q. Do you know what the price is of groundwater in
7 Diamond Valley?

8 A. I'm not sure that as a matter of reference there
9 has been an established price of groundwater per se in
10 Diamond Valley.

11 Q. Do you have an opinion?

12 A. My opinion is that the price of water is
13 reflected in the price of land because without the land --
14 without the water, the land in Diamond Valley is very
15 limited.

16 Q. Do you have an opinion then as to a quarter
17 section center pivot?

18 A. I think that my opinion would be based upon
19 comparable sales, a typical appraisal of such. I'd hate to
20 offer in to testimony a speculative figure.

21 Q. And based upon sales?

22 A. I would assume the first place to start when
23 establishing value is to use a standard method.

24 Q. Are you aware that the applicant will be
25 acquiring four million dollars worth of water rights in

1 Diamond Valley?

2 A. It is my assumption that that is the goal of the
3 trust that has been created.

4 Q. And you don't know how much water that will
5 retire?

6 A. That may or may not retire an amount of water as
7 much as it retires an amount of paper.

8 Q. Excuse me.

9 A. I think that amount will serve to retire an
10 amount of paper rather than an amount of water in any real
11 world situation that would do any benefit to the farmers of
12 Diamond Valley.

13 Q. That's your opinion; correct?

14 A. That's my opinion.

15 Q. All right.

16 A. That's --

17 Q. Have you formed an opinion as to the useful
18 economic life of the Diamond Valley aquifer?

19 A. I suppose I have.

20 Q. And what is that?

21 A. In its current state of decline due to
22 overappropriation, that life of economic return of the
23 aquifer is probably fairly marginal. Under the terms of a
24 sustained perennial yield, pumping within legal and
25 certificated limits I don't see that there is any reason why

1 Diamond Valley agriculture cannot continue so as long as the
2 water continues to recharge the basin.

3 Q. I think you just said that if pumping equals the
4 recharge then the life is great; correct?

5 A. Yes.

6 Q. My question was at the current pumping rate have
7 you formed an opinion as to the approximate number of years
8 of the economic viable life of the Diamond Valley aquifer?

9 A. I have not in my own opinion construed a target
10 date of which I think maybe we're no longer economically
11 viable. No, I have not.

12 Q. Are you Ken Benson's son?

13 A. Yes, I am.

14 MR. DE LIPKAU: Okay. No further questions.

15 HEARING OFFICER WILSON: Thank you. Redirect.

16 MS. PETERSON: No.

17 MS. URE: No.

18 THE WITNESS: May I be excused?

19 MS. URE: Wait a second.

20 HEARING OFFICER WILSON: Just checking to see if
21 we have any questions of staff.

22 THE WITNESS: I'm sorry. I should have known
23 better.

24 HEARING OFFICER WILSON: You can step down.
25 Thank you. And you can be excused.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE WITNESS: Thank you.

HEARING OFFICER WILSON: It's 12:05. Are we okay
with the lunch break at this point?

MS. URE: Yeah.

HEARING OFFICER WILSON: Let's do 1:20. Give us
an hour and 15 minutes. Thank you.

(Lunch recess was taken)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FRIDAY, DECEMBER 10, 2010, 1:32 P.M.

---oOo---

HEARING OFFICER WILSON: Ms. Ure, your next witness.

MS. URE: I would call Martin Plaskett.

HEARING OFFICER WILSON: Please come forward and be sworn.

(Witness was sworn in)

MARTIN PLASKETT

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

DIRECT EXAMINATION

By Ms. Ure:

Q. Mr. Plaskett, can you please state your name for the record and spell your last name.

A. Martin Plaskett, P-l-a-s-k-e-t-t.

Q. Can you please describe your education.

A. I earned a Bachelor's degree in business administration with a minor in economics from Saint Mary's College.

Q. And what do you do for a living?

A. Farm.

1 Q. What did you do before you were a farmer?
2 A. Nothing.
3 Q. All right. Can you please turn to Exhibit 300
4 and also Exhibit 39, Figure 2.0-1. They're in the front of
5 that binder.
6 A. Okay.
7 Q. Have you seen these maps before?
8 A. Yes.
9 Q. Using Exhibit 300 and Exhibit 39, Figure 2.0-1,
10 can you please describe where your property is located?
11 A. In Exhibit 300 I have what's labeled as Section
12 9, Township 21 north, 53 east. And then on Exhibit 39 it
13 would be in the green shaded area on the right side of that
14 map.
15 Q. And that's in Diamond Valley?
16 A. Diamond Valley, correct.
17 Q. Before you were in farming did you work in the
18 well drilling business?
19 A. Yes. I was part of the farming operation and
20 essentially supported at times.
21 Q. What types of activities were you responsible for
22 when you worked on the drilling crew?
23 A. I essentially started out as chief sample catcher
24 and worked my way up to operating the rig under a licensed
25 driller.

1 Q. Where were the wells located that your company
2 drilled mainly?

3 A. Primarily in Diamond Valley. It is a family
4 business.

5 Q. So is it true that you're the owner of the
6 Diamond Valley Hay Company at present time?

7 A. Yes, I am.

8 Q. Can you briefly describe that for us, your
9 activity related to that?

10 A. All aspects of production, agriculture, budgets
11 fertilizer, planting, harvest, sales and marketing. And with
12 the recent downturn in the economy I have turned in to chief
13 collections agent.

14 Q. Okay. Can you please turn to Exhibit 306.

15 A. Yes.

16 Q. Are these some of the water rights that your
17 company owns or holds?

18 A. Yes, they are.

19 Q. How many acres of water rights do you own?

20 A. Section 9 has approximately 520 acres of water
21 rights.

22 Q. And are your water rights from groundwater
23 sources?

24 A. Entirely.

25 Q. Can you please describe your wells.

1 A. We have four irrigation wells. The oldest was
2 drilled in 1965, I believe. It was about a 180-foot well.
3 And one of the newest that was drilled in 1995 and it's 380
4 feet deep.

5 Q. Do you know the static water level of your wells?

6 A. Yes, I do.

7 Q. And what is that?

8 A. It's gone down on the average of Diamond Valley,
9 within the average of Diamond Valley over time.

10 Q. Do you measure your wells annually?

11 A. Periodically. Not on a -- At least annually,
12 yes.

13 Q. From your experience do you have an opinion about
14 the stability of the groundwater level in Diamond Valley?

15 A. I have a major concern with it.

16 Q. And why are you concerned?

17 A. Because we all realize that it's declining and at
18 some point it can't sustain that for ever. So we're just
19 concerned about the viability of the water resources made
20 available to us.

21 Q. Do you have an opinion about withdrawing 11,300
22 acre-feet per year out of Diamond and Kobeh Valleys?

23 A. I have an opinion that it probably couldn't help
24 our situation in any way.

25 Q. Okay. Do you have an opinion about any type of

1 regional flow system in hydrographic basins?

2 A. I view the USGS work as a truly independent and
3 third party that will provide unbiased input to the situation
4 and define the flow system.

5 Q. Do you have an opinion about the types of
6 monitoring or mitigation the mine should undertake?

7 A. I see a strong commitment for the mine to do
8 monitoring. But as far as the mitigation, I rely on the
9 State Engineer and professionals of Eureka County that my tax
10 dollars pay for to figure that out.

11 Q. Were you here yesterday for the presentation by
12 Mr. Dale Bugenig?

13 A. Yes, I was.

14 Q. And would you agree with the monitoring and
15 mitigation plan he presented at Exhibit 505, slides 33
16 through 46?

17 A. Yes, I would agree with that.

18 Q. Would you have anything to add to that?

19 A. It's not my expertise, so again, I would have to
20 rely on the State Engineer and the professionals to figure
21 that out.

22 MS. URE: Mr. Hearing Officer, I have no further
23 questions, however, Mr. Plaskett prepared a written statement
24 that he would like to read in to the record if you would
25 allow it.

1 HEARING OFFICER WILSON: Go ahead, Mr. Plaskett.

2 THE WITNESS: Dear Division of Water Resources,
3 as a life-long resident of Diamond Valley involved in
4 production, agriculture, wells and irrigation systems, water
5 has and always will be the life blood of our successful
6 farming practices.

7 Protecting, conserving and managing the scarce
8 water resource in the Diamond Valley flow system has brought
9 all of us together today essentially to determine a balance
10 of optimum beneficial use for all current and future water
11 users within the system.

12 I feel the current water users of Diamond Valley
13 are serious about addressing the overpumping situation we
14 inherited and are ready to implement conservation efforts
15 through alternative crops, fellow scheduling and retirements.

16 These efforts will be a positive step toward
17 ensuring sustainability of municipal and agricultural water
18 needs.

19 This commitment will need support from the
20 Division of Water Resources and good faith leadership that
21 carefully evaluates more stress on the aquifer and mitigate
22 impacts.

23 The proposed water appropriation the mine seeks
24 in the adjacent Kobeh Basin may have irreversible impacts to
25 existing rights in the Diamond Valley flow system due to the

1 uncertainty of model predictions.

2 Since the appropriation will be totally
3 consumptive use, extra consideration would be appreciated in
4 this decision that may warrant stage pumping schedules that
5 would allow actual data to help you find the numeric model
6 and mitigate impacts. Thank you for your time.

7 THE STATE ENGINEER: Thank you.

8 MS. URE: No more questions.

9 HEARING OFFICER WILSON: Cross-examination.

10 MR. DE LIPKAU: I have one.

11 CROSS-EXAMINATION

12 By Mr. de Lipkau:

13 Q. Do you have an opinion as to the value of
14 certificated or permitted groundwater agricultural rights in
15 Diamond Valley?

16 A. I figure way above land value.

17 Q. That's your answer?

18 A. Uh-huh.

19 MR. DE LIPKAU: No further questions.

20 HEARING OFFICER WILSON: Thank you.

21 Any redirect?

22 MS. URE: No.

23 HEARING OFFICER WILSON: Questions of staff?

24 THE STATE ENGINEER: No.

25 HEARING OFFICER WILSON: Mr. Plaskett, just so

1 I'm clear for the record, I thought you had mentioned you had
2 520 acres within the section. Is that what's actually
3 irrigated under the pivot?

4 THE WITNESS: Those are water rights on that
5 section.

6 HEARING OFFICER WILSON: Is that a small section?

7 THE WITNESS: No, it is not.

8 HEARING OFFICER WILSON: Well, I was looking at
9 your certificates. It says you have 626 acres that you're
10 able to irrigate.

11 THE WITNESS: I wasn't aware of that. Because I
12 realize some corners were transferred by a prior owner.

13 HEARING OFFICER WILSON: Okay.

14 THE WITNESS: So it must be a math error.

15 HEARING OFFICER WILSON: And that's a possibility
16 that won't show up on just an image of a certificate. Okay.
17 I just wanted to make sure that was clear for the record.
18 Thank you. You can step down.

19 THE WITNESS: Thanks.

20 MS. URE: Did you want to be excused?

21 THE WITNESS: No, I don't need to be excused.

22 MS. URE: Just leave that notebook up there.

23 I would call Ken Benson.

24 HEARING OFFICER WILSON: Please come forward and
25 be sworn.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Witness was sworn in)

KEN BENSON

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

DIRECT EXAMINATION

By Ms. Ure:

Q. Mr. Benson, can you please state your name and
spell your last name for the record.

A. Yes. My name is Ken Benson, B-e-n-s-o-n.

Q. Can you please outline your education?

A. I graduated here from Carson High School in 1967
and I graduated with a Bachelor's degree in agricultural
economics from UNR in 1971. I gave up a pursuit of a
Master's degree in 1971 to accept a job with Federal Land
Bank of Berkeley in Berkeley, California to pursue interest
in farming, ranch real estate appraisal and was in fact a
designated loan officer for that federal land bank agency.

Q. Okay. Did you testify in the 2008 hearing?

A. Yes, I did. I offered testimony in that hearing
on behalf of Eureka Producers.

Q. Okay. Can you turn to Exhibit 301 in that
notebook in front of you, please.

1 A. 301?

2 Q. Correct.

3 A. Is that the maps?

4 Q. No.

5 HEARING OFFICER WILSON: 301 should be testimony

6 from the previous hearing.

7 MS. URE: They're labeled on the tabs.

8 THE WITNESS: Oh, okay. Stumbling around to find

9 it.

10 MS. URE: Not the stickies.

11 THE WITNESS: Oh, those tabs. There we go.

12 Yes, we're there.

13 Q. (By Ms. Ure) Is that your testimony from the

14 first hearing?

15 A. It was rather short, so let me review it really

16 quick. Yes, that's my testimony.

17 Q. Now can you turn to Exhibit 300, the maps, and

18 also Exhibit 39, Figure 2.0-1.

19 A. Okay. Yes, I have the map.

20 Q. And the other map in front of you as well?

21 A. Yes, ma'am.

22 Q. Can you please describe where your property is

23 located on these maps?

24 A. Starting first with what is essentially a Google

25 Earth map, the extreme north edge of the sections are indeed

1 sagebrush blank, the next row of sections down are irrigated
2 agricultural areas. That in the center portion of the upper
3 part of irrigated sections indicates Section 3, 21 north, 53
4 east. And I have those two portions of irrigated ground
5 immediately adjoining the north edge of the sagebrush there.

6 Then down towards the center section of that same
7 map some distance of about two miles there is a reference pin
8 there indicating Section 16 of Township 21 north, Range 53
9 east. And I in fact own the northeast corner of that
10 section. And as it appeared on the day of the photo, that is
11 a little lighter green pivot of those four pivots on that
12 section.

13 Q. Thank you. Generally how long have you been
14 working in the agricultural industry?

15 HEARING OFFICER WILSON: I'm sorry to interrupt.
16 I just want to go back to the previous answer. I think you
17 said northeast quarter.

18 THE WITNESS: Oh, northwest. I'm sorry.

19 HEARING OFFICER WILSON: Okay. Thank you.

20 MS. URE: Thank you.

21 THE WITNESS: Your question went to how long have
22 I been working in agriculture. When I was in high school,
23 Carson City was beginning to change and not everybody was a
24 farm boy. However, I chose to be one and I worked on the
25 Farling Ranches down here on the Carson River and for the

1 Silver Saddle Ranch down here on the Carson River which is
2 now kind of an agricultural archive of open space maintained
3 by the BLM.

4 And then that progressed. When I was at UNR I
5 worked for the university farm. I didn't have a lot of money
6 and essentially was allowed the privilege of living on
7 housing on the university farm in exchange for work there.

8 Q. (By Ms. Ure) Okay. So since college
9 approximately, your entire --

10 A. Well, yeah, since college. I was at Federal Land
11 Bank for three years and then I moved to Diamond Valley in
12 October of 1973.

13 Q. Okay. Can you please turn to Exhibit 302.

14 A. Which is?

15 Q. In the notebook.

16 HEARING OFFICER WILSON: That's your water
17 certificate.

18 THE WITNESS: Oh, okay. Yes, I have.

19 Q. (By Ms. Ure) Can you confirm that those are your
20 water rights certificates?

21 A. Yes, they are.

22 Q. Are they from underground water sources?

23 A. Yes, they are.

24 Q. Can you describe the condition of your wells?

25 A. One of my wells was drilled in 1961. It's

1 referred to amongst us farmers locally as one of the 180-foot
2 wonders, due to the fact that one of the first well drilling
3 concerns in that country only had a rig that was capable of
4 going 180 foot deep. And that well in fact has been in
5 production now for some 50 years, 49. That well concerns me
6 a little bit due to its age and its depth, but it continues
7 to produce quite well. Thank you and thank above.

