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DATED this 21st day of December, 2012.

/s/ Nancy Fontenot

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

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Dec 27 2012 09:20 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 6

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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 Kobreh 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 Kobreh Valley Ranch, LLC	09/28/2011	1	143-149
Answer to Petition for Judicial Review by Kobreh Valley Ranch, LLC	09/29/2011	1	150-154
Answer to Petition for Judicial Review by Kobreh 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
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Eureka County's Supplemental Summary of Record on Appeal - CV1108-155	01/13/2012	29-30	5421-5701
Eureka County's Summary of Record on Appeal - CV1112-0164	01/13/2012	28	5244-5420
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

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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
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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

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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
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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

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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

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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

VOLUME 5

PUBLIC HEARING

TUESDAY, MAY 10, 2011

CARSON CITY, NEVADA

REPORTED BY:

CAPITOL REPORTERS
Certified Shorthand Reporters
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I N D E X

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JAKE TIBBITTS

Direct Examination by Ms. Peterson	915
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1 TUESDAY, MAY 10, 2011, 8:58 A.M.

2 ---oOo---

3 HEARING OFFICER WILSON: As set forth in the
4 hearing notice of April 22nd 2011, it's the time and place
5 noticed for additional hearing time on Kobeh Valley Ranch
6 applications previously heard December 6th, 7th, 9th and 10th
7 of 2010.

8 The purpose of this hearing is to receive
9 testimony and evidence on additional information from the
10 applicant consisting of the memorandum of March 18th 2011 in
11 response to the State Engineer's request for additional
12 information regarding proposed water usage as set forth in
13 Nevada Administrative Code 533.220.

14 The court reporter will file an original and one
15 copy of the transcript with the State Engineer. Anyone
16 wanting a copy of the transcript should make arrangements
17 with the court reporter. The cost of the transcript will be
18 borne by the applicant and protestants as set forth in Nevada
19 Administrative Code.

20 I'm Tim Wilson, Hearing Officer with the Division
21 of Water Resources. To my right is Susan Joseph-Taylor, the
22 Chief Hearing Officer. To her right is Deputy State Engineer
23 Kelvin Hickenbottom. To my left is State Engineer Jason
24 King. To his left is Rick Felling, Chief Hydrologist. And
25 to his left is Bryan Stockton, our Deputy AG.

1 At this point I would like to take appearances
2 for the record.

3 MR. DE LIPKAU: Ross de Lipkau on behalf of the
4 applicant, Kobeh Valley Ranch, LLC. To my left is Mr.
5 Michael Branstetter, in-house counsel.

6 HEARING OFFICER WILSON: Thank you.

7 MS. URE: Therese Ure for Protestant Ken Benson.

8 MS. PETERSON: Karen Peterson, Allison MacKenzie
9 law firm for Eureka County. And to my left is the Eureka
10 County District Attorney, Ted Beutel. And then I would also
11 like to note for the record that Eureka County Board of
12 Commissioners are here. And that's Chairman Lenny Fiorenzi,
13 Commissioner Jim Ithurrealde and Commissioner Mike Page.

14 HEARING OFFICER WILSON: Thank you. Are there
15 any preliminary matters anybody wants to bring up?

16 MS. PETERSON: I have one.

17 HEARING OFFICER WILSON: Go ahead.

18 MS. PETERSON: May I ask a question about the
19 procedure today?

20 HEARING OFFICER WILSON: Go ahead.

21 MS. PETERSON: It's my understanding based on the
22 notice that you would also be taking testimony from the
23 protestant based on the additional information that was
24 submitted in response to your letter.

25 HEARING OFFICER WILSON: Yes.

1 MS. PETERSON: That's correct?

2 HEARING OFFICER WILSON: Yes.

3 MS. PETERSON: Okay. Thank you.

4 MR. DE LIPKAU: Excuse me. I didn't understand
5 the question.

6 HEARING OFFICER WILSON: The question was the
7 protestants were allowed to file a response to Mr. Rogers'
8 memorandum and they were also given 15 days to file their
9 response after they received the applicant's response and
10 they asked if they could have witnesses.

11 MS. PETERSON: And evidence.

12 HEARING OFFICER WILSON: And evidence to bring in
13 their response.

14 MR. DE LIPKAU: All right.

15 HEARING OFFICER WILSON: With that, let's begin
16 with Mr. Rogers testifying on his memorandum, which was the
17 submittal in response to the State Engineer's request for
18 additional information. Go ahead and stand and be sworn.

19 (Witness was sworn in)

20 HEARING OFFICER WILSON: Go ahead, Mr. de Lipkau.

21

22 PATRICK ROGERS

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

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By Mr. de Lipkau:

Q. Please state your full name.

A. Patrick Rogers.

Q. What is your occupation?

A. I'm the director of the environmental and permitting for General Moly.

Q. What is your business address?

A. 2215 North 5th Street in Elko, Nevada.

Q. I believe you testified at the earlier hearings. You have a Master's degree in the field of geology?

A. Yes.

Q. And how many years have you been in the mining industry?

A. I've worked in mining about 25 years.

Q. Okay. And in this 25-year experience how many mills have you been associated with?

A. I've been associated with several dozen mills. I've had working knowledge of about ten operating mills, I would estimate.

Q. Do you believe you know and understand how a mill operates?

A. Yes.

Q. All right. On December 6th, you gave testimony before the State Engineer regarding the same applications

1 with which we are here concerned; is that correct?

2 A. That's correct.

3 Q. Do you affirm that testimony?

4 A. Yes.

5 Q. And you've reviewed it?

6 A. Yes.

7 Q. Do you desire to make any changes to your
8 December 6th, 2010 testimony?

9 A. No.

10 Q. During the 2010 hearing you presented Exhibit 35,
11 did you not?

12 A. That's correct.

13 Q. Do you have Exhibit 35 in front of you?

14 A. I do.

15 Q. All right. Do you desire to make any changes to
16 Exhibit 35 at this time?

17 A. No.

18 Q. At the December 10th -- Pardon me. At the
19 December 2010 hearing you stated that approximately 95
20 percent of the water developed in Kobeh Valley would be
21 returned to Kobeh Valley via the slurry; is that correct?

22 A. That's correct.

23 Q. What happens to the water in the slurry when it
24 gets to the dam or storage?

25 A. The water that's consumed -- A substantial amount

1 of the water that reports to the tails is actually recycled
2 back to the mill. But the water that is not recycled, it's
3 lost. It's consumed both by evaporation and entrainment,
4 which is just material that is wet, water that stays in the
5 intricacies of the particles.

6 Q. Have you ever been involved in a milling
7 operation that does not have a tailing pond?

8 A. I'm familiar with one facility that does not have
9 a tailings pond.

10 Q. How are tailings disposed of in that instance?

11 A. In that instance it's a small mill circuit and
12 they still have residual gold values in the tails so that
13 they commingle those, the tails with their leach ore and put
14 it on the pad.

15 Q. Could the subject mining operation, milling
16 operation operate without a tailing dam?

17 A. No. Tailings dam is essential for this
18 operation.

19 Q. You are aware that there are appurtenant water
20 rights to these mining properties at this time, are you not?

21 A. Yes, I am.

22 Q. Do you know approximately how many acre-feet are
23 encompassed by those permits?

24 A. I believe it is 453 acre-feet.

25 Q. All right. Do you know what the place of use is

1 of those prior and existing rights?

2 A. It's in Diamond Valley, the mining and milling
3 operation, correct.

4 Q. Would you please rephrase your answer?

5 A. In Diamond Valley.

6 Q. Right. So I believe your testimony is then that
7 the existing water rights are appurtenant to Diamond Valley
8 as their place of use?

9 A. Correct.

10 Q. And the point of diversion is also in Diamond
11 Valley?

12 A. That's correct.

13 Q. Is a portion or all of the existing rights
14 currently being placed to a beneficial use?

15 A. Yes, yes.

16 Q. Has the mill design changed since the 2010
17 administrative hearing?

18 A. No. The mill design is the same.

19 Q. Okay. In your opinion approximately how much of
20 Kobeh Valley groundwater will be consumed in Diamond Valley?

21 A. A small amount. A few percent, five to seven
22 percent perhaps.

23 Q. Okay. In your opinion how much Diamond Valley
24 water may be consumed in Kobeh Valley?

25 A. If you -- The most conservative approach would

1 estimate 129 acre-feet per year.

2 MR. DE LIPKAU: Mr. Wilson, do we have an exhibit
3 number for the memorandum of March 18th?

4 HEARING OFFICER WILSON: Yes. I actually
5 premarked that as Exhibit Number 3. And I might as well do
6 the hearing notice as well. And the hearing notice of April
7 22nd, 2011 is marked as Exhibit Number 2. Is there any
8 objection to the notice?

9 MS. PETERSON: None.

10 HEARING OFFICER WILSON: Hearing no objection,
11 that will be admitted. And the memorandum is marked as
12 Exhibit 3. And I'll go ahead and tell you I've premarked the
13 Eureka County response of April 5th 2011 as Exhibit 4, if we
14 could refer to that.