8 The other two wells that I have I had the
9 misfortune of encountering the experience of having to
10 redrill one of those wells in the time frame of approximately
11 1976, 1977, which was costly for me because I was a beginning
12 farmer, didn't have a lot of financial resources. But
13 fortunately Mr. Martin Plaskett's father was engaged as a
14 well driller in Diamond Valley at that time and I redrilled
15 one well for approximately the cost of \$8,000.

16 Q. Okay.

17 A. The third well that I have, I originally
18 purchased in 1978 and it was anticipation of having a son and
19 you buy property like that for your children as they're
20 conceived in the hopes that they might be a farmer. And it
21 turns out that it might be a curse rather than a hope. And I
22 redrilled that well in similar fashion in the time frame of
23 1979 or 1980.

24 And the saving grace about both of those two
25 wells that I drilled in those time frames is they're slightly

1 deeper in the magnitude of say 235 feet and they served me
2 quite well with respect to today's context of the water
3 table. And I will certainly be better off with those two
4 wells going forward than I will be with the 180-foot well.

5 Q. Okay. Do you monitor the static water level in
6 your wells?

7 A. Yes, I do.

8 Q. And have you noticed any trends over time?

9 A. Yes. Steady decline as would be referenced by
10 the experiencing data observation of the State Engineer. The
11 one well that I mentioned is my 180-foot wonder, I have a
12 pump test available in front of me here that indicates it
13 produced about 3,000 gallons a minute on June 1st of 1961 and
14 the indicated water level, standing water level on that well
15 on that date was 47 feet.

16 That well was measured and verified by me and the
17 State Engineer in the April time frame of 2010 and that was
18 at 113 feet. It kind of indicates that it dropped 69 feet in
19 49 years, which equates to about 1.4 feet per year.

20 Q. Okay.

21 A. I will further offer that there's times when it
22 doesn't decline at that rate and there's times that it
23 declines at more than that rate.

24 Q. Do you have an opinion about the stability of the
25 groundwater levels in Diamond Valley?

1 A. Yes, I do.

2 Q. And would you like to share that with us?

3 A. It is not positive.

4 Q. Okay. Do you have an opinion about withdrawing
5 11,300 acre feet of water per year out of Diamond and Kobeh
6 Valleys?

7 A. Yes, I do.

8 Q. And can you share that with us?

9 A. That is negative as well as from two fronts. I
10 have a fear that that impact will manifest itself much faster
11 than anything I've experienced before because that water will
12 in fact be access in the activities that they wish to place
13 it in to 24 hours a day, seven days a week, 365 days a year.
14 I think any negative impact of that is going to show up much
15 faster than the negative experiences that I've ran in to on
16 the normal agricultural decline over the last four years.

17 Q. I'm going to show you Applicant's Exhibit 28.
18 This is a copy of the agreement between the Eureka Producers
19 Cooperative and the mine; is that correct?

20 A. Yes.

21 Q. And would you like to share with us your comments
22 on that?

23 A. Yes. I'm going to read a portion of that
24 agreement starting on page two of that agreement, page six of
25 that agreement rather, paragraph two. And it's in the

1 context of the negotiations between mine representatives and
2 the Eureka Producers Co-op. Do I have your permission, sir?

3 HEARING OFFICER WILSON: Go ahead.

4 THE WITNESS: "To members of EPC, to wit, Kenneth
5 Benson and Jim Benson, "Bensons," have refused to approve
6 this agreement. Will not abide by the terms, conditions and
7 obligations set forth herein and have recently resigned as
8 members of EPC.

9 If following the execution of this agreement the
10 Bensons file any protests with the Nevada State Engineer
11 opposing EM LLC's applications or any of its change
12 applications or fail to withdraw any pending protests within
13 30 business days of execution of this agreement. Two, file
14 any appeals or petitions with the Nevada district court
15 appealing any ruling of the Nevada State Engineer regarding
16 EM LLC's applications or any of its change applications.
17 Three, commit or engage in any of the acts precluded by this
18 agreement including but not limited to the conditions in
19 section E.

20 It says physically accepting the demands of E4 or
21 I5 cause harm or delay to the Mount Hope project but EM LLC
22 is successful in obtaining all required permits and approvals
23 for the Mount Hope project and EM LLC determines in its sole
24 discretion to proceed with construction based on obtaining
25 full financing, the pain amounts required in Section D2 shall

1 be reduced by one-fourth in all categories or refunded in the
2 case where payments have been made.

3 If EPC allows the Bensons or the Bensons once
4 again become members of EPC at any time in the future, Benson
5 meaning the individuals named above and also includes but is
6 not limited to all groups, organizations or business entities
7 of any kind that either of them control or have an ownership
8 interest in as a partner or a shareholder or that either one
9 of them serve on as a director, officer, consultant, agent,
10 employee or volunteer in any capacity," and it goes on to all
11 of these bad things that are going to happen.

12 Q. (By Ms. Ure) Okay. Were you a party to this
13 agreement?

14 A. No. I never even saw this agreement for about
15 two weeks until after it was in the public.

16 Q. I'm going to switch gears on you a little bit.

17 A. Please do.

18 Q. Now, you're a protestant in this matter?

19 A. That is correct.

20 Q. And were your protests directed to a particular
21 well site?

22 A. Yes.

23 Q. Which one?

24 A. It's been commonly described throughout these
25 proceedings as Well 206, more specifically that was

1 advertised as six applications and I did in fact protest
2 those six applications.

3 Q. Okay. Why did you choose?

4 A. I chose that well because I thought it was an
5 unfair infringement on another person's property rights.
6 That well is within 75 feet of Mr. Etcheverry's base property
7 at the Roberts Creek Ranch. That's about 12 miles away from
8 the pit site for the project at hand and it is in fact in the
9 public domain. They went over there and accessed the public
10 domain right up against those guys' fence within a stone's
11 throw of the house on the headquarters of that ranch. And I
12 felt that if they could do it to Etcheverry they could do it
13 to me.

14 Q. Okay. Do you know how much water is being
15 requested from Well 206?

16 A. The six applications I believe in aggregate
17 comprise something just over 3,000 gallons per minute.

18 Q. Is that what was applied for?

19 A. That's what's applied for and in fact the subject
20 of a portion of this hearing today.

21 Q. Okay. Are you aware of the mine's requested rate
22 of diversion for Well 206 and their actual need as testified
23 to earlier this week?

24 A. I am aware of what was posted in the
25 advertisement in terms of the aggregate 3,000 gallon per

1 minute request. I don't know about the mine's need. I do
2 not know to the extent that this well will participate in the
3 monitoring, management of the well field as anticipated by
4 the mine should it eventually go in to use. I do, however,
5 know, that in the narrative that the mine developed relating
6 to this well and a pump test made on that well that they
7 project in a common sense attitude that it would not be
8 employed at a rate over about 350 gallons a minute of
9 discharge and also that if they pump that thing for 44 years
10 that result of lowering of the water table in that immediate
11 area would be a reduction in the water table by 205 feet.

12 In 40 years that results in drawdown of 204 feet
13 compares to my result of that drawdown in to Diamond Valley
14 of 69 feet over a similar period of time. That's almost a
15 factor of four or five times greater.

16 The State Engineer has already expressed concern
17 in Diamond Valley that water drops 40 or 50 feet. I think he
18 should be appalled that it will drop 205 feet at the location
19 of Well 206.

20 Q. Okay. How does the 10,000 gallons per minute
21 figure that the mine is asking for in these proceedings
22 compare to the amount granted in the last order?

23 MR. DE LIPKAU: Objection. The correct amount is
24 7,000 gallons per minute.

25 THE WITNESS: I don't know that my --

1 HEARING OFFICER WILSON: Wait.

2 MS. URE: Can I respond to that?

3 HEARING OFFICER WILSON: If you'd like to
4 respond.

5 MS. URE: I believe on the application, on the
6 application itself it says that the total amount that is
7 being requested from Well 206 is 10,000 gallons per minute.

8 I guess in my response I would just point the
9 State Engineer to look at the face of the application itself
10 and you can look at 79934 through 79939.

11 HEARING OFFICER WILSON: Let me look at the
12 application.

13 MS. URE: And I can move on.

14 HEARING OFFICER WILSON: Well, let me get to it
15 real quick and see what the application says.

16 MS. URE: Exhibit 22.

17 HEARING OFFICER WILSON: I don't see the number
18 you referenced, although it is -- there is a CFS associated
19 with each application, 34 through 39, that are cumulative to
20 those that are cited within Well 206.

21 THE WITNESS: Let's just say that I'll concede to
22 whatever is on record.

23 HEARING OFFICER WILSON: If we can move on by
24 just asking it in that phrase that would be fine. If we
25 could rephrase it as the applications are filed.

1 Q. (By Ms. Ure) Do you know how -- how many water
2 rights the applicant is applying for in these proceedings
3 versus the amount that they are actually proposing to use in
4 general?

5 A. I do not have a firm opinion on that.

6 Q. Okay. Do you think the applicant's applications
7 total more than 7,000?

8 A. There is that distinct possibility. I have a
9 concern that they might actually be asking for more water
10 this time than what was the bargain-down amount awarded them
11 in the original order.

12 Q. Were you on the Eureka County board of
13 commissioners at one point in time?

14 A. Yes, I was.

15 Q. And in that setting did you ever come across a
16 mitigation strategy in water right applications?

17 A. Relating to KVR?

18 Q. Or any water right applicant?

19 A. No. During a period of time that I was engaged
20 with Eureka County Commission, from which I resigned in
21 deference to any perception of bias that might negatively
22 impact on my views being imposed on KVR, I did not
23 participate in any mitigation programs associated with KVR's
24 applications or with any other mining entity or any other
25 type of applicant. I was involved with Eureka County

1 commissioners for a period of three and one half years.

2 Q. Do you know about the Barrick mitigation fund
3 agreement?

4 A. Yes, I do.

5 Q. Can you tell us briefly about that?

6 A. That Barrick mitigation agreement came about
7 prior to a time frame of me having served on the Eureka
8 County Commission. It was negotiated primarily under the
9 direction of the chairman at that time, Mr. Pete Goicoechea
10 and it involved a similar adversarial position between
11 Barrick as a mining entity wishing to engage in dewatering
12 activities in northern Eureka County and it became a somewhat
13 notorious court case because Eureka County commissioners
14 negotiated an agreement with Barrick that became the Barrick
15 mitigation agreement involving funding of water that was
16 being exported out of Eureka County.

17 That dispute was settled between Barrick and
18 Eureka County and subsequently Frankie Sue Del Papa acting as
19 attorney general of the State of Nevada questioned whether
20 that was an extortion scheme or whether it was even a valid
21 contractual agreement between Barrick and Eureka County,
22 because quite frankly she didn't feel that Eureka County had
23 the power to hold Barrick to such an agreement.

24 I believe Ms. Peterson is very familiar with this
25 whole scenario because she led the charge for Eureka County

1 to argue that issue between -- before the Nevada State
2 Supreme Court, and in fact the United States Supreme Court
3 upheld the agreement.

4 Q. Would you advocate a similar type fund be a part
5 of mitigation in this?

6 A. Yes, I would.

7 Q. Do you have an opinion on how that should be
8 financed?

9 A. I think they ought to tie it to some modest
10 monetary consideration for the annual withdraw and permanent
11 divorcement from future Eureka County development with
12 respect to the consumptive use of the water they're asking
13 for.

14 Q. Were you involved with the, when you were a
15 county commissioner with the contracting between the county
16 and the USGS to conduct a water study in Diamond Valley?

17 A. Yes, I was. During a period of time I did serve
18 as chairman of the Eureka Board of County Commissioners and I
19 do in fact distinctly recall signing a contract with USGS to
20 that effect.

21 Q. Okay. What do you know about the USGS
22 investigation concerning the interbasin relationships between
23 Kobeh Valley and Diamond Valley?

24 A. I know that they are of an ongoing basis and I
25 would concur with the status of those investigations as

1 reported by Mr. Berger from the USGS in previous testimony
2 here this week.

3 Q. Do you believe that the raw data in the study
4 results from the USGS study should be incorporated in to any
5 monitoring and mitigation plan?

6 A. Yes. I believe the entire concept of a living
7 document should be employed with respect to USGS data and any
8 permitted activities afforded to KVR as a result of the
9 proceedings we're engaged in this week.

10 Q. Are you aware of KVR's water rights at Bobcat
11 Ranch?

12 A. To the best of my knowledge as we sit here and
13 speak today there are no water rights at Bobcat Ranch.

14 Q. Do you have an opinion about why water rights at
15 Bobcat Ranch have been a point of discussion at this hearing?

16 A. It's a little bit strange to me that this hearing
17 is in fact a preapproved credit card application to approve
18 those Bobcat applications.

19 Q. Do you have an opinion about the types of
20 monitoring or mitigation that should be incorporated in to
21 this proceeding?

22 A. Yes, I do.

23 Q. Can you please describe that?

24 A. I have a general concurrence with mitigation
25 suggested by the testimony of Mr. Bugenig yesterday. I am

1 torn between advocating and slightly stronger deployment of
2 sentinel wells, monitoring wells, if you will, based on the
3 input of Mr. Felling in those discussions. I have reason to
4 suspect that there are flows interbasin underneath the
5 Whistler Range of mountains immediately north of Whistler
6 Mountain itself proceeding north to the Saddle where 278
7 takes a sharp left turn and starts up Garden Pass in the
8 general vicinity of the mine site itself. And I have some
9 feelings that you might should put one observation, a
10 sentinel well if you would at intervals of one mile parallel
11 to Highway 278 to the west for an integral of some ten or 12
12 miles to get an early indication of what might be happening
13 with respect to the probability, possibility of any
14 underground flows either in a negative or positive direction
15 between the Kobeh Valley basin and the Diamond Valley basin.

16 Q. Have you ever had to truck water to livestock?

17 A. Yes, I have.

18 Q. Is that a feasible type of mitigation in your
19 view?

20 A. Today as we speak I have one guy engaged in
21 hauling water to approximately 250 head of cattle at an
22 irrigated farm some three miles away from my home
23 headquarters just seasonally accessing aftermath unharvested
24 crop material for some period of say 30 days or less and it
25 takes one guy all day to keep up with them cows. And that's

1 just a three-mile haul.

2 Q. Are you familiar with the Herd Ranch?

3 A. I am familiar with the Herd Farm in the context
4 as to its location and history in Diamond Valley, yes.

5 Q. Do you know about any recent pumping activity?

6 A. There has been none. And in terms of recent,
7 that would extend back to at least ten years.

8 Q. Do you know anything about the water rights on
9 that farm?

10 A. I considered buying that farm myself to upgrade
11 that senior right there to a junior water right property that
12 I have.

13 Q. In the course of this week did you have reason to
14 direct that those water rights be looked up?

15 A. Yes. One of the reasons that I backed away from
16 me inquiring as to possibilities of purchasing that property
17 was that I became aware of the possibility that it had what
18 you might call a letter of extension or some such a matter
19 associated with the records of the State Engineer.

20 Q. And is that letter of extension an effort to
21 combat any forfeiture or cancellation proceedings?

22 A. I'm not a lawyer. Fortunately none of my
23 properties have forfeiture associated with them, but I have
24 been given to understand that the letter of extension will
25 probably be subject to review by the office of the State

1 Engineer within say 120 days from right now.

2 Q. Okay. Have you ever been promised anything by
3 the mine and they've never followed through with it?

4 A. I have never had personal business relationships
5 with this mine. When I served as a Eureka County
6 commissioner I met with representatives of this mine in
7 excess of 20 times on water rights issues as well as with
8 respect to the proposed evaluation of the Eureka Canyon
9 subdivision "annex property" that they and the county were
10 going to develop immediately adjacent to the town side of
11 Eureka.

12 Those negotiations did in fact lead to my
13 decision to resign as Eureka County commissioner because I
14 didn't feel they were good faith negotiations.

15 Subsequently to me resigning, Eureka County and
16 the mine did sign an agreement to move ahead with the
17 development of that property. And for lack of better
18 terminology the whole thing fizzled, fell flat on its face.
19 And Eureka County and the mine entity are no longer
20 concurrently and mutually pursuing that project for reasons
21 unknown to me.

22 MS. PETERSON: Okay. I have no further
23 questions.

24 HEARING OFFICER WILSON: Thank you.

25 Cross-examination. Let's do -- Let's actually do

1 about a ten minute break. Come back at 2:35 please.

2 (Recess was taken)

3 HEARING OFFICER WILSON: We left off, Mr. de
4 Lipkau, I believe you possibly had cross-examination.

5 MR. DE LIPKAU: No cross-examination.

6 HEARING OFFICER WILSON: Okay. Questions of
7 staff?

8 THE STATE ENGINEER: No.

9 EXAMINATION

10 By Mr. Felling:

11 Q. I do. Mr. Benson, you had mentioned a mitigation
12 fund with Barrick and I have never heard of it so I just
13 wanted to know a little bit. What was that in reference to?

14 A. I'll defer all of that to Ms. Peterson. She
15 knows it intimately.

16 Q. Well, I can't ask her.

17 MS. URE: You're the witness.

18 MR. FELLING: You can answer or say you're not
19 comfortable answering and that's fine too.

20 THE WITNESS: Well, I'm not comfortable answering
21 because what I really know about it was developed in context
22 with riding in the creek with Pete Goicoechea gathering
23 cattle. So we're out there and I got my cattle, he's got his
24 cattle, he comes through my allotment and we sort these
25 things out and we talk about this sort of stuff.

1 MR. FELLING: Then no questions.
2 HEARING OFFICER WILSON: We appreciate it,
3 Mr. Benson.
4 THE WITNESS: Thank you.
5 MS. URE: So I'd like to move -- put some of the
6 exhibits in to the record.
7 HEARING OFFICER WILSON: Go ahead.
8 MS. URE: Exhibit 300.
9 HEARING OFFICER WILSON: 300 is the Google Earth
10 map for the protestants' property including Craig Benson and
11 Mr. Plaskett. Exhibit 300 any objection?
12 MR. ZIMMERMAN: No objection.
13 HEARING OFFICER WILSON: Exhibit 300 will be
14 admitted.
15 MS. URE: Exhibit 301.
16 HEARING OFFICER WILSON: Transcript of testimony
17 of Ken Benson from the previous hearing. Any objection to
18 301?
19 MR. DE LIPKAU: No.
20 HEARING OFFICER WILSON: Exhibit 301 will be
21 admitted.
22 MS. URE: Exhibit 302.
23 HEARING OFFICER WILSON: That is the water
24 certificate numbers 6358, 7874 and 10225. Any objection to
25 Exhibit 302?

1 MR. DE LIPKAU: No objection.
2 HEARING OFFICER WILSON: Exhibit 302 will be
3 admitted.
4 MS. URE: Exhibit 305.
5 HEARING OFFICER WILSON: Exhibit 305, Craig
6 Benson's water certificates. Any objection to 305?
7 MR. DE LIPKAU: No objection.
8 HEARING OFFICER WILSON: Exhibit 305 will be
9 admitted.
10 MS. URE: Exhibit 306.
11 HEARING OFFICER WILSON: Exhibit 306 I didn't
12 write down whose certificates those are. Are those
13 Mr. Plaskett's?
14 MS. URE: Yes.
15 HEARING OFFICER WILSON: Any objection to those?
16 MR. DE LIPKAU: No objection.
17 HEARING OFFICER WILSON: No objection to Exhibit
18 306. Exhibit 306 will be admitted.
19 MS. URE: And then Exhibit 309, the USGS
20 contracts.
21 HEARING OFFICER WILSON: Any objection to 309?
22 MR. DE LIPKAU: Just a moment. No objection.
23 HEARING OFFICER WILSON: Exhibit 309 will be
24 admitted.
25 MS. URE: And that's all. Oh --

1 HEARING OFFICER WILSON: Go ahead.

2 MS. URE: Can I move to admit Exhibit 312, 313
3 and 314, copies of Mr. Benson's protest?

4 HEARING OFFICER WILSON: Yes. Any objection to
5 312 --

6 MR. DE LIPKAU: No objection.

7 HEARING OFFICER WILSON: -- 313 or 314? No
8 objection, those three will be admitted.

9 MS. URE: That's it.

10 HEARING OFFICER WILSON: Okay. I do have
11 Mr. Benson's public comment from the previous hearing for
12 both Ken and Craig Benson. Any interest in offering those?

13 MS. URE: I think they're already --

14 HEARING OFFICER WILSON: They're public record
15 with our office.

16 MS. URE: Yeah, that's fine.

17 HEARING OFFICER WILSON: Okay. Do you just want
18 to leave them as public record of the previous hearing?

19 MS. URE: Yeah.

20 HEARING OFFICER WILSON: I believe that's
21 everything that I had marked that your witnesses testified
22 to. Did you have any further witnesses?

23 MS. URE: No further witnesses.

24 HEARING OFFICER WILSON: Okay. At this time we
25 have Mr. Tackett who is in the other room. Oh, there he is.

1 You switched rooms on us. If you are prepared to go ahead.

2 THE WITNESS: Yeah, absolutely.

3 (Witness was sworn in)

4 HEARING OFFICER WILSON: If you could just for
5 the record just start with your name.

6

7 BAXTER GLENN TACKETT

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

11

12 DIRECT EXAMINATION

13 Direct Testimony by Mr. Tackett:

14 THE WITNESS: My name is B.G. Tackett, Baxter
15 Glenn Tackett. And my last name is T-a-c-k-e-t-t.

16 In '97 I found the hot springs out in Antelope
17 Valley and we bought it and put together a partnership in
18 2000. And in 2006 I moved permanently to Hot Springs Ranch.
19 And in the documentation within the binders that I've been
20 reviewing it's typically referred to as Klobe, K-l-o-b-e, Hot
21 Springs.

22 Klobe Hot Springs is located in the north end of
23 Antelope Valley, Section 28, Township 18 north, Range 50
24 east. And it doesn't show up on a whole lot of the maps.
25 And the evidence presented before you this week because

1 Antelope Valley wasn't included in any of the studies and
2 that's one of my primary beefs and concerns with the whole
3 process here.

4 As a result of my coming in and providing public
5 comment in the October 2008 hearings here, I did file an
6 application and proved up the senior water rights in Hot
7 Springs Wash and it's not a lot compared to everything else
8 going on in the room. It's 30 acre-feet a year, 3.45
9 acre-feet or a million and a half gallons a year surface
10 rights to flow to the hot springs. 3.45 acre-feet or a
11 million and a half gallons a year are subsurface rights for
12 garden stock watering, et cetera. And the remainder of the
13 water right is about 23 acre-feet a year. So we did receive
14 the senior water rights and finalized that and needed to make
15 the transfer.

16 I graduated with a Bachelor's degree in geology
17 from CSU Chico in 1983 and my entire professional career has
18 been spent as a resources manager primarily with the State of
19 California. I've done work, regulatory work in the oil and
20 gas fields, mine reclamation, grant contract management for
21 water quality and habitat restoration and I've worked for
22 private independent waste management as a consultant and I've
23 also done accountables for recycled product and materials.

24 When I came out here in May of '07 I was hired
25 via General Moly through Geo Temp to effectively write and

1 monitor the rotary drilling program for the water project out
2 in Kobeh Valley.

3 Now, at the time, and my guess is things haven't
4 changed much, there was a girth of geologists available. And
5 rather than monitoring and keeping close track of what was
6 going on in Kobeh Valley, I was brought in to the ore shack
7 where we logged ore for the purposes of assays so that the
8 mine could get through bankable feasibility with the
9 financial institution that summer.

10 The purchase of the ranch, everything I've been
11 doing since I found the place and through today is predicated
12 on my business plan for Hot Springs Ranch or Klobe or
13 Bartholomew, however you want to refer to it. And over the
14 course of the last three years I applied for an outfitters
15 permit, incredibly lengthy process through the US Forest
16 Service. And I was finally awarded an outfitters license on
17 the Austin Toiyabe District, Austin Tonopah District of the
18 Humboldt Toiyabe National Forest. And now I am the only
19 non-hunting outfitter on 2.3 million acres of national
20 forest.

21 I say this because my business plan is predicated
22 on the flow of hot water from my spring. The ski operation,
23 the lodge operations, the retreat center that is planned, et
24 cetera are all predicated on that.

25 Now, this is the west. Things go dry. We have

1 droughts and I can handle that. If the spring goes dry, so
2 be it. That's an act of God. But the spring has been
3 utilized for hundreds if not thousands of years. We found
4 potsherds from pre-mott culture on the property dated back to
5 1580. We found bird points and larger points for larger game
6 antelope, deer and et cetera. And of course that all changes
7 as the climates happen.

8 So I don't anticipate the springs ceasing to flow
9 through natural causes, at least not in my lifetime. And I
10 find it rather interesting that the principal risk that is
11 now faced before me is a mine that's located 50 miles from my
12 house.

13 This last week I spent at the house reading all
14 the evidence presented. And as I read through these things
15 and I've listened to discussions yesterday afternoon and then
16 today I get a little more angry and upset that Diamond Valley
17 flow system wasn't studied in its entirety.

18 Antelope Valley is documented in all the evidence
19 presented as being a primary component of the Diamond Valley
20 flow system. Now, originally in '08 the model as presented
21 by Dwight Smith with Interflow, they thought the water came
22 down and went through Antelope Valley and was down at Fish
23 Creek on the other side of the range from me.

24 And subsequent evidence has been presented, USGS
25 studies, et cetera, and it registers that in fact the flow is

1 north in to Kobeh Valley. So the springs, even though I was
2 made numerous promises by various representatives of General
3 Moly to come out and provide comprehensive monitoring for the
4 project so we would know if in fact there were any worries
5 with regard to drawdown in Kobeh Valley, it never came to
6 pass. And we missed a huge opportunity. There's three years
7 gone by now. We could have had a data set that was not --
8 was not gained.

9 The original assertion to monitor the springs,
10 and it's actually pushed a little bit by my then supervisor
11 and boss Greg Murdock, he was the VP for geology at that time
12 for General Moly. He said, hey, have these guys come out, SR
13 Kale come out and take care of weirs and sampling so you can
14 get a background on your springs and flow.

15 So in October of '07 some folks came by, they saw
16 the water and shrugged their shoulders, they drove down to
17 Kitchen Meadows and did a quick bucket sample and that was
18 all the sampling and acknowledgment that Antelope Valley got.

19 My registration as a protestant for this
20 proceeding is on the Bartine Ranch. The reason for the
21 Bartine -- Well, I've got three reasons. One, I couldn't
22 afford to protest all of them so I protested the three or
23 four rights on the Bartine. The reason for that is because
24 that's the only artesian spring system that's representative
25 of my spring in Antelope Valley. Fairly commensurate

1 elevations. I'm at 6400 feet and Bartine may be at 6,000
2 feet, give or take. But my logic was if the Bartine stops
3 flowing it's probably going to stop flowing before anything
4 else out there with sufficient drawdown and that's going to
5 be the tail on what may be going on in my system. So that
6 was the reason for the protest on the Bartine. The -- Those
7 are those two reasons.

8 The third reason I'm here today, and this is kind
9 of a tough subject for me to even talk about, but while I was
10 at General Moly there were some things that were going on in
11 the cowboy days of an early mine project that have given me
12 pause. I didn't mention them last time when I was here two
13 years ago because I was assured that in fact monitoring would
14 occur.

15 There was virtually nobody riding herd on the
16 water project in Kobeh Valley during my tenure at the mine.
17 The rigs were running. Nobody was keeping track of invoices
18 and expenses. Nobody was sitting the rigs to ensure they
19 were drilled properly, that mud weights were correct, et
20 cetera. We did the best that we could for Mount Hope but we
21 had five core rigs running at the same time. So the focus
22 was the assay. The water side of the equation was after the
23 fact.

24 When it started becoming time to construct the
25 sample wells -- And it's amazing to me that 206-T keeps

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 09:18 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 5

KAREN A. PETERSON, NSB 366
kpeterson@allisonmackenzie.com
JENNIFER MAHE, NSB 9620
jmahe@allisonmackenzie.com
DAWN ELLERBROCK, NSB 7327
dellerbrock@allisonmackenzie.com
ALLISON, MacKENZIE, PAVLAKIS,
WRIGHT & FAGAN, LTD.

402 North Division Street
Carson City, NV 89703
(775) 687-0202

and

THEODORE BEUTEL, NSB 5222
tbeutel@eureka nv.org
Eureka County District Attorney
702 South Main Street
P.O. Box 190
Eureka, NV 89316
(775) 237-5315

Attorneys for Appellant,
EUREKA COUNTY

**CHRONOLOGICAL APPENDIX TO
APPEAL FROM JUDGMENT**

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL</u>	<u>JA NO.</u>
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

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL</u>	<u>JA NO.</u>
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

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL</u>	<u>JA NO.</u>
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

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL</u>	<u>JA NO.</u>
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

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL</u>	<u>JA NO.</u>
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**

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL</u>	<u>JA NO.</u>
Affidavit of Service by Certified Mail	08/11/2011	1	66-68
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
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
Answer to Petition to Judicial Review	02/23/2012	34	6398-6403
Answering Brief	02/24/2012	34	6404-6447
Corrected Answering Brief	04/05/2012	35	6780-6822
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
Eureka County's Opening Brief	01/13/2012	27	5178-5243
Eureka County's Reply Brief	03/28/2012	34	6566-6638
Excerpts from Transcript of Proceedings	10/13/2008	36	6952-6964

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL</u>	<u>JA NO.</u>
Findings of Fact, Conclusions of Law, and Order Denying Petitions for Judicial Review	06/13/2012	36	6823-6881
First Additional Summons and Proof of Service, State Engineer, Division of Water Resources	08/17/2011	1	129-133
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
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
Notice of Verified Petition for Writ of Prohibition, Complaint and Petition for Judicial Review	08/10/2011	1	07- 08
Notice of Petition for Judicial Review	08/11/2011	1	69-117
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

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL</u>	<u>JA NO.</u>
Order Allowing Intervention of Kobeh Valley Ranch, LLC, to Intervene as a Respondent	09/14/2011	1	134-135
Order Allowing Intervention of Kobeh Valley Ranch, LLC, as a Party Respondent	09/26/2011	1	141-142
Order Directing the Consolidation of Action CV1108-156 and Action No. CV1108-157 with Action CV1108-155	10/26/2011	1	161-162
Order Setting Briefing Schedule	12/02/2011	27	5053-5055
Order Granting Extension	01/26/2012	31	5702-5703
Partial Motion to Dismiss, Notice of Intent to Defend	09/14/2011	1	136-140
Petition for Judicial Review	08/08/2011	1	01-06
Petition for Judicial Review	12/29/2011	27	5087-5091
Petition for Judicial Review	12/30/2011	27	5092-5097
Petition for Judicial Review	02/01/2012	31	5721-5727
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
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
Petitioners Benson, Diamond Cattle Co., and Etcheverry Family LP's Notice of Appeal	07/12/2012	36	6950-6951

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL</u>	<u>JA NO.</u>
Record on Appeal, Vol. II, Bates Stamped Pages 217-421	02/03/2012	32	5951-6156
Record on Appeal, Vol. I, Bates Stamped Pages 1-216	02/03/2012	31	5734-5950
Record on Appeal, Vol. III, Bates Stamped Pages 422-661	02/03/2012	33	6157-6397
Reply in Support of Partial Motion to Dismiss and Opposition to Request for Writ of Prohibition	12/15/2011	27	5056-5061
Reply Brief of Conley Land & Livestock, LLC and Lloyd Morrison	03/28/2012	34	6519-6541
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
Respondent Kobeh Valley Ranch, LLC's Answering Brief	02/24/2012	34	6448-6518
Summary of Record on Appeal	10/27/2011	2-26	163-5026
Summary of Record on Appeal	02/03/2012	31	5728-5733
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
Summons and Proof of Service, Jason King	08/15/2011	1	121-123
Summons and Proof of Service, Kobeh Valley Ranch, LLC	08/15/2011	1	118-120

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL</u>	<u>JA NO.</u>
Summons and Proof of Service, The State of Nevada	08/17/2011	1	124-128
Summons and Proof of Service, The State of Nevada	01/11/2012	27	5098-5100
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.