15 MR. DE LIPKAU: Okay.

16 Q. (By Mr. de Lipkau) Did you prepare Exhibit 3?

17 A. I prepared this with assistance from some others
18 that were working under my direction, yes.

19 Q. All right. What is primarily the source of your
20 preparation regarding Exhibit 3?

21 A. I used the engineering estimates of the water
22 consumed in the various elements of the water balance and I
23 used the hydrologic projections of water that flow in to the
24 pit and the engineering footprints of the pit and the
25 waste-off facilities during the various years of mine

1 operations.

2 Q. Would it be a true statement that Exhibit 3 is
3 based upon evidence and testimony introduced before the State
4 Engineer at either the '08 hearing or the 2010 hearing?

5 A. Yes, that's correct.

6 Q. Would it be a true statement then that Exhibit 3
7 conforms to the existing testimony and exhibits?

8 A. Yes.

9 Q. Let's start with the conclusion. It's true, you
10 testified to many times, that the consumption in the mill and
11 the various cycles is approximately 11,300 acre-feet
12 annually; is that correct?

13 A. Yes. 11,300 feet is the total used in the entire
14 mine and mill operation.

15 Q. All right. What is the diversion of Kobeh to
16 Diamond Valley consumption?

17 A. There is about 513 acre-feet per year that's used
18 in Diamond Valley every year from Kobeh Valley. There's also
19 some water from Kobeh Valley that's used in Diamond Valley
20 for dust suppression in the pit and the dumps and that
21 changes year to year.

22 Q. All right. What is the maximum volume of water
23 that will be transported from Diamond Valley to Kobeh Valley?

24 A. The maximum amount would be 129 acre-feet if you
25 consider that water that flows in to the pit can be

1 segregated as it's redistributed for dust suppression.

2 Q. We'll get in to further detail. Let's go to
3 Exhibit 3. Please turn to that. Would you please turn to
4 Figure A. Do you have that in front of you, Mr. Rogers?

5 A. I do.

6 Q. What does Figure A depict?

7 A. It shows the mine footprint in year one of our
8 operation. And as you can see, most of the disturbance
9 occurs in Diamond Valley. The entirety of the pit is in
10 Diamond Valley. The disturbance shown in the blue hatching
11 that's in Kobeh Valley is much smaller. But all of those
12 hatched areas will require dust suppression, road watering if
13 you will, to keep dust down. And that's a consumptive use of
14 that water which will primarily derive from the pit, the open
15 pit.

16 Q. Is dust suppression required by federal and state
17 environmental law?

18 A. Yes.

19 Q. It's absolutely indispensable then?

20 A. Yes.

21 Q. Let's go to Figure B.

22 A. Figure B is the same depiction, just shown in
23 year 32, which is the maximum footprint of the mine. You can
24 see that some of the pit at this point overlaps in to Kobeh
25 Valley so that the water that reports in to the pit will be a

1 mixture of Kobeh Valley water and Diamond Valley water. And
2 that water will be used for dust suppression in the hatched
3 area, which as you can see is mostly Diamond Valley but also
4 Kobeh Valley.

5 Q. And it shows the location of the process plant?

6 A. Correct.

7 Q. What is the processing plant? Would that be
8 synonymous with the mill?

9 A. Yes.

10 Q. Why did you stop the footprint in year 32?

11 A. That's the maximum extent of the mine operation.

12 Q. But I believe we -- you testified earlier that
13 the life of the project is 44 years; is that correct?

14 A. That's correct. This project is designed to mine
15 for 32 years. During that time we'll feed the mill
16 approximately 60,000 tons of ore per day. Economically it's
17 beneficial to feed the mill the highest grade material. The
18 lower grade material during that 32 years will be stockpiled.
19 At the end of 32 years, mining stops, the miners go home, the
20 mill stays operational. We continue to feed from that lower
21 grade stockpile to the mill to process.

22 Q. So mining itself will occur some 12 years prior
23 to cessation of all activities?

24 A. Milling will occur for 12 years after mining has
25 stopped.

1 Q. Why did the applicant design and contemplate the
2 construction of the tailing storage facility in Kobeh Valley?

3 A. Based on a number of factors, operational,
4 maintenance, efficiency. Really in this case there really
5 isn't a location in Diamond Valley other than one that would
6 involve moving the state highway to fit the tailings dam of
7 the size needed for the capacity of tails. Essentially had
8 to go in to Kobeh Valley.

9 Q. Can you state whether or not the tailing dam was
10 contemplated to be located in Kobeh Valley in an effort to
11 minimize water transfer of Kobeh Valley groundwater to
12 Diamond Valley?

13 A. No. It was placed there, like I said, because
14 that was the best location from an operational perspective
15 and because topographically it was feasible.

16 Q. Why isn't the mill building installed in Kobeh
17 Valley?

18 A. Economically you want your mill building close to
19 your pit. The ore, all the waste, all the material comes out
20 of that pit right there in the southeast side of the pit and
21 you want your mill building as close as possible to that.

22 Q. Was it done for economic improvement mining
23 majors?

24 A. Yeah, exactly.

25 Q. There would in fact be added cost to the mining

1 operation if the mill were to be located in Kobeh Valley?

2 A. Yes. It would be less economic to have it
3 located in Kobeh Valley.

4 Q. Okay. Do you agree and consent that the State
5 Engineer in his upcoming ruling and as part of the permit
6 terms that the existing permits in Diamond Valley, existing
7 permits in Diamond Valley, and the applications to change
8 with their points of diversion in Diamond Valley as their
9 source cannot collectively move or transfer more than 250
10 acre-feet to Kobeh Valley?

11 A. Those terms would be fine with us. They would be
12 workable.

13 Q. Okay. Is that your request?

14 A. Yes.

15 Q. Okay. What is mass balance?

16 A. Mass balance is an accounting of the ins and
17 outs. In this situation it was used for the water balance.
18 So it accounts for the massive water going in to the circuit
19 and coming out of the circuit.

20 Q. Okay. Could you please explain that in a little
21 more detail?

22 A. Sure. It looks at the water sources and the
23 water uses. You can think of the milling circuit as a loop
24 where the water is used in the mill reports to the tails,
25 there's water recycled from the tails back to the mill.

1 There's continually fresh water added from Kobeh Valley and
2 from the pit area so it's the sum of all of those inputs and
3 outputs. And they will equal zero. It's an accounting type
4 practice. It's a balance.

5 Q. Water balance?

6 A. Correct.

7 Q. Okay. Would you classify Exhibit 3 as
8 conservative or as liberal?

9 A. It's conservative in that it maximizes the
10 estimate of the water that's transferred between basins. And
11 that's simply because that pit is located on the hydrologic
12 divide the water that flows in to that pit is commingled. It
13 includes Diamond Valley and Kobeh Valley water. What we've
14 done with this exhibit is taken all of that water and mixed
15 it and then determined where it would be used in Diamond and
16 Kobeh and we consider that to be a transfer.

17 Q. All right. Let's go back through the existing
18 rights again and the applications that were approved by the
19 State Engineer for the predecessors to KVR. Do you recall
20 again what the number of acre-feet is for that?

21 A. 543, I believe.

22 Q. 543. And is it true that the applications before
23 the State Engineer seek to change 616 acre-feet of
24 certificated groundwater to the mine site?

25 A. Yes. Water from the Gail Ranch up to the mines,

1 correct.

2 Q. The points of diversion are in Kobeh Valley? I'm
3 sorry. Diamond Valley?

4 A. Yes.

5 Q. And applying the discount of 62.5 percent being a
6 consumptive duty of 2.5 acre-feet per acre, one arrives at an
7 anticipated drawing of 385 acre-feet; is that correct?

8 A. That's correct.

9 Q. And you have the total of the existing rights
10 plus the anticipated permitted rights?

11 A. 950 or so.

12 Q. The total is 928.

13 A. Okay.

14 Q. Okay. Let's go to Table 2. I'm sorry. Table 1.
15 What is the maximum volume in year 32 from Diamond Valley?

16 A. The maximum volume from Diamond Valley in year
17 32?

18 Q. Yes.

19 A. Let me make sure I understand the question. Do
20 you want me to explain how we derived at the numbers?

21 Q. Not yet. How much do you need in Diamond Valley
22 each year?

23 A. We need 513 feet, 513 acre-feet every year to run
24 the mill. And that gets used in the roaster and in potable
25 and in crusher dust suppression primarily. Those numbers are

1 shown on Table 2. We also need a variable amount of water
2 for dust suppression in Diamond Valley, and that number
3 depends on the footprint of the disturbance.

4 Q. Let's go to year 32 to get the footprint.

5 A. Okay. Year 32 the amount of water needed for
6 dust suppression in Diamond Valley would be 555 acre-feet.

7 Q. Okay. So let's add the 513 and the 555.

8 A. 1068.

9 Q. 1068, okay.

10 A. That would be the maximum use in any year in
11 Kobeh Valley of water.

12 Q. Okay. Let's now go to Table 1, and as an example
13 let's use year 20.

14 A. Okay.

15 Q. And assist us all in describing what Table 1
16 depicts.

17 A. Okay. Table 1 if we're looking at year 20 we can
18 see that the amount of water, and I'm looking at these four
19 columns on the right side of the table, the amount of water
20 in Diamond Valley that's required for dust suppression is 466
21 acre-feet. The amount of water that's required for dust
22 suppression in Kobeh Valley is 135 acre-feet. Those numbers
23 are based on the disturbance footprint in that mine area and
24 they are -- the acres within each basin are multiplied by a
25 factor that's used to estimate on a per-acre basis the amount

1 of water for dust suppression. I believe the number is .108
2 gallons per minute per acre. So if you do the math, you can
3 determine that for that footprint you need that many
4 acre-feet of dust suppression on Kobeh and Diamond sides.

5 In year 20, you can also see going over to the
6 left four columns you can see that the Kobeh Valley side of
7 the pit is estimated to generate 88 acre-feet. The Diamond
8 Valley side of the pit is estimated projected to generate 486
9 acre-feet. Those numbers are derived from the projected pit
10 inflows that are in Exhibit 50, I believe, the regional
11 hydrologic report, ratioed by the footprint of the pit.

12 Early on in the pit, as I was showing, the pit is
13 entirely in Diamond Valley. At the end of the mine life, the
14 pit is about 20 percent in Kobeh Valley and 80 percent in
15 Diamond Valley. So for each year we took the amount of water
16 that flows in to the pit and assigned that ratio of that
17 year's pit footprint to determine how much water comes from
18 each valley in to the pit.

19 In year 20 you can also see that those two
20 numbers added up, the 88 and the 486, are less than the sum
21 of the water needed. The 466 plus the 135 on the right side
22 of table are the amount needed. They total 601 acre-feet.
23 It requires that an additional 27 acre-feet from Kobeh Valley
24 be pumped to use for dust suppression.

25 When you mix all those waters together, the water

1 that flows in to the pit plus the water that you need from
2 Kobeh Valley for dust suppression, it is 19 percent from
3 Kobeh Valley, 81 percent from Diamond Valley.

4 Q. Is it a true statement then that the pit in 20
5 years has 19 percent in Kobeh Valley and 81 percent in
6 Diamond Valley?

7 A. That's correct.

8 Q. And we go to, up to say year one there is zero
9 percent of the pit in Kobeh Valley?

10 A. That's correct.

11 Q. And these calculations are based upon the percent
12 of the permit -- Pardon me -- of the pit in each basin; is
13 that correct?

14 A. The water inflows are, yes. And then that 19
15 percent Kobeh Valley number is used to determine the amount
16 of interbasin transfer that would happen due to dust
17 suppression required in Diamond Valley. In other words, that
18 466 acre-feet that's needed in Diamond Valley, 19 percent of
19 that we assume came from Kobeh Valley would equal 89
20 acre-feet that would be a transfer.

21 So this whole table was built on the premise that
22 the water that's commingled, if you have say red molecules
23 and blue molecules of water you could combine them and then
24 use them and go back on the ground and count up the
25 molecules, you could see which water went to which basin.

1 Q. Is it your testimony that more than 250 acre-feet
2 of Kobeh Valley groundwater will be pumped and placed to a
3 beneficial use in Diamond Valley?

4 A. Yes, that's correct.

5 Q. Does the volume of water used in -- on the
6 Diamond Valley side of the Granite Basin always exceed the
7 volume developed in Diamond Valley?

8 A. Yes. Every year there's 513 acre-feet that's
9 required in Diamond Valley plus the amount shown under water
10 uses in Diamond Valley total. Every year that number is more
11 than the water that flows in to the pit from Diamond Valley.
12 So that allows it -- I mean different interpretation would be
13 that there would never be a transfer from Diamond Valley in
14 to Kobeh Valley.

15 Q. Of any water?

16 A. Of any water.

17 Q. Are you saying that using the conservative
18 approach there therefore is no transfer of Diamond Valley
19 groundwater to Kobeh Valley?

20 A. Yes. Using a mass balance approach where you
21 count the amount of water that's used in Diamond Valley and
22 the amount of water that's generated in Diamond Valley,
23 there's no transfer from Diamond to Kobeh. But if you use
24 this approach where we comingle the water and count for which
25 basin it's used in and which basin it comes from, that gives

1 you a more conservative approach, which tells us that the
2 maximum amount would be 129 acre-feet from Diamond to Kobeh.

3 Q. It has been brought to my attention that you
4 stated that the, Exhibit 3 was based in part upon Exhibit 50.
5 Don't you mean Exhibit 39, the --

6 HEARING OFFICER WILSON: 35, I believe.

7 MR. DE LIPKAU: Well, the model.

8 HEARING OFFICER WILSON: Oh, the model. Okay.
9 Go ahead.

10 Q. (By Mr. de Lipkau) The model is Exhibit 39 in
11 the 2010 hearing.

12 A. Okay. I'm talking about the two-volume regional
13 hydrological report.

14 Q. It's 39 and not 50 is the point I'm making; is
15 that correct?

16 A. Yes, that is correct. It's referenced in this
17 memo, correct.

18 MR. DE LIPKAU: I have no further questions of
19 Mr. -- the witness at this time.

20 HEARING OFFICER WILSON: Okay. Thank you. And
21 I'll just restate just for the record from the hearing of
22 December 6th, 7th, 9th and 10th, Exhibit 39 was volumes one
23 of two of the hydrogeology and modeling, and that was
24 previously admitted.

25 All right. You were finished, Mr. de Lipkau?

1 MR. DE LIPKAU: Right. I'd like to move for the
2 admission of Exhibit 3.

3 HEARING OFFICER WILSON: Any objection to Exhibit
4 3.

5 MS. PETERSON: Exhibit 3, just so I'm clear, is
6 the March 18th memorandum to the State Engineer from
7 Mr. Rogers?

8 HEARING OFFICER WILSON: Yes.

9 MS. PETERSON: Just that document?

10 HEARING OFFICER WILSON: Yes.

11 MS. PETERSON: No objection.

12 MS. URE: I have none.

13 HEARING OFFICER WILSON: All right. Exhibit 3
14 will be admitted.

15 And we'll go ahead, cross-examination. Any
16 preference on who goes first?

17 MS. PETERSON: I was going to go first if that's
18 okay.

19 HEARING OFFICER WILSON: Go ahead.

20 MS. PETERSON: Thank you.

21 CROSS-EXAMINATION

22 By Ms. Peterson:

23 Q. Mr. Rogers, I'm Karen Peterson. I'm the attorney
24 for Eureka County. And I did have some questions. I was
25 interested in the testimony, your line of testimony regarding

1 agreeing to a permit term. Do you recall that testimony?

2 A. Yes.

3 Q. And just so that it's clear on the record what
4 you're referring to, it's my understanding that the applicant
5 is willing to agree to a permit term that it will not in its
6 development of the water resource and use of the water
7 resources in Diamond Valley, it will not, it will not use
8 more than 250 acre-feet per year exported from Diamond Valley
9 to Kobeh Valley to avoid the inventory statute kicking in; is
10 that correct?

11 A. We would agree to that restriction.

12 Q. With that restriction. And how would that
13 restriction be measured and how would it be monitored?

14 A. We would -- We could do it. I mean we have flow
15 meters to measure flow from various sources. It's just a
16 matter of a mechanical, the logistics of measuring water
17 flow.

18 Q. From your wells, you're talking about the
19 dewatering wells?

20 A. Yes, could do it from the dewatering wells.
21 Within the pit it's more complicated, but certainly you could
22 dig sumps on either side of the pit, measure the flow that
23 comes out of those sumps. You could put dewatering wells on
24 either side of the pit. It can be tracked.

25 Q. And then it's my understanding that you would put

1 that water in to dust suppression trucks and then the trucks
2 would use that in Kobeh Valley; is that right?

3 A. The water that comes in to the pit is used
4 primarily for dust suppression. That's its primary use.

5 Q. So there would need to be some tracking based on
6 the dust suppression side also; is that correct?

7 A. Yes, yes. Easy to do with the technology today.
8 GPS systems attached to trucks, it's pretty routine.

9 Q. And of course you would be willing to agree to
10 that monitoring and measuring and all of that to be able to
11 enforce the permit term; is that correct?

12 A. Yeah. If it's in our permit terms, absolutely,
13 yes.

14 Q. Directing your attention -- Do you have a copy of
15 your testimony from the December 6th hearing in front of you?

16 A. I do.

17 Q. You do?

18 A. Yes.

19 Q. And do you have Exhibit 35 in front of you?

20 A. Yes.

21 Q. And directing your attention to page 106.

22 Actually it starts at the bottom of page 105 and moves in to
23 page 106. And this is volume one of the transcript held
24 Monday, December 6th, 2010.

25 A. Okay.

1 Q. And your testimony -- I mean take a minute and
2 read it if you want. But this was the testimony that was
3 referenced in Mr. Wilson's letter to the applicant requesting
4 the additional information. Have you read that?

5 A. Have I read this transcript?

6 Q. Yeah. Just basically pages 104 to 106. That's
7 what he was referencing in his letter.

8 A. Okay.

9 Q. Do you want to read it right now?

10 A. Sure. Okay.

11 Q. Okay. And so there's a question, Mr. de Lipkau
12 starts at the bottom of page 105 on line 25, "Could you start
13 with the word source and describe how these arrows are
14 followed?" Do you see that?

15 A. Uh-huh.

16 Q. And he's referring to Exhibit 35. Do you agree
17 with that?

18 A. Yes.

19 Q. Okay. And then reading your answer, it starts at
20 line two on page 106. And let's just go through it sentence
21 by sentence. There's probably about five or six sentences.
22 Do you see that?