/s/ KAREN A. PETERSON

KAREN A. PETERSON, NSB #366
ALLISON, MacKENZIE, PAVLAKIS,
WRIGHT & FAGAN, LTD.

P.O. Box 646
Carson City, NV 89702

Attorneys for Appellant,
EUREKA COUNTY

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,
76745, 76746, 76802, 76803, 76804, 76805,
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/VOLUME IV, pages 663-852

FRIDAY, DECEMBER 10, 2010

CARSON CITY, NEVADA

REPORTED BY:

CAPITOL REPORTERS
Certified Shorthand Reporters
BY: CHRISTY Y. JOYCE, CCR
Nevada CCR #625
1201 N. Stewart Street Ste. 130
Carson City, Nevada 89706
(775)882-5322

1 A P P E A R A N C E S

2
3 For the Division:

JASON KING, State Engineer
KELVIN HICKENBOTTOM, Deputy
State Engineer
SUSAN JOSEPH-TAYLOR, Chief
Hearing Section
RICK FELLING, Chief
Hydrologist
TIM WILSON, Hearing Officer
BRYAN STOCKTON, Deputy
Attorney General

4
5
6
7
8
9 For the Applicant:

ROSS E. DE LIPKAU, ESQ.
JOHN R. ZIMMERMAN, ESQ.
Parsons, Behle & Latimer
50 West Liberty Street
Suite 750
Reno, Nevada 89501
(775)323-1601

10
11
12
13 For Protestant Eureka County:

KAREN A. PETERSON, ESQ.
Allison, MacKenzie,
Pavlakis, Wright & Fagan
402 N. Division Street
Carson City, Nevada 89702
(775)687-0202

14
15
16
17 For Protestant Ken Benson:

THERESE A. URE, ESQ.
Schroeder Law Office
410 Marsh Avenue
Reno, Nevada 89509
(775)786-8800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

DALE BUGENIG	PAGE
Continued Direct Examination by Ms. Peterson	667
Cross-Examination by Mr. de Lipkau	673
Examination by Mr. Felling	684
Examination by The State Engineer	688
Examination by Ms. Joseph-Taylor	689
REX MASSEY	
Direct Examination by Ms. Peterson	694
Cross-Examination by Mr. de Lipkau	705
LEONARD FIORENZI	
Direct Examination by Ms. Peterson	712
Cross-Examination by Mr. de Lipkau	717
JACOB TIBBITTS	
Direct Examination by Ms. Peterson	719
Cross-Examination by Mr. de Lipkau	754
Examination by The State Engineer	761

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X
(Continued)

CRAIG BENSON	PAGE
Direct Examination by Ms. Ure	769
Cross-Examination by Mr. de Lipkau	778
MARTIN PLASKETT	
Direct Examination by Ms. Ure	783
Cross-Examination by Mr. de Lipkau	789
KEN BENSON	
Direct Examination by Ms. Ure	791
Examination by Mr. Felling	810
BAXTER GLENN TACKETT	
Direct Testimony by Mr. Tackett	814
Examination by The State Engineer	831

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FRIDAY, DECEMBER 10, 2010, 8:31 A.M.

---oOo---

HEARING OFFICER WILSON: Mr. Bugenig, you're still under oath. We're proceeding to cross-examination; is that correct?

MS. PETERSON: No.

HEARING OFFICER WILSON: You still had some more questions?

MS. PETERSON: Yes.

HEARING OFFICER WILSON: Okay. Go ahead.

MS. PETERSON: Thank you.

CONTINUED DIRECT EXAMINATION

By Ms. Peterson:

Q. Mr. Bugenig, do you have Exhibit 156 in front of you?

A. I believe 156 is a table that deals with water rights.

Q. Yes.

A. Yes.

Q. Did you prepare that document?

A. Yes, ma'am.

Q. And what does that document portray?

A. Well, we tried to, I guess, establish the pedigree of the water rights applications, tried to trace them from some of the original applications up through the

1 round of applications that were the subject of the 2008
2 hearing. And then a lot of those appear to have been changed
3 to arrive at the distribution of pumping for the ten wells in
4 the well field as currently envisioned and then in addition
5 to water rights were transferred to wells at the tailing
6 storage facility, the TSF.

7 Q. And did you notice anything when you were
8 reviewing all of these water right applications?

9 A. Yeah. One thing that I noticed, and I don't
10 really have a satisfactory explanation, but it looks like
11 maybe there is some duplication of water rights or water
12 rights that were split. And it's very, very complicated to
13 me anyway. But there are water rights that appear to be for
14 wells that are something other than the ten in the well field
15 and the two at the TSF and there seems to be some sort of
16 duplication. But I don't have a really good answer for some
17 of this distribution because it's kind of complicated.

18 Q. And that's outlined on the second page of the
19 spread sheet?

20 A. The one that's color-keyed, yes.

21 Q. Okay. And then you also mentioned in your direct
22 testimony yesterday during your power point a pumping test
23 that the State Engineer had ordered in the carbonate system.
24 Do you recall that?

25 A. Yes, ma'am.

1 Q. And that was ordered I believe it was 1966?

2 MS. JOSEPH-TAYLOR: 1169.

3 MS. PETERSON: 1169.

4 THE WITNESS: That's the one I was referring to,
5 yes.

6 Q. (By Ms. Peterson) And I believe we've attached a
7 copy of that in the record, submitted it in to the record as
8 Exhibit 522. If you could go to the black binder.

9 A. Yes, ma'am, that's the one I was referring to.

10 Q. And that's the order that you were referring to?

11 A. Yes, ma'am.

12 Q. And then is there any data in the record
13 suggesting flow in Roberts Mountains over a fairly large
14 distance?

15 A. I'd like to -- I think what I hear you say is are
16 there any data that support flow from the recharge area in
17 the Roberts Mountains in to say Kobeh Valley. I think that's
18 what I think you asked.

19 Q. Right. Is there data in the record to support
20 that?

21 A. Yeah, there are. Exhibit 40, I think, was the
22 Kobeh Valley well field data summary report. And there
23 are -- There's a figure in here. I need to find it.

24 Q. It's Figure 45.

25 A. Figure 45 it's called the potentiometric water

1 level contour map for consolidated rocks in the study area.
2 The top half identifies the various wells. The bottom part
3 of the figure shows iso contours of the potentiometric
4 surface in the rocks that I'm guessing was prepared by
5 Interflow. And I think Mr. Childress said that he was the
6 person who assembled this document.

7 And one of the things it shows is those blue
8 lines are indicators of the potentiometric surface. And what
9 it shows, and they have some solid blue line that shows that
10 that's their interpretation of the potentiometric surface
11 from actual water level measurements and then they show
12 dashed lines that are more interpreted because there are less
13 data. So where the data are good you draw solid lines
14 characteristically in our business and where the data are a
15 little fuzzy you draw dash lines.

16 But in the area on the west half of the figure
17 where it shows, it's labeled 6400, meaning the 6400 foot
18 elevation of the potentiometric surface, just to the
19 northwest of that is the location of a fault which is
20 represented in the groundwater flow model as a horizontal
21 flow barrier. And if you have water level contours the flow
22 is more or less in the direction of those contours. And as I
23 look at this figure, this figure represents flow from the
24 mountains through that fault area in to Kobeh Valley.

25 So Mr. Childress' opinion was that the effect of

1 pumping couldn't be, it was his -- could not be propagated
2 through this barrier because there was no flow through it.

3 Again, the model is -- provides a different point
4 of view and I think his own figure would lead you to believe
5 that there is flow from the mountains to the well field and
6 which is again -- Recharge originating in the Roberts
7 Mountains is a major source and flowing through the rocks is
8 a major source of recharge to the aquifer.

9 Q. Is there any isotope data that supports this?

10 A. Yeah. The mine's consultants collected an awful
11 lot of water chemistry data and they looked at -- and they
12 analyzed it for all kinds of parameters. A real useful tool
13 in our business is what's called stable isotopes of oxygen
14 and hydrogen and there are certain relationships where you
15 can tie the concentration of these isotopes to areas of
16 recharge. Usually what we say is the term that we use is
17 that the higher that recharge occurs in a mountain the more
18 depleted these waters are of the heavier isotopes.

19 So when you look at some of the springs it was
20 spelled out in Exhibit 39, you know, some springs out in the
21 valley show evidence of recharge occurring at higher
22 elevation.

23 Also there's a real interesting phenomenon that
24 went in -- that occurred -- that you see in some of the data
25 from Mount Hope. The shallower piezometers or drill holes

1 show water that's not as depleted in the heavier isotopes.
2 So suggesting shallower recharge, recharge that might be
3 occurring right on Mount Hope.

4 But as you go deeper, it becomes more and more
5 depleted suggesting that as you go deep below Mount Hope that
6 the recharge elevation is higher, higher than it was at
7 shallow depths.

8 So I know when you go up there, when we were up
9 at the spring, the water that was the source of the flow at
10 the spring, you could look up to the northwest and you see,
11 what do you see, you see Roberts Mountain looming up 2,000
12 feet higher in elevation. And then you look to the southeast
13 and you see Mount Hope, which is a little higher in
14 elevation. So the thought is that -- And I think -- I know
15 the authors of the report expended some effort trying to
16 explain this and one of their conclusions that it had
17 probably had something to do with groundwater flow paths,
18 suggesting that that higher elevation water below Mount Hope
19 had to come from some place else, suggesting continuity and
20 flow through the Roberts Mountains.

21 MS. PETERSON: That's all the questions I had.

22 HEARING OFFICER WILSON: Thank you.

23 Cross-examination.

24 MR. DE LIPKAU: Yes.

25 ///

1 CROSS-EXAMINATION

2 By Mr. de Lipkau:

3 Q. Would you please turn to 502, Mr. Bugenig. Would
4 you please look at the monitoring and mitigation last
5 paragraph, page 29 of 30. Would you read the first sentence
6 of the last paragraph, please.

7 A. "Assuming the State Engineer approves the pending
8 applications, we recommend a monitoring program that is much
9 more comprehensive than the one proposed by the mine and
10 which takes in to account our comments and provides for
11 active participation of Eureka County, not just receipt and
12 review of the data."

13 Q. All right. Have there been any discussions
14 regarding monitoring plans between Eureka County and the
15 applicant?

16 A. It's my understanding that there's a history of
17 discussions of monitoring and -- of a monitoring program and
18 I think you said mitigation.

19 Q. Yeah.

20 A. The most recent one that I'm aware of is a
21 discussion that Mr. Rogers and I had with Mr. Boice also of
22 Eureka Moly at Eureka County.

23 Q. Okay. Earlier I believe yesterday you mentioned
24 that there are other gold mine parties in the valley?

25 A. Well, there's exploration actively going on. I'm

1 not aware of anybody who's seeking a permit for a mine yet.

2 Q. So to your knowledge then no application has been
3 filed with the State Engineer regarding additional water
4 rights in Kobeh Valley for mining purposes?

5 A. Not to my knowledge.

6 Q. All right. Would you please turn to Exhibit 34.
7 Would you please pull the maps at the back of the exhibit
8 that you have in front of you.

9 MS. JOSEPH-TAYLOR: You're very hard to hear.

10 Q. (By Mr. De Lipkau) Have you reviewed Exhibit 34?

11 A. I've looked at it in the past but I have it in
12 front of me right now.

13 Q. And do you have the maps or figures that were
14 supplied earlier?

15 A. I have a series of maps labeled figures one
16 through seven.

17 Q. Right.

18 A. I'm assuming those are the maps in their
19 entirety.

20 Q. Yes. Would you please turn to table one of
21 Figure 34.

22 A. Of Exhibit 34?

23 Q. Yes.

24 A. Yes.

25 Q. And you realize that Exhibit 34 is a proposed

1 monitoring plan proposed by the applicant, do you not?

2 A. Yes.

3 Q. All right. And do you realize that in Ruling
4 6599 the State Engineer ordered or set forth proposition or
5 fact that prior to any pumping of any of the wells an
6 approved monitoring plan as approved by the State Engineer
7 must be in full force and effect?

8 A. It's my understanding that's correct.

9 Q. All right. Okay. Do you know that there are 30
10 sites in Diamond Valley which are to be monitored as set
11 forth on Figure 1, ten wells and ten springs. I don't want
12 you to count them. But do you agree there are monitoring
13 sites as set forth on Figure 1?

14 A. You initially asked me if there were -- if I knew
15 there were 30 and then you said ten wells and ten springs.
16 Are there ten other sites as well?

17 HEARING OFFICER WILSON: Mr. Bugenig, please
18 don't ask questions of Mr. de Lipkau. If you don't
19 understand the question, just say it and he'll understand.

20 THE WITNESS: Thank you.

21 HEARING OFFICER WILSON: Go ahead and reask your
22 question.

23 THE WITNESS: Yeah. Could you reask your
24 question please.

25 Q. (By Mr. de Lipkau) Does Figure 1 depict the

1 monitoring of 20 wells in Diamond Valley and ten springs in
2 Diamond Valley?

3 A. Well, it depicts a lot more than that if you take
4 in to account the sites that are identified as sites
5 monitored by the Division of Water Resources and the United
6 States Geological Service.

7 Q. So there will be a great deal of monitoring in
8 Diamond Valley?

9 A. Assuming that USGS has funding to move forward
10 and to continue to monitor those.

11 Q. Couldn't the applicant monitor those wells unless
12 they're electronically disconnected?

13 A. I would think the applicant could monitor
14 everything here as long as they get permission.

15 Q. All right. And do you realize or accept the fact
16 that there will be 25 monitoring sites in Kobeh Valley of
17 which five are springs?

18 A. Well, I'm not going to count them but I'll take
19 your word for the number.

20 Q. And the production wells being ten in number will
21 similarly be monitored, will they not?

22 A. I read that in to the plan, yes.

23 Q. And there will be 25 sites on Roberts Mountain
24 that will be monitored, will you take my word for that?

25 A. I'll take your word for that.

1 Q. And of that number there will be two wells, 11
2 springs and 12 stream recording devices which will have
3 continuous reporting devices there on?

4 A. Will all the wells have recording devices?

5 Q. The streams will.

6 A. Okay. I'll take your word for that.

7 Q. All right. So you agree then that that's 80
8 sources of measurement plus the ten wells for a total of 90?

9 A. I haven't done the arithmetic, but if you -- if
10 90 is what you say is correct, that there will be
11 measurements perhaps at 90 sites of varying and these
12 measurements will be of varying frequency.

13 Q. And do you know what a sentinel well is?

14 A. I gave a definition and my definition is that it
15 is a well, a monitoring well between a stressor of a system,
16 and in this case the stressor is the well field, and it's
17 positioned between it and what we call a sensitive receptor
18 such as maybe Tonkin Springs or the springs in the alluvium
19 of Kobeh Valley or located between the mine and Diamond
20 Valley.