23 A. Yes.

24 Q. All right. The well field, and then you're
25 referring to the source that's on Exhibit 35; correct?

1 A. Yes.

2 Q. And that's located in Kobeh Valley?

3 A. Yes.

4 Q. And that will have ten production wells?

5 A. Yes.

6 Q. And then you state all of that water will go to a

7 booster tank?

8 A. Yes.

9 Q. And that is the booster that's still located in

10 Kobeh Valley; is that correct?

11 A. Yes.

12 Q. From there it gets piped to the mill storage

13 tank?

14 A. Yes.

15 Q. And that tank is located in Diamond Valley; is

16 that correct?

17 A. Yes.

18 Q. And that's commingled with water that's been

19 moved from the pit?

20 A. Yes.

21 Q. And that's also depicted on your Exhibit 35?

22 A. Yes.

23 Q. And that is basically the 11,300 acre-feet that

24 are applied for in this case?

25 A. Yes.

1 Q. And then you say all of that water becomes the
2 process circuit and -- Excuse me. Not all that water. Do
3 you see that?

4 A. Yes.

5 Q. Then you say most of that water is used in the
6 mill?

7 A. Yes.

8 Q. And you're talking about most of that water being
9 the 11,300 acre-feet; is that correct, is used in the mill?

10 A. Yes.

11 Q. And the mill on Exhibit 35 is that brown building
12 that says mill on it?

13 A. Yes.

14 Q. And it's located in Diamond Valley?

15 A. That's correct.

16 Q. And when you say most of that water is used in
17 the mill --

18 A. Uh-huh.

19 Q. -- you mean beneficial use in the mill; is that
20 correct?

21 A. It serves a function in the mill.

22 Q. And the function is that the ore is extracted in
23 the mill with the use of the water; is that correct?

24 A. Yes.

25 Q. That is how the moly is extracted?

1 A. That's correct.

2 Q. But with the use of the water?

3 A. Pardon me.

4 Q. With the use of the water?

5 A. The water is used to extract the molybdenum

6 mineral, yes.

7 Q. And that beneficial use occurs in Diamond Valley;

8 is that correct?

9 A. My understanding is that the interpretation of

10 the regulations is that the water is consumed -- it is lost

11 in Kobeh Valley.

12 Q. Right. But I'm asking you about your testimony.

13 A. Pardon me.

14 Q. I'm asking you about your testimony.

15 A. Yes.

16 Q. And the statement that you made in December of

17 2010 is that most of that water is used in the mill?

18 A. Right.

19 Q. Do you recall that?

20 A. Yes.

21 Q. And you also just testified expounding on that,

22 that the use of that water is to extract the ore?

23 A. Absolutely, yes.

24 Q. Is that correct?

25 A. Yes.

1 Q. And you use the word "used" about three times in
2 your testimony here on page 106; is that correct?

3 A. Yes.

4 Q. And that is to process the ore; is that correct?

5 A. Correct.

6 Q. And that is a beneficial use of -- is that a
7 beneficial use of the water?

8 A. I would agree with that, yes. I would agree that
9 the water is used in the entire circuit there in the mill, in
10 the thickener, in the tails. It's used along that entire
11 circuit.

12 Q. And going back to your testimony.

13 A. Pardon me.

14 Q. Going back to your testimony in 2010 when you
15 were referring to on line seven, most of that water is used
16 in the mill, and you're referring to the 11,300 acre-feet;
17 correct?

18 A. Yes, ma'am.

19 Q. That is coming out of Kobeh Valley; is that
20 correct?

21 A. Yes, ma'am. I said most of the water is used in
22 the mill. To distinguish that, a portion of it is not used
23 in the mill. Some of it is used for dust suppression.

24 Q. Right. And what is that. How many acre-feet?

25 A. Maximum of 726 acre-feet used for dust

1 suppression.

2 Q. Okay. And then just quickly going down the page
3 on page 106.

4 A. Uh-huh.

5 Q. You say there is a component that's used in
6 Diamond Valley as well for suppression, cooling and domestic
7 uses; correct?

8 A. Yes.

9 Q. And that's the portion you were just talking
10 about; is that right?

11 A. The 726 is just dust suppression.

12 Q. Okay. And then there's, what, 108 acre-feet for
13 domestic uses, something like that?

14 A. There's an additional 513 acre-feet that's used
15 in Diamond Valley for cooling, water potable/domestic and
16 dust suppression on the crusher.

17 Q. Going to your next sentence on page 106.

18 A. Uh-huh.

19 Q. The majority of that water, do you see that?

20 A. Yes.

21 Q. About 95 percent?

22 A. Yes.

23 Q. Gets used in the middle to process the ore, do
24 you see that?

25 A. Yeah. I think it's a typo. It should be mill,

1 yes.

2 Q. And then again the water, the 95 percent you're
3 talking about is the 11,300 acre-feet that comes from Kobeh
4 Valley; is that correct?

5 A. It comes from Kobeh Valley and Diamond Valley,
6 the total 11-3, most of it gets used in the mill.

7 Q. Okay. And then you go on to state the water is
8 discharged as a slurry to the thickener. Do you see that?

9 A. Yes.

10 Q. Okay. And then the thickener is depicted on
11 Exhibit 35 also; is that correct?

12 A. Yes.

13 Q. And that's also located in Diamond Valley, the
14 thickener?

15 A. Yes.

16 Q. And there is a use of the water there in the
17 milling process; is that correct?

18 A. Yes.

19 Q. Mining and milling process?

20 A. Yes.

21 Q. And then it looks like an arrow, some of that
22 water goes back from the thickener and is used again in the
23 mine in the mill; is that correct?

24 A. Yes.

25 Q. And then it goes back to the thickener, some of

1 the water?

2 A. Yes.

3 Q. Okay.

4 A. Yes.

5 Q. And then after it leaves the thickener, some of

6 it eventually goes down to the tailing pond; is that correct?

7 A. Yes.

8 Q. And did you -- have you reviewed Mr. Bugenig's

9 submission to the State Engineer?

10 A. Yes, I read it.

11 Q. That was submitted after your submission to the

12 State Engineer?

13 A. Yes, yes.

14 Q. And did you look at the numbers that he had put

15 on Exhibit 35?

16 A. I did.

17 Q. And do you agree with those numbers?

18 A. He's got some mistakes in them, but most of the

19 numbers correlate to numbers that are in our tables, yes.

20 Q. Okay.

21 A. There's some mistakes. But generally it's

22 reasonable.

23 Q. His numbers?

24 A. His numbers? They're not correct. There are

25 some errors in there.

1 Q. Are they minor?

2 A. No, not exactly. No, I would not characterize
3 them as minor.

4 Q. Do you have Mr. Bugenig's exhibit?

5 A. I don't. I'm not prepared to testify on that.

6 Q. You can't tell me which numbers you disagree
7 with?

8 MR. DE LIPKAU: I'm going to have to object to
9 this line of questioning. This is cross-examination based
10 upon his testimony and Exhibit 3.

11 MS. PETERSON: I'm just trying to speed things up
12 here so that I can find out what the issues are with the
13 numbers and Mr. Bugenig.

14 HEARING OFFICER WILSON: Wait, Mr. Rogers.
15 Sustained. Go ahead and ask your next question.

16 MS. PETERSON: So I can't ask this witness any
17 questions about Mr. Bugenig's memo.

18 HEARING OFFICER WILSON: Mr. Bugenig can testify
19 to his numbers, what he feels is correct.

20 MS. PETERSON: If I could just have one minute.

21 HEARING OFFICER WILSON: Go ahead.

22 Q. (By Ms. Peterson) Just one more question,
23 Mr. Rogers, maybe one more question, Mr. Rogers. Exhibit 35,
24 do you have that in front of you?

25 A. I do.

1 Q. Okay. So there is water in the tailings pond;
2 correct?

3 A. Yes.

4 Q. And then you've got an arrow that goes back up to
5 the mill?

6 A. Yes.

7 Q. Is that correct?

8 A. Yes.

9 Q. That water that can be reused from the tailings
10 pond, can it be reused for any other use other than in the
11 milling circuit, mining and milling circuit?

12 A. I would have to think about all of the
13 components, but generally no. Under State of Nevada NDEP
14 guidelines it becomes process water and you wouldn't use it
15 for other uses. And there may be metallurgical reasons why
16 you wouldn't use it for other uses. So generally yes, it
17 would only be used in the milling.

18 Q. So it can't be appropriated by somebody else for
19 agricultural use or domestic use or something like that?

20 A. I don't know that answer.

21 Q. The only use you know of is in the mining
22 circuit; is that correct?

23 A. Yes.

24 MS. PETERSON: That's all I have.

25 HEARING OFFICER WILSON: Thank you. Any

1 redirect? I'm sorry. Therese, Ms. Ure.

2 MS. URE: Yes.

3 CROSS-EXAMINATION

4 By Ms. Ure:

5 Q. Looking at your Exhibit 35, is the only water
6 then that comes back in to Kobeh Valley what is in that stays
7 in the tailings pond?

8 A. The only water that comes back to Kobeh is what?

9 Q. Okay. I'll rephrase it. So on Exhibit 35 from
10 the mill to the thickener, the water then goes in to Kobeh
11 Valley in to the tailings; is that true?

12 A. Yes.

13 Q. Okay. So is that the only point where water from
14 the mining and milling operation goes back in to Kobeh
15 Valley?

16 A. Yes. All the water from the mill is discharged
17 in to the tailings impoundment. As I said, in the pit area,
18 the water that flows in to the pit is used for dust
19 suppression, road watering, and that happens in both Diamond
20 and Kobeh Valley.

21 Q. And that's on the footprint that you testified
22 to?

23 A. Yes.

24 Q. Do you know how much of the water then is
25 recharged from that tailings pond back in to the groundwater

1 system?

2 A. Very little hopefully.

3 Q. In the memo it states -- in Mr. de Lipkau's March
4 21st memo it states that the groundwater recharge to Kobeh
5 Valley is 16,000 acre-feet annually; is that correct?

6 A. I believe that to be correct. I don't have
7 Mr. de Lipkau's memo in front of me.

8 Q. So if you're -- And how -- Would you agree that
9 irrigation of farm land has a substantial -- is a substantial
10 factor in contributing to that groundwater recharge?

11 A. Is a substantial?

12 Q. Contributor.

13 A. I don't know how much it would contribute. I
14 guess that's an interesting question. I don't know about
15 that.

16 MS. URE: All right. Okay. I have no further
17 questions.

18 HEARING OFFICER WILSON: Thank you. Redirect,
19 Mr. de Lipkau?

20 REDIRECT EXAMINATION

21 By Mr. de Lipkau:

22 Q. Mr. Rogers, I think we had better explain how the
23 water cycle works. Would you go back to Exhibit 35 and
24 briefly explain where the water is beneficially used.

25 A. Sure. Exhibit 35 shows the two sources of water:

1 The well field that produces most of the water and the pit
2 that produces much less water.

3 Q. Is water beneficially used in the mill?

4 A. Yes.

5 Q. Is water beneficially used in the tailings?

6 A. Yes. Yeah. It's used to dispose the tailings.
7 It's part of the operation.

8 Q. Is there any component on Exhibit 35 that can be
9 removed?

10 A. No.

11 Q. They're all indispensable?

12 A. Yes.

13 Q. Would you please clarify or explain how water
14 that seeps in to the pit will be removed?

15 A. Through sumps. Low spots in the pit are
16 excavated or used to collect the water as it flows in and
17 it's pumped to, typically pumped to a single pond for
18 distribution in to all trucks, in to water trucks.

19 Q. So is it a true statement that water pumped from
20 the bottom of the pit would be pumped in to water trucks?

21 A. Yes.

22 Q. And the water trucks in turn would spray or
23 otherwise distribute the water for dust?

24 A. Yes.

25 MR. DE LIPKAU: I have no further questions.

1 HEARING OFFICER WILSON: Thank you. Recross?

2 MS. PETERSON: None.

3 HEARING OFFICER WILSON: Ms. Ure?

4 MS. URE: No.

5 HEARING OFFICER WILSON: All right. You may step
6 down, Mr. Rogers. Oh, sorry. If you could remain seated. I
7 have some questions of staff.

8 EXAMINATION

9 By Mr. Felling:

10 Q. Mr. Rogers, is there any groundwater production
11 in Diamond Valley outside of what is -- what's needed for pit
12 dewatering?

13 A. No, no. All the water that's produced in Diamond
14 Valley would be used for dust suppression.

15 Q. My question was groundwater production, not its
16 use but its source. Are all the wells going to be pit
17 dewatering wells? Is there going to be a well that would be
18 used for, say, QM uses around the mill? Are there any wells
19 anticipated in Diamond Valley other than the pit dewatering
20 wells?

21 A. No. Monitoring wells may be in Diamond Valley
22 but not producing wells.

23 MR. FELLING: Okay. Thank you. No more
24 questions.

25 HEARING OFFICER WILSON: Any other questions of

1 staff? All right. Thank you, Mr. Rogers. You may step
2 down. Let's take a short break.

3 (Recess was taken)

4 HEARING OFFICER WILSON: We left off with the end
5 of the applicant's case. Ms. Peterson, do you have a
6 witness?

7 MS. PETERSON: Yes. Actually we're going to have
8 two. We're going to have Dale Bugenig. And I was hoping
9 that his affidavit could be marked as Exhibit 4. And then we
10 would also offer Jake Tibbitts. And I would mark his
11 affidavit maybe as Exhibit 5. We're not going to overlap
12 their testimony, so I'll try to cover, you know, some with
13 one witness and not duplicate it with the other witness. But
14 I did want to make them both available for cross-examination
15 in case anybody had any question on their affidavits.

16 HEARING OFFICER WILSON: Okay. Did you want to
17 separate and just put the affidavits in or your entire
18 package as one exhibit?

19 MS. PETERSON: You know what, you shouldn't put
20 my letter in as exhibit because it's argument and I would
21 argue against it if it was anybody else. So why don't we
22 just mark the affidavits. I think that would be better.

23 HEARING OFFICER WILSON: That will be fine. I'll
24 do Dale Bugenig's affidavit as Exhibit 4 and as Exhibit 5 the
25 affidavit of Mr. Tibbitts.

1 MS. PETERSON: Thank you.

2 HEARING OFFICER WILSON: Go ahead.

3 MS. PETERSON: We would call Dale Bugenig.

4 HEARING OFFICER WILSON: Please come forward and
5 be sworn.

6 (Witness sworn in)

7
8 DALE BUGENIG

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

12
13 DIRECT EXAMINATION

14 By Ms. Peterson:

15 Q. Could you please state your name for the record.

16 A. Dale Bugenig, B-u-g-e-n-i-g.

17 Q. And are you here representing Eureka County
18 today?

19 A. Yes, I am.

20 Q. And what is your profession?

21 A. I am a consulting hydrogeologist. I've been
22 retained by Eureka County to address a number of water
23 issues.

24 Q. And you testified, you previously testified in
25 the December 2010 hearing and you also testified in the

1 October 2008 hearing in these proceedings?

2 A. I did.

3 Q. And are you aware or were you aware of a March
4 3rd 2011 letter from Mr. Wilson to the applicant, Kobeh
5 Valley Ranch, requesting additional information?

6 A. Yes, I reviewed that letter.

7 Q. And did you review the response submitted by
8 Mr. de Lipkau to the State Engineer on March 21st 2011?

9 A. I did.

10 Q. And were you engaged by Eureka County to prepare
11 certain information to submit to the State Engineer in
12 response to Mr. de Lipkau's submission?

13 A. I collaborated with Mr. Tibbitts on preparing a
14 response to that letter and the attachments.

15 Q. And do you have Exhibit 4 in front of you?

16 A. Exhibit 4 is?

17 Q. Your affidavit.

18 A. Yes.

19 Q. And is that the response that you submitted?

20 A. Yes, it is.

21 Q. And could you just briefly walk the State
22 Engineer through your response?

23 A. Yes. I think what we tried to do was answer a
24 question that Mr. Wilson asked in his letter to the applicant
25 that we thought perhaps wasn't answered as complete as it

1 could be. My interpretation, and it's not to put words in to
2 Mr. Wilson's mouth, but my thought that what we sort of
3 expected was Exhibit 35 with very annotated so that you could
4 see a visual representation of the various components of the
5 water balance that Mr. Rogers described in quite detail here
6 earlier.

7 So I'm a visual person. So maybe I am imparting
8 my way of looking at things. But it was a nice diagram, very
9 well laid out with the various components. And so what we
10 tried to do was go through first Mr. Rogers' exhibit to try
11 and put numbers to these various ones. So in one page you
12 could have a representation of this water balance.

13 Now, all of these numbers that you see on the
14 version of the -- the annotated version of Exhibit 35, those
15 numbers came from documents provided by Eureka Moly.

16 And to be honest with you, I truly do not envy
17 the State Engineer having to go through these myriad of
18 documents because these various components have different
19 numbers from one document to the next. So the question is
20 which document is the most up to date and which is correct.
21 I realize that -- And it's a very complicated water system, I
22 believe. In some tables and figures they talk about
23 averages, maximums, minimums. So trying to delve through
24 these various numbers to come up with a number that maybe
25 represents it. And perhaps my opinion of what the number

1 that might be represented on this figure might be different
2 from somebody else's interpretation.

3 But this was my best shot and working in
4 collaboration with Mr. Tibbitts to try and lay this
5 information out on a single sheet of paper for easy
6 reference.

7 I think we've all heard the number 11,300
8 acre-feet per year. That's the amount of water that I think
9 everybody is in agreement with is that the project is -- the
10 applicant is requesting for their project. And so what we
11 tried to do then was to take these various components and
12 break down these various areas on the figure so that you have
13 a better understanding of what water was where and how much
14 water here and how much water might be transferred across a
15 basin, that sort of thing. And so I don't have a pointer.
16 But if you look at the note above the thickener -- Oh, thank
17 you.

18 Q. And just for the record, again, you're looking at
19 the color map that's included in Exhibit 4. We have that up
20 on the screen; is that correct?

21 A. That's correct. So here, above the thickener
22 there's a number, 11,266 acre-feet per year of water that's
23 beneficially used for mining and milling at the mill.

24 Now, in Mr. Rogers' report, if I correctly
25 interpreted his tables, there's approximately of that total

1 water of all sources perhaps 34 acre-feet per year will be
2 used in -- will be used in Kobeh Valley for dust suppression,
3 but that water appears to originate in Diamond Valley.