21 Q. Okay. Will you accept the fact that there will
22 be five in Diamond Valley, two in the Roberts Mountain and
23 two on the east side of Kobeh Valley?

24 A. I believe that those are represented here on the
25 figure and according to table one the plan was to monitor

1 them quarterly.

2 Q. Okay. Do you accept the fact that there will be
3 ten monitoring sites out of the ten-foot area as modeled by
4 what we'll refer to as Exhibit 39? That's in Diamond Valley.

5 A. Right. I would like to have an opportunity to go
6 to one of the figures that might depict that better. Can you
7 point me to which one that might be.

8 Q. Figure 2.

9 HEARING OFFICER WILSON: Repeat your question
10 please.

11 Q. (By Mr. de Lipkau) Do you accept the fact there
12 will be ten monitoring sites in Diamond Valley which are
13 outside of the ten foot contour line as depicted on Exhibit
14 39?

15 A. As I look at Figure 2, the Diamond Valley
16 monitoring sites are depicted either as red circles or red
17 squares, so I'm going to count them up. I think I count more
18 than 20.

19 Q. Okay. And do you accept the fact that 18 sites
20 are outside of the ten-foot contour?

21 A. Yeah, that number appears to be represented by
22 the figure.

23 Q. All right. And 23 sites are intended to be
24 monitored on the Roberts Mountain outside of the ten-foot
25 contour line. Do you accept that figure?

1 A. That appears to be consistent.

2 Q. Okay. And the text of the exhibit addresses the
3 fact that monitoring will take place on the vegetation
4 monitoring. Would you agree with that?

5 A. That's what the text says.

6 Q. All right. And aerial satellite monitoring?

7 A. That's my recollection.

8 Q. And meteorological monitoring and data
9 collection?

10 A. At one meteorological site.

11 Q. Okay. And are you aware of a technical review
12 panel as created by Eureka County?

13 A. I think such a review panel has been proposed.

14 Q. Are you on the technical review panel?

15 A. I don't think that that's been determined yet. I
16 don't think it's been formalized.

17 Q. Okay. Do you realize that there are two
18 monitoring plans, one for the BLM, one for the State
19 Engineer?

20 A. I do. And realize that they may have different
21 purposes.

22 Q. Okay. Do you accept the fact that the State
23 Engineer has total jurisdiction over monitoring plans?

24 A. As they relate to water resources I believe so.

25 Q. Okay. Do you agree with the fact that Eureka

1 County does not have veto power over a monitoring plan as
2 approved by the State Engineer?

3 A. I don't believe that they can -- I believe that
4 that's correct.

5 Q. Okay. Going through a little bit of history, was
6 a monitoring plan included in the June 2010 plan of
7 operations of which Eureka County received a copy?

8 A. I have not personally reviewed the plan of
9 operations but I think that there was a monitoring plan
10 submitted to Eureka County.

11 Q. Do you realize that prior to that -- Do you know
12 whether or not prior to that being June 2010 a preliminary
13 draft was submitted to the BLM and to the county?

14 A. I don't have a good grasp of the history but I
15 know that there have been plans submitted to the county. The
16 county has commented on the plans and on several occasions.
17 But the actual details of these iterations of the plan, I
18 don't have a good grasp of that.

19 Q. Do you know who Steve Boice is?

20 A. I met Mr. Boice at Eureka County Natural
21 Resources at a meeting with Mr. Rogers. And I don't know his
22 title but he's perhaps their environmental coordinator,
23 something to that effect.

24 Q. Is he a county employee?

25 A. No, sir. It's my understanding he's an employee

1 of Eureka Moly.

2 Q. Do you realize that meetings were held in October
3 of this year between these gentlemen to go over the
4 monitoring plan?

5 A. I think that that was the meeting that I
6 participated in where I was -- where I voiced my wish list
7 for monitoring to Mr. Rogers and Mr. Boice.

8 Q. Were those suggestions incorporated and accepted
9 by the applicant?

10 A. I don't think I've seen -- You know, if I look at
11 this table, there were several things that are in our
12 discussions that are not represented in this table. My one
13 suggestion that I made was that they put data loggers in the
14 sentinel wells so that we could collect very high frequency
15 measurements to truly establish baseline conditions and allow
16 for a determination of the variations in the water levels.

17 One of my -- But it's not reflected in this
18 table. One of my other suggestions was that in the head
19 waters of Henderson Creek was that perhaps they should put in
20 a second monitoring well. Because a single monitoring well
21 sometimes will show you an impact but it won't give you an
22 important idea as to the direction, where may that stress be
23 coming from. So if you have multiple wells you can sometimes
24 pin down the direction and get a better handle on where it's
25 coming from. And if you look at figure --

1 Q. Excuse me. Let me continue on with this line of
2 questioning.

3 A. Okay.

4 Q. Did Eureka Moly at this meeting agree to
5 additional sentinel wells in Henderson Creek?

6 A. Mr. Rogers, you know, verbally committed to doing
7 that to me.

8 Q. Did he agree to additional continuous monitors on
9 the production wells?

10 A. Well, the production wells in Table 1 are
11 already, I believe, were to be equipped for continuous
12 measurements. What I suggested was that -- I was told that
13 each production well will have an associated exploration well
14 and they'll drill the exploration well to come up with the
15 final design of the production well.

16 Well, one of my suggestions was to equip those
17 with data loggers so that you get -- so that your data
18 reflect what's happening in the aquifer, not just what's
19 happening in the production well, which can be influenced.
20 The water levels in the production wells can be influenced by
21 things like changes in well efficiency and that sort of
22 thing. But he committed to that.

23 Q. He committed to that?

24 A. Yeah.

25 Q. Did he commit to additional monitoring sites on

1 Coils and Cottonwood Creeks?

2 A. He agreed that that was a good idea.

3 Q. Did Mr. Rogers commit to the measuring month of
4 certain USGS wells assuming access thereto can be made?

5 A. Likewise he thought that was a good idea.

6 Q. In your opinion is Exhibit 34 a fair and
7 acceptable example of a proposed monitoring plan?

8 A. I think it's a start. I think if they were to
9 incorporate the county's suggestions it would be a pretty
10 decent monitoring plan assuming they can get access to the
11 GIS wells and the wells that DWR has been pumping.

12 Q. Pumping? You mean testing, measuring?

13 A. I'm sorry. Measuring, monitoring, yes.

14 Q. Would you commit to providing a list of
15 suggestions?

16 A. Oh, absolutely. I think the county has already
17 provided that list. Mr. Tibbitts, who is the director of the
18 county's department of water resources.

19 Q. I mean a specific list, do the following, one,
20 two, three?

21 A. I would be happy to sit down with the county and
22 the mine and provide you a list, yes.

23 MR. DE LIPKAU: No further questions.

24 HEARING OFFICER WILSON: Thank you. Do we have
25 redirect?

1 MS. PETERSON: None.

2 HEARING OFFICER WILSON: We have some questions
3 from staff for you.

4 THE WITNESS: Pardon me.

5 HEARING OFFICER WILSON: We have some questions
6 from staff.

7 EXAMINATION

8 By Mr. Felling:

9 Q. Mr. Bugenig, one of your recommendations was a
10 pumping test similar to what the State Engineer required in
11 Order 1169. The circumstances aren't exactly the same, so
12 how would you envision such a pumping test going forward?

13 A. It would be a monumental task because of the
14 amount of water involved. But, you know, I truly believe
15 that the mine believes in their ability to produce that
16 amount of water they would have to install their ten
17 production wells and pump 11,300 acre -- 7,000 gallons per
18 minute, which is a substantial amount of water.

19 But because this is -- In this valley we're going
20 from zero on 60 in 2.6 seconds basically, from very little
21 pumping to 11,300 acre-feet per year in a jump. So it's not
22 like other valleys where you have the opportunity to ramp up
23 production and you can see historical data to see how the
24 system responds to testing. So quite frankly, it would be a
25 large commitment to install the wells and find a means to

1 utilize that water during the initial stages or during this
2 testing now.

3 One way you could do it, and it's a significant
4 financial commitment, is to build your mine and build your
5 mill and put in your well field and your pipelines and if you
6 truly believe in the ability to take that water out, it's a
7 big gamble, but if you really believe that all of the
8 investigations are useful and that the predictions are in the
9 realm of possibility, you build it, you pump it and you do
10 that with the full realization that the State Engineer if
11 something bad happens, the State Engineer can curtail
12 pumping.

13 But if you believe that -- if you truly believe
14 in your investigations and in the quality of the work that
15 your consultant team has done then this is a gambling state,
16 this is a big gamble, but if you believe it, that's sort of
17 how I would run that pumping test so that we're not wasting
18 11,300 acre-feet per year, unless of course they want to take
19 that water and pump it for a year and route it to Diamond
20 Valley as a part of a recharge project.

21 Q. In Order 1169, which is the pumping component is
22 two years, in that two-year period the effects from pumping
23 are expected to either be seen or not seen, it will be a
24 definitive test at that point that we're concerned about with
25 that being the Muddy River Springs, in Kobeh Valley we're

1 seeing effects that propagate ten, 20, 30, 40, 50 and more
2 years. I'm still wondering how such a test can be applied in
3 Kobeh Valley similar to what we're doing in Order 1169, which
4 is fixed and will clearly work and be -- there won't be any
5 argument, I don't think, at the end of the test of what the
6 results are. I have a hard time seeing how such a test could
7 be performed in Kobeh Valley.

8 A. I agree with you that the circumstances are
9 different. But I think the point that I would make is that
10 if you run the test with all of the monitoring wells equipped
11 and if the results of the test are consistent with the model,
12 it would then increase confidence in the model predictions.
13 So I think that's the focus of the test as opposed to looking
14 for a response at one particular receptor. It's really to
15 validate the predictions in the model so that you can then
16 have more confidence in the predictions five years, ten
17 years, 20 years down the road. And then also it would help
18 us to, us being the collective us, Eureka County and the
19 mine, look at the appropriateness of the monitoring and
20 mitigation plan.

21 Q. Okay. In your testimony and in your exhibits
22 you've been very clear about what you think would be the
23 effects of this pumping in Kobeh Valley and Roberts Mountains
24 and even in to Pine Valley, but you didn't really touch in
25 your testimony on what you think the effects of this project

1 will be on Diamond Valley, so I'll ask you pretty much the
2 same question I asked Ms. Oberholtzer. The model simulates
3 little or no effect on Diamond Valley from this pumping in
4 Kobeh Valley. Do you agree with the model and if not how is
5 your disagreement?

6 A. Well, I think the model right now is a tool and I
7 agree that there are some disagreements in how well the model
8 is calibrated. But the model doesn't show much effect in
9 Diamond Valley. And so if we assume that the model is
10 accurate, I don't see a direct effect in Diamond Valley based
11 on the model.

12 Q. And so the next question is do you believe the
13 model is accurate?

14 A. I think the model is an approximation of a
15 natural system. There are areas where the model appears to
16 be calibrated quite well and that's in the flats on Kobeh
17 Valley floor. I believe that it is not as accurate as it
18 could be in Diamond Valley based on your assessment of a
19 calibration flaw for the transient model. But in Kobeh
20 Valley it appears to be fairly accurate. Now, I would use
21 these uncertainties as impetus for modeling in areas where I
22 think that there -- where the model might be approved.

23 MR. FELLING: Thank you. No more questions.

24 ///

25 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5

Q. Mr. Bugenig, it's kind of a follow-up to Mr. Felling's question. It's the same question I asked Mr. Katzer. Were you here when Mr. Katzer was testifying?

Q. I wanted him to summarize the connection between
and Diamond and he brought up basically this large
pump test that has been occurring in Diamond Valley and
a-effect in Kobeh Valley. And that was important to
That was an indication to him that there was not that
of a connection between the two in terms of flows. Does
mean anything to you as well?

And I think it was Mr. Smith in his testimony that said that Darcy's law isn't one way. If you have water flows in one direction, if you have a pumping stress in the other that it should propagate upwards. And I hope I'm characterizing what he said consistent with, you know, his testimony.

We haven't seen it, the data, you know, there are

1 not that many wells scattered throughout the basin and flows
2 to the mountains. So the fact that we haven't seen it
3 doesn't mean that there hasn't been some effect that we just
4 haven't had a well in the right place to see it. Because if
5 you recall the model results, there were just a couple of
6 fingers, let's call them, in that propagation of that
7 drawdown cone of depression. And if we didn't have a -- And
8 those sort of represent conduits associated with geologic
9 structures. The one north of Whistler, if we don't have a
10 monitoring well at that location we have no data to see if
11 there is a -- has been a connection.

12 THE STATE ENGINEER: Okay. Thank you.

13 EXAMINATION

14 By Ms. Joseph-Taylor:

15 Q. Mr. Bugenig, I believe you said you had
16 information that there are other gold mines exploring in
17 Kobeh Valley?

18 A. Yes, ma'am.

19 Q. So if the State Engineer were to deny these
20 applications and those gold mines came in and applied,
21 wouldn't we be having the same hearing?

22 A. I'm not sure. I think -- I think the concern
23 here as has been expressed to me that you're going from, like
24 I said earlier, zero to 60 in 2.6 seconds.

25 Q. But don't gold mines use a lot of water?

1 A. Well, it depends on where they are and whether
2 they have to -- whether or not they have to dewater. In the
3 processing they don't use near as much water as I understand
4 it as here. A good example would be Ruby Hill. If you look
5 at the consumptive use of the Ruby Hill Mine, it's no where
6 near 11,300 acre-feet per year. A good portion of their
7 water, as I understand it, is returned to the aquifer via
8 rapid infiltration beds that recharge the aquifer.

9 So if they put a -- Again, it's the consumption
10 of the water. It's not just the amount of water that you
11 pump that I think is the concern. Again, ramping up from
12 virtually very, very little water use to when you combine the
13 mine and the mine's affiliate, Kobeh Valley Ranches, pumping
14 to the extent of their application there's not much water
15 left in the pot for other people to use.

16 Q. Are you familiar with the prior appropriation
17 system?

18 A. Yes, ma'am.

19 Q. And are you aware that the State Engineer could
20 not allow that pump test water to just run on the ground?

21 A. That's why I suggested that perhaps they be
22 willing to gamble with -- If they really believe their
23 predictions and the water is there and the impacts will be
24 minimal then that's a gamble that maybe should be put on the
25 shoulders of the applicant.

1 And I know that it is within the State Engineer's
2 purview to curtail pumping. And if the applicant would be
3 willing to accept that risk, that's one way to run this
4 pumping test.

5 MS. JOSEPH-TAYLOR: Thank you.

6 HEARING OFFICER WILSON: Any further questions?

7 All right. Thank you, Mr. Bugenig.

8 MS. PETERSON: Mr. Wilson, we would move for the
9 admission of Exhibit 156.

10 MR. DE LIPKAU: Would you speak up please.

11 HEARING OFFICER WILSON: Let's please be quiet.
12 We need to get these exhibits on the record. Thank you. Go
13 ahead.

14 MS. PETERSON: 156. I think that's a CV.

15 MS. JOSEPH-TAYLOR: Huh-uh. It's a water rights
16 spread sheet.

17 MS. PETERSON: Oh, I'm sorry. 127 is the CV. I
18 should start there.

19 HEARING OFFICER WILSON: Any objection to Exhibit
20 127?

21 MR. DE LIPKAU: No.

22 HEARING OFFICER WILSON: It will be admitted.

23 MS. PETERSON: 156 is the water rights spread
24 sheet.

25 HEARING OFFICER WILSON: Any objection to Exhibit

1 156?