4 So what I did was took -- Well, let me backtrack
5 a little bit. If we start with 11,300 acre-feet per year and
6 subtract 605 acre-feet per year of water that appears to be
7 the maximum that might originate in the pit from Diamond
8 Valley, we come up with this number, 10,695 acre-feet per
9 year.

10 That really has to be exported from, potentially
11 exported from Kobeh Valley well field to the milling
12 operation. You take that number and subtract from it 137
13 acre-feet per year, which appears to be water originating in
14 Kobeh Valley but flows in to the pit. So it might be 137.
15 It might be 129. There's a possibility that I might have
16 used the wrong number there.

17 But the end point of all of that is that there
18 appears as if there would be this 10,695 acre-feet that
19 really seems to be exported from Diamond Valley in to Kobeh
20 Valley that ultimately is used at the mine.

21 Q. Could I ask you to think about that for a second,
22 what you just stated.

23 A. Okay. What did I say?

24 Q. You said water is exported from Diamond Valley in
25 to Kobeh Valley.

1 A. I apologize. I transposed that. From Kobeh
2 Valley to Diamond Valley. There's a lot of water that goes
3 round and round and round in the circuit here, 20 to 30,000
4 gallons a minute of water. But we don't really talk about
5 that because it stays in this area.

6 Q. And which area are you referring to?

7 A. In the area of the mill. The mill circuit let's
8 call it. At the mill. Out of this total water,
9 approximately 513 acre-feet, as Mr. Rogers testified, is
10 consumed in the milling operation in Diamond Valley.

11 Now, where things get a little fuzzy really is
12 the amount of water that really is pumped or allowed to flow
13 back from the mill circuit where the water is beneficially
14 used to Kobeh Valley. Now, I offered here one of several --

15 Q. Mr. Bugenig, just so the record is clear, you're
16 talking about that line that goes from the thickener to the
17 tailings pond?

18 A. Affirmative. Now, there are a myriad of numbers
19 that address what is the fluid content of that water. One
20 number that I elected here from several is that it was from
21 the, a report done for the tailings impoundment design by M3
22 Engineering. And they give an estimate of the volume of that
23 slurry and assume that the water content is somewhere, the
24 solids content is somewhere between 50 and 55 percent. And
25 that volume of the slurry is 16,400 acre-feet per year.

1 That's what they say in their report. Now, if you assume
2 that 50 percent of that slurry is water and you take that
3 20 -- that 16,400 acre-feet per year of slurry at 50 percent
4 solids and convert that to acre-feet per year, that's where
5 this number, 13,202 acre-feet of water comes from. And that
6 comes from a report that was prepared for Eureka Moly and is
7 an appendix to their plan of operation. So that number is
8 probably in the realm of possibilities.

9 Now there's other numbers out there. If you
10 take, if you look at I believe it's Exhibit 105, which is
11 Mr. Moore's water balance, there's a very nice depiction
12 schematically of the water balance from Mr. Moore and he's a
13 very, very thorough person based on how this is laid out. If
14 you take his number, he has a nice little table that's keyed
15 to this drawing, and if you take his table and he shows in
16 this area 18,531 acre-feet of water going back to Diamond
17 Valley. Now, Mr. Rogers, I believe --

18 Q. Wait, wait, wait, wait.

19 A. I'm sorry. Going back to Kobeh Valley.

20 Q. From the thickener?

21 A. From the thickener.

22 Q. In to the tailings pond?

23 A. That's correct.

24 HEARING OFFICER WILSON: And Mr. Bugenig, just
25 real quick, the exhibit you're referring to is from the 2008

1 hearing. I just want that in the record.

2 THE WITNESS: Yes. Thank you. So this number,
3 you know, it varies from this 13,202 to 18,531, if you
4 believe Eureka Moly's consultant's numbers. And I have no
5 reason to doubt Mr. Moore's assessment.

6 Now, in the vicinity of the tailings impoundment
7 here are three numbers. Now, I took those directly from
8 Mr. Rogers' Table 2, I believe. And that gives you the total
9 of water lost to evaporation, water that is entrained in the
10 solids at the tailings storage facility and a trivial amount
11 of water that seeps through this engineered impermeable
12 liner. And those add up to somewhere around 10,000 acre-feet
13 per year.

14 Now, I know that those numbers are somewhat
15 different than in Mr. Moore's report, and I realize that
16 things evolve over time so that information in one report may
17 be somewhat different than another. But again, it shows the
18 complexity of trying to arrive at how much water is being
19 utilized beneficially in one area and consumed by evaporation
20 somewhere else.

21 And then we come back with a certain amount of
22 this water everybody agrees with gets returned back to the
23 mill, the water is reclaimed. I came up from one of their
24 sources at 5,716. And if you look at Mr. Moore's report,
25 again, it's 8,499. So there's a pretty big spread of water

1 used. And I think it's really important that sort of the
2 unified theory of water mass balance get developed so that
3 the State Engineer's job is made a lot easier to really
4 understand where water is going, where it's being used and
5 where it might be lost to evaporation. But that's the, a
6 significant part, I believe, of the memorandum that
7 Mr. Tibbitts and I collaborated on.

8 Q. (By Ms. Peterson) And then just one
9 clarification. You were talking about the calculation you
10 did to come up with the 13,202 acre-feet per year figure
11 there that goes from the thickener to the tailings pond. Do
12 you see that?

13 A. Yes.

14 Q. And just to clarify for the record, I believe the
15 conversion was from gallons per minute to acre-feet. I'm not
16 sure that's what you said.

17 A. Okay. The 3M Engineering and Technology
18 Corporation report that is an appendix to the plan of
19 operation states that the water moves to the tailings and
20 that the slurry moves to the tailings impoundment at a
21 nominal rate of 16,400 gallons per minute. And throughout
22 the documentation they suggest that perhaps 50 to 55 percent
23 of this slurry by volume is water. So I just assumed 50
24 percent water and then converted that to acre-feet per year
25 of water that is flowing in the slurry from the thickener to

1 the tailings impoundment.

2 Q. And where is the moly removed in this mining and
3 milling process?

4 A. Well, the moly is removed at the mill as
5 Mr. Rogers described in Diamond Valley.

6 Q. And do you agree with Mr. Rogers' statement in
7 his memo that he states that the tailing dam used is not
8 considered an interbasin transfer and that the source of the
9 water is derived from the Kobeh Valley and the tailing
10 impoundment is in Kobeh Valley?

11 A. This is a really interesting and complicated
12 situation, you know, I find extremely fascinating. Because
13 the water originates in Kobeh Valley, is exported to Diamond
14 Valley where it's beneficially used at the mill because it's
15 a mining and filling process. And then the waste is sent to,
16 back to Kobeh Valley and then water is reclaimed and is
17 exported again to Diamond Valley.

18 And I was trying to come up with an analog to try
19 and get my hands around this. And so I'm thinking what if I
20 had a water bottling plant and my plant is at the mill site
21 here in Kobeh Valley, I mean in Diamond Valley but my well
22 field is in Kobeh Valley. So I have a water right from the
23 State Engineer to bottle water. But my water is distributed
24 to all points west, Las Vegas, Reno, who knows, Seattle
25 perhaps. Is the place of use Reno, Seattle? You know, so

1 again, trying to get my head around an analog is the
2 beneficial use is mining and milling, you have a process that
3 sends some water back and then you capture some of that water
4 and you export it again. It's complicated.

5 And my opinion is that the water is beneficially
6 used at the mill, the place of use, and that the tailings
7 impoundment and that part of the circuit is just part of the
8 production circuit. It's the most practical and economical
9 way to get rid of the tailings. There's no other way
10 economically or practically to do it. But the end result of
11 that is water. You're assuming -- It almost seems like
12 you're assuming that the evaporation of those tailings, of
13 the water in the tailings is now a beneficial use. And I'm
14 not sure that I would call it that.

15 I know I had a discussion with one of the
16 commissioners from Esmeralda County who has been trying to
17 get, she tells me, and I can't tell -- I don't know how
18 accurately I portray this. But they would like to see
19 evaporation at a mining operation in Esmeralda County be
20 termed beneficial use. And apparently they haven't --
21 That's not so. They don't have permits for evaporation at
22 other mining operations. But that's secondhand. I can't --
23 I don't know about that first -- No first-hand knowledge of
24 that.

25 Q. And then directing your attention to Exhibit 4,

1 your memo. It's on the third page.

2 A. Okay.

3 Q. You also have pit inflows. Do you see that
4 section there?

5 A. Yes.

6 Q. And maybe you can just briefly highlight to the
7 State Engineer what you're stating there in your memorandum.

8 A. Yeah. I think we all know and we've gone through
9 a series of hearings here and I see Mr. Smith is in the
10 audience and he's done a great deal of work putting together
11 a groundwater flow model to help people get their hands
12 around where the water goes, the effects of not only
13 withdrawing water from the well field but what happens in the
14 pit. Because it's important to know this water coming out of
15 the pit, where does it originate. Because I could foresee a
16 potential issue coming up if after they excavate the pit and
17 they start pumping and they run in to a fracture zone that
18 they have yet to intercept through any of the testing and
19 what happens if a lot more water comes in to the pit from
20 different orientations than what you predict. How do you
21 retroactively deal with if more water from -- there's
22 actually an interbasin transfer that might develop as a
23 result of the hydrogeology once you start -- or the stress of
24 excavating the pit and dewatering. I don't know how you get
25 around that.

1 So I could envision a possibility where in
2 reality at some point in the operation you might be actually
3 using and citing more flow and creating a situation where
4 more water is actually -- where you might actually have an
5 interbasin transfer from Diamond Valley.

6 Q. That was greater than 250 acre-feet?

7 A. Yeah, greater than 250 acre-feet. That's the
8 statutory limit where certain things start to happen. But
9 that's going to be a very, very -- I think it's going to be a
10 fairly difficult scenario, because how do you -- it's going
11 to be hard to differentiate one molecule of water in one
12 basin and in another and looking at it. That's going to be a
13 fairly complicated budget-keeping process just because of
14 where that pit is located, I believe.

15 Q. And you're referring to the permit term that's
16 been proposed by the applicant, is that what you're saying is
17 difficult?

18 A. That's right. I think it might be -- You know,
19 Mr. Rogers said that it would be fairly complicated to do but
20 he thought they could do it. Well, I think it might be a
21 fairly difficult undertaking so that they would be in full
22 compliance with the statute.

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

24 HEARING OFFICER WILSON: Thank you.

25 Cross-examination.

1 CROSS-EXAMINATION

2 By Mr. de Lipkau:

3 Q. Sir, are you an employee of Eureka County?

4 A. No, sir. I'm an independent hydrogeologic
5 consultant. I own my own firm.

6 Q. What is the importance of your numbers set forth
7 on Exhibit 35?

8 A. The importance of the numbers?

9 Q. Yes. Why did you do it?

10 A. I did it because I read in to Mr. Wilson's
11 request a very simplified means of water accounting. And so
12 something similar wasn't done, a figure with the water budget
13 numbers in it was not produced by Eureka Moly, so my goal was
14 to attempt to do what I thought Mr. Wilson asked Eureka Moly
15 to do.

16 Q. All right. Your number, 5,716 AFA process water,
17 do you see that number?

18 A. That's processed water returns to Diamond Valley.

19 Q. Right. And you have including precipitation?

20 A. Yes.

21 Q. And you included precipitation at the maximum
22 size of the tailings pond, did you not?

23 A. Yes, sir, I did.

24 Q. All right. Do you believe that would make the
25 chart more accurate to have it at the maximum level, the year

1 42, wasn't it, 44?

2 A. I think the accuracy doesn't change. It gives
3 you a different number as opposed to perhaps an average. It
4 might be a maximum. And I think as I alluded to in my
5 testimony earlier there's this difficulty dealing with
6 averages, maximums, minimums and trying to put it in to some
7 sort of cohesive argument.

8 Q. All right. You are aware that at the 2008
9 hearing the expert witness employed by Hanlong, Exhibit 50,
10 testified that he agreed to the water balance as prepared by
11 Mr. Jim Moore; is that correct?

12 A. Yes, sir, I recall that. I read that in
13 Mr. Moore's deposition.

14 Q. Have you ever designed a mill circuit?

15 A. No, sir. I'm a hydrogeologist.

16 Q. That's all?

17 A. A mere hydrogeologist.

18 Q. Are you saying water consumed in the tailing pond
19 is not a beneficial use?

20 A. I'm not sure that it is.

21 Q. Have you worked on any milling operations in the
22 State of Nevada as a hydrologist?

23 A. No, sir, I don't work with the mines very often.

24 Q. All right. Can you tell me what component of the
25 milling or water cycle can be removed?

1 A. Well, let me see if I can rephrase your question
2 so I think I can answer it.

3 Q. Let me rephrase the question. What component is
4 set forth on Exhibit 35 is not indispensable?

5 A. I think for Mr. Moore's testimony, his
6 transcript, that virtually every part of that circuit is --
7 There aren't any effective options. So they're all
8 indispensable.

9 Q. I see. Just to make it clear, every part of
10 what's called the water cycle, the liquid cycle is
11 indispensable?

12 A. That's what Mr. Moore's testimony would lead me
13 to believe.

14 Q. And you agree with that testimony?

15 A. I believe that his water balance is correct and
16 there are very few effective means to reduce the amount of
17 water going to the tailings impoundment.

18 Q. Okay. What part of the Exhibit A, the memo of
19 Exhibit 4 was prepared by you?

20 A. Well, it was, I think it was done, it was a
21 collaboration. Mr. Tibbitts and I discussed our different
22 points of view and we attempted to put it in to a single
23 memorandum that incorporated our -- We have unique
24 perspectives, and so the goal was to put it in to a single
25 cohesive memorandum. So all of the numbers, I would say if I

1 generated them, Mr. Tibbitts reviewed them. We discussed
2 them. And if it was something that he came up with, I
3 critiqued it and I would say that this is a -- represents --
4 well, it's a collaboration but it represents our joint
5 thoughts.

6 Q. Right. So do you, I'll say, vouch for the
7 attached language in Exhibits 4 and 5?

8 A. Yes, sir.

9 Q. All right. Let's turn to page three of that
10 exhibit.

11 A. I'm open to page three.

12 Q. All right. Let's go to the third paragraph,
13 first sentence.

14 A. Is that the third full paragraph or the fourth
15 paragraph down from the top?

16 Q. It would be the second full, "Elsewhere in
17 Nevada."

18 A. Yes, sir. That represents my opinion and I
19 believe Mr. Tibbitts shares that with me.

20 Q. All right. Have you done any research at the
21 State Engineer's office regarding the lithium permits,
22 lithium mining permits?

23 A. No, sir. My experience was based on a discussion
24 with an Esmeralda County commissioner.

25 Q. Do you know if Mr. Tibbitts checked any records

1 in support of that statement?

2 A. I think you would have to ask Mr. Tibbitts. But
3 it's my recollection is that we both relied on my discussion.

4 Q. The phone call?

5 A. Face to face. I met with this commissioner.

6 MR. DE LIPKAU: All right. I would like to offer
7 as administrative records Permit 52921 on file with the State
8 Engineer. The remarks section of that permit reads as
9 follows: "The brine solution is pumped to evaporation ponds
10 where the lithium is recovered from the dehydrated solution."
11 I'll represent to the State Engineer that the total combined
12 duty at the lithium mine now known as chemical foot is 20,000
13 acre-feet annually and all water is placed to a beneficial
14 use by evaporating the brine solution until such time as the
15 concentration reaches the desired high level where it is then
16 run through the mill. The tailings ore discharged from the
17 mill is then again ran back in to the ponds. There are about
18 15 to 20 ponds there. They change. The entire mining
19 operation is based upon evaporation. That is increasing the
20 salinity or concentration of the lithium brine solution.

21 Therefore, I'm stating that the comment is
22 absolutely incorrect.

23 HEARING OFFICER WILSON: Mr. de Lipkau, we can't
24 accept your testimony. You're not the witness.

25 MR. DE LIPKAU: That's true. But I'm

1 representing to the State Engineer that he must look and take
2 administrative notice of Permit 52921.

3 HEARING OFFICER WILSON: That is a record of our
4 office.

5 MR. DE LIPKAU: Right. And I'm requesting you
6 take a look at it and incorporate that in to the record.

7 Q. (By Mr. de Lipkau) Could you go down to the
8 third full paragraph starting about EM, LLC.

9 A. Yes, sir, I've read it.

10 MS. JOSEPH-TAYLOR: Mr. de Lipkau, can I
11 interrupt you a second because I want to make sure where
12 you're going with that. Are you trying to argue under the
13 permit that you asked us to take administrative notice of
14 that evaporation is a beneficial use?

15 MR. DE LIPKAU: Absolutely.

16 MS. JOSEPH-TAYLOR: So are you saying for the
17 Kobeh Valley mine, the moly mine that the tailings pits are a
18 beneficial use of water?

19 MR. DE LIPKAU: It's an indispensable part of the
20 mining operation. The answer is unequivocally yes.

21 MS. JOSEPH-TAYLOR: Thank you.

22 THE WITNESS: Yes, sir, I've reviewed the
23 paragraph you asked me to review.

24 Q. (By Mr. de Lipkau) All right. Would you read
25 the first sentence out loud, please.

1 A. "EML's response suggests the TSF was
2 strategically placed in Kobeh Valley strictly because of
3 interbasin water transfer issues in order to minimize the
4 amount of water effectively transferred from Kobeh Valley."

5 Q. What's TSF?

6 A. Tailing storage facility.

7 Q. Would you please give me all of your testimony
8 utilized by you to set forth this statement?

9 A. That's the impression that I drew from having
10 read the memorandum from Mr. Rogers. That's my impression.

11 Q. That's only your impression?

12 A. Yes, sir.

13 Q. Did you consider economics?

14 A. Well, I go on to state there that it was
15 ultimately located in Kobeh Valley strictly for economic and
16 engineering considerations. So that I recognize that
17 economics played a real part in its selection, site
18 selection.

19 Q. Have you changed your mind to date?

20 A. Have I changed my mind to date? My opinion is
21 that I have the, in reading the memorandum, that was my
22 impression. It's obvious that it was put there for
23 engineering and economic considerations. And there being
24 Kobeh Valley.

25 Q. All right. Do you agree with that statement?

1 A. Yes, sir.

2 MR. DE LIPKAU: I think that's all the questions

3 I have.

4 HEARING OFFICER WILSON: Thank you. Any

5 redirect?

6 MS. PETERSON: Just one. Mr. Bugenig, to your

7 knowledge is any of the moly extracted from the tailings

8 storage facility?