2 MR. DE LIPKAU: No.

3 HEARING OFFICER WILSON: It will be admitted.

4 MS. PETERSON: 502, which was his report.

5 HEARING OFFICER WILSON: Yeah. I already have
6 that as admitted.

7 MS. PETERSON: Okay. 505.

8 HEARING OFFICER WILSON: Any objection to the
9 power point?

10 MR. DE LIPKAU: No.

11 HEARING OFFICER WILSON: Exhibit 505 will be
12 admitted.

13 MS. PETERSON: 519 was the water brochure
14 referenced in his testimony.

15 HEARING OFFICER WILSON: Any objection?

16 MR. DE LIPKAU: No.

17 HEARING OFFICER WILSON: Exhibit 519 will be
18 admitted.

19 MS. PETERSON: 520 was also the Mount Hope tour
20 power point referenced in his testimony.

21 HEARING OFFICER WILSON: Any objection to 520?

22 MR. DE LIPKAU: No.

23 HEARING OFFICER WILSON: Exhibit 520 will be
24 admitted.

25 MS. PETERSON: Thank you. And then Number 522,

1 which was Order 1169.

2 HEARING OFFICER WILSON: Any objection?

3 MR. DE LIPKAU: No.

4 HEARING OFFICER WILSON: Exhibit 522 will be
5 admitted.

6 MS. PETERSON: Thank you. And our next witness
7 has a power point.

8 HEARING OFFICER WILSON: Okay.

9 MS. PETERSON: So could we have a minute to set
10 that up?

11 HEARING OFFICER WILSON: Okay. We'll be off the
12 record.

13 (Recess was taken)

14 MR. DE LIPKAU: This is Ross de Lipkau. And I'd
15 like to correct an error which I may have made, and that is
16 in my questioning of Mr. Bugenig I meant to say State
17 Engineer Ruling 5966. I may have stated another number or
18 garbled those four, those three. Thank you

19 HEARING OFFICER WILSON: You're welcome. Let's
20 swear in the witness, please.

21 (Witness was sworn in)

22 REX MASSEY

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

1 DIRECT EXAMINATION

2 By Ms. Peterson:

3 Q. Could you please state your name and spell your
4 last name for the record.

5 A. It's Rex Massey, M-a-s-s-e-y.

6 Q. And by whom are you employed?

7 A. Researching Consultant Services, Incorporated.
8 It's a company that I own.

9 Q. And what kind of work does your company do?

10 A. We do a variety of things from planning to
11 utility development to socioeconomic research, housing
12 financing, areas of public financing and a lot of land use
13 planning work.

14 Q. And do you have Exhibit 166 in front of you?

15 A. Yes.

16 Q. And could you -- was that prepared by you or
17 under your direction?

18 A. Yes.

19 Q. And is that your curriculum vitae?

20 A. Yes, ma'am.

21 Q. Could you please just briefly describe to the
22 State Engineer and the panel your educational background and
23 your work experience.

24 A. Sure. I have a BS in mathematics and business
25 economics and I have a Master's in business administration

1 from the University of Nevada. I have 24 years of
2 experience, 21 of them have been in my own company. I spent
3 a lot of time in project development and planning in areas
4 from, all the way from the Lake Tahoe basin across to White
5 Pine County and Ely doing a variety of things from project
6 entitlements to utility development to land use planning,
7 capital improvements planning, local government finance. I
8 spent several years, I have done environmental impact
9 statements for federal agencies, Army Corps of Engineers,
10 Bureau of Land Management, Department of Defense, Department
11 of Energy. I have, as I mentioned, I have about 13 years of
12 experience working at the Lake Tahoe Basin with TRPA on
13 project entitlements permitting approvals and I have a host
14 of recreational type of developments that I have been
15 involved with over the years as well.

16 I mentioned environmental compliance. I've done
17 a lot of work in the areas of socioeconomic and demographic
18 analysis. 24 years of experience there. I've been the
19 Nevada state demographer. I do a substantial amount of work
20 in public and government relations. And I think I've
21 summarized it.

22 Q. And have you been engaged by Eureka County for
23 any work?

24 A. Yes. Back in I believe it was 1998 or 1999 I
25 worked on the Eureka County master plan. I did a follow up

1 on some work on the housing situation and then recently I've
2 been engaged by Eureka County working on the Mount Hope
3 project.

4 Q. And are you familiar with the Roberts Mountain
5 area?

6 A. Yes, ma'am.

7 Q. And are you familiar with outdoor recreation
8 activity in the Roberts Mountain area?

9 A. Yes, ma'am.

10 Q. And are you also familiar with population growth
11 and population estimates for Eureka County?

12 A. Yes.

13 Q. And to assist you in presenting your testimony to
14 the State Engineer today have you prepared a power point
15 presentation?

16 A. Yes, I have.

17 Q. And that addresses those two topics that I just
18 discussed?

19 A. Yes. The recreation and population.

20 Q. And so would you like to give your power point
21 presentation now?

22 A. Yes.

23 Q. And that's Exhibit 521; is that correct?

24 A. Yes.

25 Q. Please proceed.

1 A. If you want to turn over to the second slide.

2 MR. STOCKTON: Did I go too far?

3 THE WITNESS: Nope. That's it. Just a couple
4 things to point out for recreation from the Mount Hope
5 Roberts Mountain area. The area supports important outdoor
6 recreation resources and activities which provide social and
7 economic benefits. The most popular recreational activities
8 are directly or indirectly related to water resources.

9 I mention that the BLM through a number of
10 documents has identified some of the more popular recreation
11 activities in the area. And of particular relevance we are
12 focusing on today is the Mount Hope/Roberts Mountain area and
13 its importance. And it's important because there's a variety
14 of, I think, unique characteristics which highlight that
15 region.

16 And if you turn over to slide three. First
17 starting off, there's really a limited availability of water
18 resources in Eureka County. The perennial streams are
19 limited and the Roberts Mountain area is one of the places
20 that provide that availability. So the one thing that makes
21 it unique is from the beginning it's sort of -- it's rare in
22 Nevada but it's rare in Eureka County.

23 On the second bullet, you know, some of the
24 things, and I've got a number of quotes out of the 2010
25 Nevada statewide comprehensive outdoor recreation plan, the

1 first thing is numerous wildlife species including migratory
2 birds and fish require water resources as a central part of
3 their habitat. Also in that same plan, the state plan talks
4 about water being a prime attraction for recreation. It
5 makes sense more I think there are obvious statements for
6 Nevada, given the arid nature of Nevada, water resources
7 attract particular attention. And in fact the state plan has
8 even identified a strategy in there to protect water
9 resources particularly as they relate to recreational value.

10 And so I think the state plan clearly makes the
11 connection between the importance of water and recreation of
12 water and wildlife.

13 One of the other interesting elements about
14 recreational use is the majority of people, and this is based
15 on some statewide national surveys, is that they travel less
16 than an hour, about 62 percent of those. The Mount
17 Hope/Roberts Mountain area is within that reach of most of
18 the residents of Eureka County. So it just illustrates that
19 a recreational area in proximity is critical.

20 The other thing about the area is it has pretty
21 good vehicle access. So vehicles, trailers, motor homes can
22 reach a lot of the areas that have water-based recreation and
23 that's a critical element.

24 Another element that was pointed out in the
25 state's planning efforts over the years, back in 2004 in the

1 state's comprehensive plan they identified five outdoor
2 recreation areas and facilities that are most needed outside
3 communities, and they were camping, fishing, parks, hiking
4 and biking. And these activities are certainly available in
5 the Roberts Mountain area and they're needed and they're
6 desired from the state's perspective as far as residents go.

7 If you turn over to slide three, or four, I'm
8 sorry. The other thing I'd like to note is that fishing,
9 camping, hiking, hunting and wildlife viewing are really high
10 sorts of activities among state and national survey
11 respondents and they have high cross-over participation
12 rates.

13 Eureka County, for example, has very high
14 participation rates among anglers and hunters as measured by
15 their licenses held by local residents. With respect to
16 fishing, for example, the population holds licenses is almost
17 twice as high as national. National indicators and hunting
18 is substantially higher in national hunting license holder.
19 So it's a high value, what goes on up this that area is a
20 high value, has high participation in Eureka County
21 residents.

22 And then finally as far as outdoor recreation
23 goes, and it's also pointed out in the statewide
24 comprehensive plan, that there's certain social benefits
25 derived such as public health and quality of life activities.

1 And I also point out that activities such as fishing, camping
2 and hiking function as important gateway activities. They
3 spark participation in other sorts of recreational endeavors.

4 So for all the reasons listed above, the
5 proximity, the valued activities, the high participation
6 rates, the needed and desired types of facilities and areas
7 and the limited availability of those types of resources, the
8 Roberts Mountains area provides important recreation and
9 contributes to the quality of life and the well-being of
10 Eureka County residents.

11 Additionally, we went ahead and looked at some of
12 the economic benefits, attempting to quantify things that
13 have an economic value. We looked at fishing in the area.
14 And I would note that NDOW plants Tonkin Springs and plant
15 Roberts Creek. 2009 at the Roberts Creek you had 550 rainbow
16 trout. In Tonkin Springs a thousand rainbow trout were
17 planted in that.

18 MS. PETERSON: Excuse me. Did you need to go to
19 the next slide?

20 THE WITNESS: Oh, I'm sorry. Slide five. I was
21 there. And then some of the streams that we gathered some
22 information on streams of reported fishing, those are listed
23 up there. I would also note that NDOW identifies the fish
24 bowl waters that are in the Roberts Mountain as Tonkin
25 Springs, Tonkin Reservoir, Pete Hanson Creek, Roberts Creek

1 and Vinini Creek.

2 In trying to -- And I'll go through this real
3 quick unless you want details on the calculation. Trying to
4 come up with some kind of economic generation, economic
5 activity we looked at the license holder, we looked at number
6 of days fishing. I would add I think because the
7 participation rates in Eureka County, the fishing days are
8 probably more similar to national averages where most people
9 fish 13 days -- 17 days a year of fresh water fishing, the
10 state census information is about 13 but it might be higher
11 in Eureka. We put that all together with fishing days and
12 expenditures that we were able to find from the 2006 survey,
13 the Nevada expenditures on fishing and we came up with about
14 \$155,000 in economic activities related to fishing in the
15 Roberts Mountain area.

16 Slide six, big game hunting. Principally mule
17 deer and antelope. The number of big game tags issued or
18 sold and hunt units 141 through 145, which I will admit is a
19 large area, as well as 155 according to NDOW records, about
20 690 tags issued in there.

21 Based on the 2006 survey of fishing and hunting,
22 wildlife recreation shows that hunters hunting in Nevada
23 spend about \$1922 for all related items, excluding some of
24 the special equipment that that amount declines to about
25 \$1107 per hunter. And travel-related expenses. Hunters in

1 Nevada spent about \$628 in 2006. Doing some math we came up
2 with the contribution for hunting expenditures in different
3 categories based on the big game tags issued in those units
4 that I had mentioned.

5 And I would -- I would say that Eureka County
6 benefits directly and indirectly from those big game tags.

7 If you turn over to slide seven, I'll just touch
8 on upland game bird hunting and camping and picnicking day
9 use. With respect to upland game bird hunting, 2009 based on
10 NDOW records, 2,550 days. We just did a rough calculation
11 taking about 30 percent of the land area. And we came up
12 with an economic contribution, economic activity of about
13 \$73,440 for upland game bird hunting.

14 As far as camping and picnicking in the day use
15 activities, there's really not a lot of records. We did sort
16 of a reasonable estimate I think that has to pass the
17 reasonable test. We figured maybe 20 weeks of usage, 20
18 users a week, recognizing that some will stay overnight. We
19 came up with about 800 user days, \$70 a day expenditure is
20 about \$56,000 annually of economic activity.

21 If you go over to page eight or slide eight, I
22 will touch on population very quickly. State demographers'
23 estimates show that Eureka County population over the last
24 ten to 20 years remained fairly constant with variations
25 created mostly by mining projects. The population in Eureka

1 County, southern Eureka County is about 1100. We verified
2 that through a number of different sources. Unless there's a
3 full census taken or we dig through the assessor's records,
4 that's a pretty good estimate. What we have is a stabler
5 base population where we take out kind of the cyclical
6 projects and we end up with about 940 people in southern
7 Eureka County. Mostly we attribute if you take the southern
8 Eureka County population is 1100 and you subtract out most of
9 the population associated with the Ruby Hill you end up with
10 about 940. It's kind of a stable non-mining population.

11 Due to the longevity of the Mount Hope project,
12 it's, you know, how you want to look at it, it's probably a
13 project that adds to the long term population of the county
14 where before you've seen mostly seven, eight years, you get
15 spikes and you get troughs. And we also were able to get
16 some information on proposed projects that are looking at the
17 southern Eureka County area. And we just went through some,
18 provided some population numbers. As far as existing
19 population as I mentioned 940.

20 We think the Mount Hope population once
21 production is underway is about 700. So we looked at sort of
22 the base population as moving up to about 1640 in southern
23 Eureka County. If we add in some of the other projects that
24 are out there pending that are looking at the area, there's
25 probably another 260 that may move in to the area so that the

1 population over the next, oh, ten years or so could spike up
2 to over 2,000. I have 2,060.

3 And then it's very difficult based on the
4 cyclical mining elements that come in to Eureka County
5 periodically to kind of project past that time.

6 Turning over to slide nine, a couple of
7 conclusions about population development. There will be an
8 increase in the base population of southern Eureka County due
9 to the project. Cyclical projects with relatively short-term
10 projects will continue to create some volatility in the
11 Eureka area with periodic declines and gains in population.

12 Over time the stable base population in southern
13 Eureka County will probably trend higher. Employment
14 opportunities is one of the principal factors of population
15 migration according to the census. And in the future years
16 it could turn out that more and more local residents find
17 work more like the Mount Hope project and reduce the number
18 of non-local residents that are projected to work in the
19 project.

20 Based upon the pattern of growth and development
21 in southern Nevada -- That should have been southern Eureka
22 County -- over the next ten to 20 years, new residential
23 areas and development will likely expand from the town in a
24 northern and westerly direction.

25 And I would note that there are 7,471 acres of

1 private land available in Kobeh Valley. And the highest
2 residential density currently allowed in that area by Eureka
3 County is, the density is two and a half acres per dwelling
4 unit. There is a potential to create as many as 2,988
5 residential lots.

6 Q. (By Ms. Peterson) And that's in Kobeh Valley; is
7 that correct?

8 A. Yes.

9 Q. And also on the bullet, the second bullet from
10 the bottom when you indicate that the residential areas in
11 development will likely extend from the Town of Eureka in a
12 northern and westerly direction, do you see that bullet?

13 A. Yes.

14 Q. Is the westerly direction you're referring to
15 there to Kobeh Valley?

16 A. Yes.

17 MS. PETERSON: That's all the questions I have.

18 HEARING OFFICER WILSON: Thank you.

19 Cross-examination.

20 CROSS-EXAMINATION

21 By Mr. De Lipkau:

22 Q. Do you know what the unemployment is in Nevada?

23 A. Too high. But I think it's near 13. It's been
24 in the 12 to 14 range for several months, if not --

25 Q. Are you aware that Eureka County holds itself out

1 as a mining county?

2 A. I would assume that, given the mining activity in
3 the northern portion of the county.

4 Q. Are you aware that the Nevada legislature has
5 declared mining to be the paramount interest in this state?

6 A. No, sir, I'm not.

7 MR. DE LIPKAU: No further questions.

8 HEARING OFFICER WILSON: Thank you.

9 Redirect?

10 MS. PETERSON: None.

11 HEARING OFFICER WILSON: Questions of staff?

12 All right. Thank you, Mr. Massey. You may step
13 down.

14 MS. PETERSON: So we would move for the admission
15 of Exhibits 166 and 521.

16 HEARING OFFICER WILSON: Any objection to 166 and
17 521?

18 MR. DE LIPKAU: No.

19 HEARING OFFICER WILSON: Exhibit 166 is
20 Mr. Massey's CV. That will be admitted. Exhibit 521 is his
21 power point and that will be admitted.

22 MS. PETERSON: Then could Mr. Massey be excused?

23 HEARING OFFICER WILSON: Yes. Let's take a short
24 break before your next witness. And who do you have coming
25 up?

1 MS. PETERSON: The chairman, Lenny Fiorenzi.

2 HEARING OFFICER WILSON: All right. Let's be on
3 break until five till.

4 (Recess was taken)

5 HEARING OFFICER WILSON: Before we continue on
6 with Eureka County's case I did want to do a little bit of
7 public comment to help accommodate some people that cannot be
8 here this afternoon. I'd like to have Denise Moyle to come
9 forward.

10 MS. DENISE MOYLE: Thank you. Thank you for your
11 time.

12 HEARING OFFICER WILSON: Go ahead and sit right
13 in the chair and we'll just have you state your name for the
14 record.

15 MS. DENISE MOYLE: Denise Moyle, D-e-n-i-s-e
16 M-o-y-l-e. I am a farmer from Diamond Valley but my comment
17 today is as a citizen of the State of Nevada. And that is
18 that the water of Nevada is our greatest natural resource, I
19 think. All of this obviously is my own opinion, but it is
20 hands down our greatest natural resource. And in the long
21 run, the water of our state will be far more important to the
22 residents and the global community than any other product,
23 service or commodity that we may manufacture, provide or
24 produce and most importantly consume.

25 And I say that because the pumping out of 11,000

1 plus acre-feet of water annually that won't ever be recharged
2 in to any basin is not going to be usable again obviously
3 ever. And the most important thing about that is that that
4 water is more important to us in the long run as a water
5 source, as consumption, as used for agriculture but not just
6 agriculture, in people's homes, to bathe, to drink, to cook
7 with, to clean. Those things are more important and water is
8 becoming more and more valuable every day in our society and
9 it's harder and harder to find and it's harder to find in its
10 cleanest form.

11 And so I think that it needs to be really
12 addressed and thought deep down by the State Engineer to
13 conserve and protect the water the way that it would be most
14 beneficial in the long run, not just used very quickly for
15 the state of the -- for the benefit of the state as an
16 economic, the mining industry. The water needs to be used
17 the way that water was meant to be used, not as a byproduct
18 of mining. That's it.

19 HEARING OFFICER WILSON: Thank you very much.

20 UNIDENTIFIED SPEAKER: Amen.

21 HEARING OFFICER WILSON: Dusty, go ahead and come
22 up.

23 MS. DUSTY MOYLE: Good morning.

24 HEARING OFFICER WILSON: Go ahead and state your
25 name for the record.

1 MS. DUSTY MOYLE: My name is Dusty Moyle and I am
2 a farmer in Eureka, Nevada, Diamond Valley. And I come to
3 you today with letters from individuals who were not able to
4 make it. And I'm going to submit the letters and read just
5 one of them. This is from Everett Groth and Verna Groth.
6 "Dear Mr. King, I would appreciate it if you
7 would take time to consider the lives of people in this
8 community. My family in particular in regards to Eureka
9 County's current water protest, CV 0904-122 and CV 0904-127
10 as well as CV 094-123, Halpin, et al participants. We would
11 like this letter to be read in to the record.
12 My husband and I came to Diamond Valley over 50
13 years ago. During that time we developed a farm, started our
14 family and contributed to the building of a stronger stable
15 community which was and continues to be to this day based on
16 trust, faith in our neighbors, to help each other in good
17 times and in bad.
18 In those early days, my husband drilled wells for
19 our neighbors, did mechanic work for everybody, dropped
20 everything to help a friend put up his crop. We all helped
21 to build churches, form the Diamond Valley Homemakers, baked
22 a million pies, cakes, cookies and preserved jams and jellies
23 for fundraisers for our kids. Drove a hundred miles to see a
24 doctor, drove a hundred miles to visit relatives. Saw our
25 kids grow up, leave and come back to farm with their parents

1 or teach school or any number of things they could to raise
2 their families here. When our friends and family members
3 passed away, supported each other when the crops were not so
4 good whether bugs or weather, made it possible for Mount
5 Wheeler Power to grow in to a strong reliable electrical
6 company and trusted in the State Engineer's mission to
7 conserve, protect, manage and enhance the state water
8 resources for Nevada's citizens through the appropriation and
9 reallocation of public waters.

10 It is my family and all the other families in
11 this valley who have made Diamond Valley in to the place we
12 call home. We recognize our responsibility to conserve water
13 and be good stewards of the land. I hope we can trust that
14 you will work with all of us in a fair and equitable way to
15 keep our valley whole."

16 And I would like these other letters to just be
17 submitted in to the public record. One by myself, one by Dan
18 and Sandy Green, G-r-e-e-n, J.J. Moyle, Incorporated, Jim and
19 Jane Moyle. Thank you for your time.

20 HEARING OFFICER WILSON: All right.

21 MS. JOSEPH-TAYLOR: Thank you.

22 HEARING OFFICER WILSON: I'd like to get back to
23 Eureka County's case.

24 MR. DE LIPKAU: Excuse me. Could I interrupt on
25 a procedural question? And that is could we attempt to find

1 out the order of witnesses and the timing basically to
2 determine whether we'll finish up today or not.

3 HEARING OFFICER WILSON: Yes. We can go ahead
4 and discuss that. I believe when I asked before, we have
5 Lenny Fiorenzi and Jake Tibbitts.

6 MS. PETERSON: Yes.

7 HEARING OFFICER WILSON: And how much time do you
8 anticipate?

9 MS. PETERSON: For the chairman maybe not too
10 long. Mr. Tibbitts may be a bit longer.

11 HEARING OFFICER WILSON: Hour maybe?

12 MS. PETERSON: An hour maybe on direct.

13 HEARING OFFICER WILSON: And --

14 MS. URE: I have Craig Benson, Marty Plaskett and
15 Ken Benson. And I would say like around an hour and a half
16 maybe tops.

17 HEARING OFFICER WILSON: Does that give you
18 enough information?

19 MR. DE LIPKAU: I think we can conclude the
20 hearing today, yes. We'll sure try.

21 HEARING OFFICER WILSON: Yes. And we do have
22 Mr. Baxter Glenn Tackett as well.

23 MS. PETERSON: He's looking.

24 HEARING OFFICER WILSON: Yes, I know he's here.
25 And then of course any public comment, further public comment

1 that we may need to address.

2 With that, let's go ahead and call the next
3 witness.

4 MS. PETERSON: Eureka County would call Mr.
5 Lenny Fiorenzi.

6 HEARING OFFICER WILSON: Please come forward and
7 be sworn.

8 (The witness was sworn in)

9
10 LEONARD FIORENZI

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

14
15 DIRECT EXAMINATION

16 By Ms. Peterson:

17 Q. Could you please state your name and spell your
18 last name for the record.

19 A. Leonard J. Fiorenzi, F-i-o-r-e-n-z-i.

20 Q. And are you the chairman of the Eureka County
21 Board of Commissioners?

22 A. Yes.

23 Q. How long have you held that position?

24 A. Since January of this year.

25 Q. And how long have you been a Eureka County

1 commissioner?

2 A. July of '08.

3 Q. And were you employed by Eureka County in the
4 past?

5 A. Yes. I was hired in '72, retired in '04 as
6 public works director.

7 Q. And what positions did you hold between 1972 and
8 2004?

9 A. I was hired on the road department and worked my
10 way up through to public works director.

11 Q. And since 2004 you've basically been retired?

12 A. Yes.

13 Q. Except for serving on the commission?

14 A. Yes.

15 Q. And how long have you lived in Eureka County?

16 A. All my life.

17 Q. Has Eureka County made a commitment to provide
18 and study the hydrogeologic sources of Eureka County?

19 A. Yes.

20 Q. And have they entered in to agreements with the
21 USGS to study the Diamond Valley flow system?

22 A. Yes.

23 Q. Have they entered in to agreements with USGS to
24 form monitoring programs?

25 A. Yes.

1 Q. Has Eureka County even most recently hired a
2 hydrogeologist?

3 A. Yes.

4 Q. And to your knowledge how much has Eureka County
5 spent on trying to obtain this technical information?

6 A. I believe we spent about 500,000 on USGS stuff to
7 date.

8 Q. And have you or to your knowledge has anyone
9 representing Eureka County ever directed your consultants,
10 your employees or your attorneys to try to kill this project?

11 A. Not to my knowledge.

12 Q. And I guess then just turning to another issue,
13 from the county's perspective have they seen problems in the
14 State Engineer's process with a county trying to be involved
15 in managing, monitoring and mitigation plan?

16 A. It's my -- Yes.

17 Q. And could you explain what the problem is?

18 A. It's my understanding that if a protestant does
19 not settle with the applicant in some type of an agreement
20 and go to hearing and the applicant wins his case that the
21 protestant is denied the right to participate in a 3 M plan.

22 Q. And why did Eureka County file its protest or
23 protests in this proceeding?

24 A. So we can maintain standing with the state water
25 engineer.

1 Q. Is there anything else you would like to say to
2 the State Engineer?

3 A. I have prepared a short written statement.

4 Q. Would you like to read that?

5 A. Sure.

6 Q. Could you do that?

7 A. Sure. I've been asked, just now I've been asked
8 why the county protested and why is Eureka County against
9 mining. Eureka County protesting any mining water
10 application is not news. We have protested Barrick and
11 Newmont water applications. Recently we protested an
12 application from a mining company known as Rocky Mountain
13 Resources.

14 The law says to have standing at water hearings
15 you must be a protestant. So if anyone has what they feel is
16 a legitimate concern over water use, they must protest.

17 Eureka County has in the past and will in the
18 future stay involved in any planned use of the natural
19 resources within our coordinates.

20 Are we against mining? Mining is a life blood of
21 Eureka County. We have an open pit within 1500 feet of the
22 town side of Eureka. We have provided Eureka Moly with all
23 reports, analysis, all documents on this project the county
24 has generated at a cost of approximately two million dollars
25 so Eureka Moly could use them to make its permitting

1 applications stronger. Asked the mine to consider longer
2 mine life which would reduce pumping. To me this does not
3 sound like a county against mining.

4 We have to remember, this mine project
5 intensifies county concerns. Large amounts of water in gold
6 mines are different. They reinject, farm, pump the river
7 just about anything they can legally do to get rid of it.

8 This project is almost a hundred percent
9 consumptive use with no return to the basin. A long life, 44
10 years mining, with 25 to 30 years continued cone of
11 depression.

12 County residents have wells in the cone of
13 depression. Eureka County has public water wells for two
14 water systems that supply quality drinking water to 50
15 percent of Eureka County's population.

16 The agriculture industry in Diamond Valley
17 already has enough trouble with water quantity and can't
18 stand any additional impacts.

19 Do we have concerns? We certainly do.

20 With what Eureka feels are future unknowns for
21 above approximately 70 years of impacts that this project has
22 the potential to create, Eureka County has asked to be a
23 joint partner in the creation and submission of a 3 M plan to
24 all permitting agencies involved in the approval of a 3 M
25 plan. As the procedure is now, if a protestant does not

1 reach a settlement agreement with the 3 M plan included and
2 the application is approved, the protestant is not granted
3 participation in any monitoring program required by the
4 state.

5 In an effort to give the State Engineer the
6 opportunity to offer 3 M participation to willing local
7 governments we have submitted a BDR that will be heard this
8 legislative session.

9 Eureka County's goals have been and will be to
10 use our natural resources to their sustainable renewable rate
11 with no or minimal impacts to existing use.

12 MS. PETERSON: I don't have any further
13 questions.

14 HEARING OFFICER WILSON: Cross-examination,
15 Mr. de Lipkau.

16 MR. DE LIPKAU: Yes.

17 CROSS-EXAMINATION

18 By Mr. de Lipkau:

19 Q. Sir, would you say that the monitoring plan is
20 the only holdup between the parties hereto?

21 A. No.

22 Q. What other problems are there or issues?

23 A. I believe that there is three or four issues that
24 we have talked about through trying to reach some type of an
25 agreement. I don't think those have all been addressed. I

1 can't remember by memory.

2 Q. Okay. If these issues can be resolved, and as
3 you stated earlier that Eureka County doesn't want to kill
4 the project, it can be moved ahead with an agreement between
5 the parties?

6 A. I'm sure it could be talked about. But I can't
7 talk for the board. The State Engineer would have to be
8 involved in it. We're already at the protest hearing. The
9 talks are over.

10 Q. Why?

11 A. It's up to the State Engineer now.

12 Q. Let me start again. Can this matter be resolved
13 between Eureka County and the applicant?

14 A. And the State Engineer, yes.

15 MR. DE LIPKAU: All right. No further questions.

16 HEARING OFFICER WILSON: Thank you.

17 Redirect?

18 MS. PETERSON: None.

19 THE WITNESS: That was easy.

20 HEARING OFFICER WILSON: It was easy.

21 Your next witness please.

22 MS. PETERSON: That would be Mr. Tibbitts, Jake
23 Tibbitts.

24 HEARING OFFICER WILSON: Please come forward and
25 be sworn.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Witness was sworn in)

THE WITNESS: Can I grab a bottle of water? I heard that I would be on here direct for an hour, so...

JACOB TIBBITTS

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

DIRECT EXAMINATION

By Ms. Peterson:

Q. Could you please state your name for the record and spell your last name.

A. Yes. Jacob Tibbitts, T-i-b-b-i-t-t-s.

Q. And are you employed by Eureka County?

A. I am.

Q. And what is your position?

A. I'm the natural resource manager for Eureka County.

Q. And how long have you held that position?

A. Since July 1st 2008.

Q. And you haven't testified before the State Engineer before, have you?

A. I have not.

Q. And could you please describe your educational

1 background and your employment background briefly for the
2 State Engineer.

3 A. Sure. I received my Bachelor's in biology from
4 Idaho State University. I had a focus in botany and
5 microbiology. After I graduated with my undergrad I received
6 a national institute of health research fellowship where I
7 did research regarding pathogenic E.coli.

8 I moved from that research fellowship to
9 employment at a chemistry research and development lab as a
10 lab technician.

11 After being employed there I returned to school,
12 to graduate school back to Idaho State University where I
13 pursued a graduate education in geo-spatial, using that
14 technology, g-e-o-dash-s-p-a-t-i-a-l, where I used -- Primary
15 focus was using geo-spatial technologies, GIS and remote
16 sensing, to manage, monitor and model range land resources.

17 While I was at graduate school I was also
18 employed through the ISU, Idaho State University, GIS
19 Training and Research Center, and their primary focus is rec
20 lands resources research, using those technologies.

21 In July 2008 I became an employee for Eureka
22 County as the natural resources manager.

23 Q. And briefly what are your duties as the natural
24 resources manager?

25 A. I'm a generalist as far as natural resources for

1 the county. I keep the county commission and the county
2 informed as well as involved in all issues related to natural
3 resources. So out of my office we involve and keep the
4 county informed on issues related to mining, to water
5 resources, to BLM grazing allotments, to wild horses, to air
6 quality. Virtually anything that has to do with natural
7 resources it's my job to stay on top of those issues and to
8 keep the county involved and informed.

9 Q. And have you had any experience in designing and
10 implementing monitoring programs?

11 A. I have. In my opinion, monitoring really is
12 research. Really all of my education experience was involved
13 in research. And it's collecting data to measure against
14 something you're trying to find out.

15 I stated I've been involved in a lot of range
16 land research as well as microbiological research and
17 biological research. And currently in my position for Eureka
18 County I am involved in range land resources monitoring as
19 well as water resources monitoring.

20 Q. And are there any necessary components of a
21 monitoring plan?

22 A. In my opinion, monitoring flows from objectives.
23 You have to know what you're monitoring for to implement any
24 monitoring plan. Because again, I believe that all
25 monitoring is scientific research. And you need to know

1 exactly what you're trying to find out and ensure that the
2 data that you collect both in quantity and quality and the
3 protocol used will help you find out if you're reaching what
4 you're trying to reach or trying to find out.

5 Q. And have you had any experience where you
6 collected data and it didn't achieve the objectives that
7 were -- you were trying to achieve?

8 A. I have painful experience from that. In graduate
9 school I spent an entire field season collecting tremendous
10 amounts of data from May to October of an entire year spent
11 in the field. And during the fall and the winter, subsequent
12 fall and winter, analyzing the data, came to realize that the
13 protocols that we had used and the actual quantity of data
14 that we had collected did not give us any indication of what
15 we were trying to find out. And by any -- We couldn't make
16 any conclusion from the data we collected.

17 Q. So again just to reenforce, it's important to
18 have the objectives set out at the very beginning as what
19 you're trying to achieve by a monitoring plan; is that
20 correct?

21 A. Yes. In my opinion, monitoring is not synonymous
22 with data collection. Monitoring is taking -- collecting
23 data to analyze against something to see if you are -- to see
24 if the data you are collecting tells you what you are trying
25 to tease out, trying to find out.

1 Q. And in this project from a monitoring plan what
2 would we be trying to tease out?

3 A. For the Mount Hope project specifically what we
4 would be trying to tease out are the impacts that are related
5 to the pumping from the Mount Hope project.

6 Q. And did you prepare a monitoring, management and
7 mitigation plan for the Mount Hope project?

8 A. Yes.

9 Q. And is that Exhibit 126?

10 A. It is.

11 Q. And could you just --

12 HEARING OFFICER WILSON: Could you tell me what
13 binder number that is.

14 MS. PETERSON: It would be in binder one of our
15 original of our original submission.

16 HEARING OFFICER WILSON: Let's be off the record
17 just for a minute.

18 (Discussion was held off the record)

19 Q. (By Ms. Peterson) And what were the goals of the
20 plan that is laid out in Exhibit 126?

21 A. The overall goal of the plan is to ensure that
22 the -- all stakeholders have the opportunity to actively
23 participate in the monitoring, management and mitigation of
24 the Mount Hope project. And that includes representation
25 from Eureka County, the State Engineer as well as the

1 applicant.

2 The overall goal is to create a frame work that
3 everybody can be comfortable with and that forecloses future
4 challenging protests. That's the overall goal is to
5 foreclose future fights, future challenges, future protest.

6 Q. And the framework is set forth in Exhibit 126;
7 isn't that correct?

8 A. Yes. And I need to qualify that this is a
9 framework. This speaks about how you get to setting
10 objectives for the threshold objectives for mitigation, how
11 you go about implementing the monitoring. But it doesn't
12 speak to specific locations or the specific objectives. We
13 leave that up going to the input of the proper people.
14 Eureka County doesn't have the market cornered on good ideas.
15 And I think this plan acknowledges that.

16 Q. And in preparing this frame work did you review
17 any other plans that had been accepted by the State Engineer?

18 A. Yes.

19 Q. Or any other agencies?

20 A. I did. That was one of the primary things that I
21 wanted to do when I prepared this on behalf of Eureka County
22 was to ensure that it was something -- we weren't setting a
23 precedent here. It is something that other projects in
24 Nevada, it's heavily based on other 3 M plans implemented by
25 the BLM and the State Engineer, at least two that I can

1 specifically speak to. And that would be the North Valleys
2 Water Importation Project and the Lincoln County Right of Way
3 Importation Project, water importation project.

4 Q. And is there any intent in this frame work to
5 take any authority away from the State Engineer as the
6 regulator of water in the State of Nevada?

7 A. Absolutely not. I mean a clear reading of the
8 framework acknowledges that it provides an opportunity for
9 the stakeholders, the technical expertise and everybody to be
10 involved in the right manner. It's acknowledged multiple
11 locations and it is the State Engineer's authority to change
12 this plan at its discretion, the State Engineer's authority
13 to modify it and the State Engineer's authority to make all
14 final decisions regarding the recommendation of the plan.

15 Q. And was there any attempt at putting the plan
16 together to run the mine's business?

17 A. No, not at all. I think, again, the intent of
18 the plan is to bring all the parties to the table to work on
19 something that can -- it's collaborative in to the future and
20 that everybody can have -- can have pride in.

21 Q. The applicant has submitted a proposed monitoring
22 plan in this proceeding; is that correct?

23 A. Yes.

24 Q. And that's Exhibit 34?

25 A. Right, yes.

1 Q. And you reviewed that plan?

2 A. I have reviewed it.

3 Q. And did you have some critique of that plan?

4 A. I did. I provided a memo to the county
5 commissioners regarding my critique of this plan.

6 Q. And did you also submit -- or did we submit in
7 this proceeding your memorandum critiquing this plan so the
8 State Engineer could have that information?

9 A. Yes, we did.

10 Q. And is that Exhibit 507?

11 A. Yes, it is.

12 Q. And maybe you could just briefly give the State
13 Engineer, highlight the points of Exhibit 507.

14 A. Okay. I'm just wondering if I should wait.

15 THE STATE ENGINEER: We're good.

16 THE WITNESS: I guess the highlight -- If you
17 read my memo, I spend a substantial portion of the memo,
18 nearly the first three pages talking about background because
19 I don't think that we can fully understand the -- my critique
20 of the plan submitted for this hearing unless you understand
21 the background involved.

22 And it's clear that Eureka County has been
23 working for nearly two years now to work with the applicant
24 and the BLM in implementing something that would work for
25 Eureka County. And we have been very clear in our intent to

1 do this. And so that's why I wanted to point that out in the
2 background of my memo.

3 So the individual specific comments that I give
4 to each section, the applicant's water resource monitoring
5 plan, I don't repeat many of the same comments that I've made
6 over the past two years on that plan because -- but that does
7 acknowledge that I have made many comments. My response
8 basically acknowledges that it will make statements like our
9 comments were not taken in to consideration again in this
10 plan or the ideas that we had that we think are very
11 reasonable were not implemented in this plan that the
12 applicant stated, so I guess that's the highlight.

13 Q. (By Ms. Peterson) Is there a concern about
14 establishing baselines?

15 A. Yes, there is a concern on establishing a
16 baseline information. There's discussions of it in both the
17 plan that I have prepared for Eureka County as well as the
18 plan from the applicant. But the discussions in the
19 applicant's plan talk about baseline information, it talks
20 about collecting historical data which is important and
21 compiling all of this data. But in reality, much what
22 they're speaking to is some of the USGS wells that have come
23 up multiple times in other locations that they're not
24 baseline information. They're base point information. They
25 have one measurement associated with them, some from many

1 years ago.

2 And being able to really analyze impacts going
3 forward it's like planting a tree, the best time to plant a
4 tree was 50 years ago. Well, there's not a better time to
5 start collecting baseline data than today if you don't have
6 it. So proposing collection of baseline data some time in
7 the future I think it's kind of dangerous.

8 A good example of this is we heard testimony from
9 Mr. Martin Etcheverry about his concerns at Nichols Spring.
10 That's a good example of stressing water resource through a
11 pump test and an impact occurring and not having the baseline
12 data to overcome any finger pointing that's going to happen.

13 Q. And is there any mitigation plan proposed in the
14 mine's Exhibit 34?

15 A. There's not.

16 Q. And is there any mitigation frame work proposed
17 in the record from the mine -- in the record before the State
18 Engineer from the mine?

19 A. As far as I'm aware there is not any mitigation,
20 specific mitigation proposed or any frame work to establish
21 how that mitigation would be proposed.

22 Q. And does Eureka County have concerns about the
23 mine's voluntary implementation of mitigation?

24 A. Yes, we have concerns on that.

25 Q. And what is that based on?

1 A. I'm speaking on behalf of myself this time. I
2 know the county has voiced those concerns through various
3 correspondence in the past. The concerns that I have are
4 based on past history, past actions. I have -- I've
5 documented it in my memo, for one thing. Many times we have
6 requested things. We've received verbal promises on many
7 things. But I have not seen a complete follow-through on
8 those promises and I think that is also highlighted by some
9 of the testimony from some of the ranchers at Kobeh Valley
10 yesterday.

11 Q. And prior to this hearing was the mine aware of
12 the impacts to Nichols Spring based on the pumping of Well
13 206?

14 A. Yes, they were. I have discussed that issue.
15 It's been relayed to me at least three times through the
16 Etcheverry family. I have discussed that issue with
17 employees of Eureka Moly. And I also have -- Everything that
18 I -- All the background material for my memo that I provided
19 I brought with me. And I note in that memo that there was a
20 meeting held in Battle Mountain at the BLM office January
21 13th of this year, of 2010. And Eureka Moly convened that
22 meeting. At that meeting were seven Eureka Moly
23 representatives. And the notes from that meeting that were
24 prepared by Eureka Moly acknowledged that I brought that
25 issue up, the issue of Nichols Spring, and that was nearly a

1 year ago.

2 Q. And to your knowledge has the mine provided any
3 mitigation to that impact to Nichols Spring?

4 A. My knowledge of that is what I heard
5 Mr. Etcheverry speak to yesterday and that is to date there
6 has not been any mitigation.

7 Q. And is Eureka County requesting that the State
8 Engineer implement the frame work for a monitoring,
9 management and mitigation plan as you've prepared in Exhibit
10 126?

11 A. Yes, that's what we would ask.

12 Q. And then I'm going to turn now to the EIS
13 process.

14 A. Okay.

15 Q. And -- Oh, I forgot to ask you on your
16 background. As the natural resource manager are you involved
17 in the NEPA process on behalf of Eureka County?

18 A. I am. Again, as I stated, I am over all of the
19 natural resource issues for Eureka County. Eureka County has
20 a community NEPA committee and it's made up of citizens from
21 a broad group in the community to review those documents for
22 the EIS. We have that memorandum of understanding with the
23 BLM that lays all of that out. And I am the executive
24 secretary to that group, you could say. And I am a point of
25 contact for BLM EIS.

1 Q. Specifically you're talking about the Mount Hope
2 EIS?

3 A. Specific to the Mount Hope EIS.

4 Q. And do you have Exhibit 36 in front of you?

5 A. I do.

6 Q. You do? Okay. And there was some testimony
7 earlier in this proceeding about Exhibit 36.

8 A. I remember that.

9 Q. And I'll characterize that testimony as the
10 Exhibit 36 indicating that the model had been approved by the
11 BLM. Did you hear testimony to that effect?

12 A. I heard it multiple times.

13 Q. And is it your understanding that the model has
14 been approved as final by the BLM?

15 A. No, that is not my understanding.

16 Q. And what's your -- Why is that not your
17 understanding?

18 A. Well, Exhibit 36 is an exhibit that the applicant
19 submitted for this hearing. And I think the letter actually
20 speaks to what my understanding is. It references two
21 reports, but the one we're occurred about is the hydrogeology
22 and numerical flow modeling.

23 And if you go to the second to last sentence, it
24 states, "After input to the reports from the cooperating
25 agencies, the BLM considers the two reports acceptable for

1 continued use to support the preliminary draft environmental
2 impact statement."

3 And it needs to be noted that the preliminary
4 draft environmental impact statement is an internal draft.
5 It's only between the cooperating agencies and the regulatory
6 agencies that are participating in the Mount Hope process.
7 That review period is still -- That review is still going on
8 as we sit here today.

9 The document has been reviewed and there were
10 over 2,000 comments submitted on that internal draft between
11 the cooperating agencies and the other regulatory agencies.

12 We are having a meeting next week with the BLM to
13 discuss those comments. Many of those comments are similar,
14 if not exactly the same, to our concerns on the water model
15 that we've brought forward. We have those same concerns in
16 the model with the BLM. We continue to make those concerns.
17 And we don't know what changes may be directed by BLM on this
18 water model. We haven't had the meeting yet to see where
19 those changes will go.

20 If you look at the last sentence in that letter,
21 please note that through interdisciplinary team reviews,
22 which is the internal version, during the NEPA analysis and
23 further, during the public review period, which is months
24 away by the time it goes to draft EIS for a 45-day comment
25 and a final EIS, there is the potential that comments may

1 arise that could affect the status of the reports. No where
2 does BLM say that they have marked the exhibit as final. No
3 where have they said that it is a final model or report.
4 This is very clear that they acknowledge that there may be
5 comments that arise that affect the status of the report.
6 And in my mind that is as far as from being accepted and
7 final by BLM.

8 Q. And in your experience through the NEPA process?

9 A. And in my experience where I am involved in this
10 on a daily basis.

11 Q. And there also was testimony I think it was from
12 Mr. Rogers, that approval of the plan of operations by the
13 BLM meant that the project was environmentally sound. Do you
14 recall that?

15 A. That's how I recall that.

16 Q. Do you recall that testimony?

17 A. Yes, I do.

18 Q. And is that your understanding of the BLM
19 process?

20 A. No, it is not. My understanding of the BLM
21 process, really what we're talking about is the NEPA process
22 that we're involved in. The NEPA process is not to decide
23 the most or the environmentally sound projects. The NEPA
24 process is to disclose impacts related to projects.

25 What needs to be pointed out is that the NEPA

1 process they analyze the proposed action, which is
2 essentially the plan of operation. NEPA mandates that BLM is
3 to analyze and take in to account any other reasonable
4 alternative in addition to the proposed action. And there
5 are examples of the final project as approved by BLM is
6 different than the proposed action of the applicant. It's
7 either one of the reasonable alternatives that they analyze
8 or it is some kind of mash-up between the reasonable
9 alternative and the proposed action.

10 Q. So there's a possibility that the project as
11 proposed and presented to the State Engineer here may not be
12 the project that's actually approved by the BLM; is that
13 correct?

14 A. That is correct. And I would say that that is
15 what Eureka County would want. Because Eureka County has
16 from the very beginning, before I was ever in Eureka County,
17 the minutes of the community NEPA committee to the BLM and
18 the applicant and the third party contractor to BLM are very
19 clear that Eureka County's intent from the beginning was we
20 wanted to see a reduced project that could still develop a
21 world class moly mine that could still develop every bit of
22 defined resource at that pit but reduce the impacts by
23 extending the life of the project, reduce the water impacts,
24 the socioeconomic concerns as well as other environmental
25 concerns.

1 Q. And would reducing the project size or reducing
2 the water impacts mean a need for a smaller quantity of water
3 rights than applied for in this proceeding?

4 A. I would assume that. And that's what we have
5 assumed that a reduced project extending the life of the
6 project would reduce the water consumption.

7 Q. So --

8 A. And I would like to acknowledge as well that
9 again I've talked about the meeting we had with the BLM.
10 That is one of our comments that we've made on the
11 preliminary draft, the administrative draft EIS. That's what
12 Eureka County would like to see. And we will be as a
13 cooperating agency and as the local affected government,
14 that's what we are wanting the BLM to consider. So there is
15 a possibility that the final project as approved by the BLM
16 may be different than what is being proposed by the
17 applicant.

18 Q. And does Eureka County have any request of the
19 State Engineer then with regard to these applications and
20 action on these applications?

21 A. We -- I was here for the entire hearing in
22 October of 2008 and we asked the same thing then is that we
23 believe, and I believe we've asked it through correspondence
24 as well to the State Engineer's office. We believe that the
25 EIS process should be complete before the State Engineer