9 THE WITNESS: To my knowledge no.

10 MS. PETERSON: Okay. That's all I had.

11 HEARING OFFICER WILSON: Thank you. Anything

12 else, Mr. de Lipkau?

13 Questions of staff? None. You may step down,

14 Mr. Bugenig.

15 THE WITNESS: Thank you.

16 HEARING OFFICER WILSON: Go ahead and call your

17 next witness, please.

18 MS. PETERSON: Yes. Mr. Jake Tibbitts.

19 (Witness was sworn in)

20

21 JAKE TIBBITTS

22 Called as a witness on behalf of the

23 Protestant, having been first duly sworn,

24 Was examined and testified as follows:

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1 A. I do.

2 Q. And is it the memo that you collaborated with
3 Mr. Bugenig on?

4 A. Yes, it is.

5 Q. And then do you have Exhibit 108 in front of you?

6 A. From the previous 2008 hearing?

7 Q. Yes. It was referenced by Mr. Rogers in his
8 Exhibit 3 memo.

9 A. Yes, I have that in front of me.

10 Q. And going to question on page three, question 13,
11 do you see that?

12 A. I do.

13 Q. Well, first of all, is it fair to say --

14 MR. DE LIPKAU: Excuse me. I don't know what
15 we're discussing here.

16 MS. PETERSON: Exhibit 108.

17 HEARING OFFICER WILSON: From the 2008 hearing;
18 is that correct?

19 MS. PETERSON: Yes.

20 HEARING OFFICER WILSON: Can you go ahead and
21 identify what it is.

22 MS. PETERSON: Yes. Exhibit 108 is the letter
23 dated December 21st 2007 from General Moly to Diane Lefler
24 regarding a Mt. Hope milling use questionnaire.

25 HEARING OFFICER WILSON: Go ahead.

1 Q. (By Ms. Peterson) And directing your attention
2 to question 13 on that exhibit, do you see that?

3 A. I do.

4 Q. And have you read the question and read the
5 answer that was submitted by General Moly in response to the
6 Division of Water Resources' question?

7 A. Yes, I've read it.

8 Q. And that's related to mine dewatering or pit
9 dewatering? I'm sorry.

10 A. Yes.

11 Q. And could you just relay the information that was
12 presented I guess in 2007 to the State Engineer regarding the
13 amount of water that would be part of the dewatering
14 operation for the pit?

15 A. The question is, "Will all dewatering be consumed
16 by mining and other related mining uses? Submit an estimate
17 of the consumption in acre-feet annually."

18 In this letter the response was that there would
19 be -- the annual dewatering rates would start from an amount
20 of 484 acre-feet and when the groundwater is initially
21 encountered to approximately 1,613 acre-feet at the end of
22 mining. So it starts at the beginning when groundwater is
23 first encountered to the end of mining, the end of dewatering
24 at 1,613 feet, acre-feet.

25 Q. And did you use the same methodology that

1 Mr. Rogers used in his Exhibit 3 memo?

2 A. I did. Using the basic geographic analysis of
3 where the pit is located and 80 percent of the pit occurs in
4 Diamond Valley and 20 percent of the pit occurs in Kobeh
5 Valley. Using the 484 acre-feet times .8 or 80 percent is
6 387.2 acre-feet annually, which is higher than 250 acre-foot.
7 And using the higher amount, 1,613 times 80 percent is 1,290,
8 which is well above 250 acre-feet annually.

9 Q. At that time the estimates were that there could
10 possibly be an interbasin transfer that was greater than 250
11 acre-feet from Diamond Valley to Kobeh Valley; right?

12 A. Right. The statute applied in 2007. It would
13 have been accurate to assume that there could be above
14 greater than 250 acre-foot dewatering water transferred from
15 Diamond Valley in to Kobeh Valley.

16 Q. So that if no inventory is done, this permit is
17 crucial to compliance with the statute; is that correct?

18 A. I believe so. I think this is just another
19 example to show how these are estimates. I know more work
20 has been done to refine these estimates. But the important
21 thing is that they are estimates. And I think there should
22 be an overly conservative approach taken to assure that the
23 statute is applied now rather than retroactively. Because I
24 don't think the statute could apply retroactively to this
25 situation.

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

2 HEARING OFFICER WILSON: Thank you.

3 Cross.

4 CROSS-EXAMINATION

5 By Mr. De Lipkau:

6 Q. Are you a hydrologist?

7 A. I am not.

8 Q. Are you a geologist?

9 A. I am not.

10 Q. Do you have experience in the field of mining?

11 A. No.

12 Q. What is your background again?

13 A. I have a Bachelor's degree in biology and
14 graduate education in GIS, graphic information science.

15 Q. Excuse me.

16 A. Geographic information science.

17 Q. Thank you. You testified earlier that by
18 Mr. Bugenig that both you and he collaborated, to use his
19 word, on the memorandum of April 4th 2011; is that correct?

20 A. That's correct.

21 Q. Did you have any input in to the numbers set
22 forth on Exhibit 35 shown on the screen?

23 A. I did.

24 Q. Do you agree with those numbers?

25 A. I agree that the numbers we collaborated on to

1 place on this figure shown on the screen on Exhibit 35 are
2 numbers that were directly pulled from Eureka Moly documents.

3 Q. All right. And you're capable of pulling the
4 numbers in the Eureka Moly documents?

5 A. Yes.

6 Q. Do you understand the milling cycle?

7 A. I believe so.

8 Q. Have you ever worked on a mill before?

9 A. No, I have not.

10 Q. When did you become employed with -- employed by
11 Eureka County?

12 A. July 1st 2008.

13 Q. Do you realize what changes were made by the
14 applicant from the time the original applications were filed
15 to the present?

16 A. I'm not quite sure I understand which changes.

17 Q. You referred to a letter of December 21st 2007,
18 did you not?

19 A. I did.

20 Q. All right. Do you know what changes or
21 alterations have been made by the mining company since that
22 letter to date, to the last hearing?

23 A. There has been virtually thousands of changes
24 that have been made by the mining company since that date.

25 Q. All right. Thank you. And would it be a true

1 statement also that you did not check the statement in your
2 records regarding the lithium mining?

3 A. That's correct.

4 MR. DE LIPKAU: No further questions.

5 HEARING OFFICER WILSON: Thank you. Any
6 redirect?

7 MS. PETERSON: Just one clarification for the
8 record. Mr. de Lipkau was asking you about some numbers on
9 Exhibit 35. And I believe you were referring to the map
10 that's in your Exhibit 5 that's in your memo; is that
11 correct?

12 THE WITNESS: Yes.

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

14 HEARING OFFICER WILSON: Thank you.

15 Any questions of staff? No questions of staff.
16 Go ahead and step down, Mr. Tibbitts.

17 Ms. Ure, did you have anybody to present on the
18 memo?

19 MS. URE: I do not.

20 MS. PETERSON: I just needed to ask to have
21 Exhibits 4 and 5 admitted.

22 HEARING OFFICER WILSON: Are there any objections
23 to Exhibits 4 and 5.

24 MR. DE LIPKAU: No.

25 HEARING OFFICER WILSON: Exhibit 4 is the

1 affidavit of Mr. Bugenig. That will be admitted. Exhibit 5
2 is the affidavit of Mr. Tibbitts and that will be admitted.

3 MR. BRANSTETTER: 3 got in, didn't it?

4 MR. DE LIPKAU: And 3?

5 HEARING OFFICER WILSON: And Exhibit 3 has been
6 admitted previously. And Exhibit 2 was the hearing notice.
7 Are there any other documents that anyone wants to make part
8 of the record?

9 MR. DE LIPKAU: Yes. I would like to
10 incorporate, as I previously stated, Permit 52921.

11 HEARING OFFICER WILSON: We'll take
12 administrative notice of that permit.

13 Ms. Peterson, was that your last witness?

14 MS. PETERSON: Yes.

15 HEARING OFFICER WILSON: With that, what we'd
16 like to do at this point we'd like to give each party five
17 minutes to give us a summary of what was presented here today
18 and as a closing statement. And let's take a short break so
19 you have some time to prepare. Let's come back at 11:05,
20 please.

21 (Recess was taken)

22 HEARING OFFICER WILSON: We'd like to have
23 closing arguments to summarize what you feel you've
24 accomplished here today. So Mr. de Lipkau, we would like to
25 start with you.

1 MR. DE LIPKAU: Okay. Thank you. What I think
2 we've accomplished here today is to explain to the State
3 Engineer and his staff, which of course I believe they
4 already know, and that is the liquid or water cycle for a
5 milling system. I believe it's a true and correct statement
6 that every single component of the milling cycle is
7 absolutely indispensable and to take away one or more of the
8 components would render the cycle inoperable. Same principle
9 applies to a steam cycle or a refrigeration cycle.

10 I'd like the State Engineer to take
11 administrative notice that Exhibit 50 in the 2008 hearing,
12 which was prepared by Hanlong Engineers, the expert witness
13 called by the county agreed with the water balance as
14 previously testified to by Mr. Moore. I'd also like to point
15 out that in the early stages and at the 2008 hearing the
16 volume of water sought was 16,000, not 11,300. That number
17 has been reduced from the 16,000 originally sought to the
18 11,300. That's where we are. So the prior numbers that were
19 set forth in the exhibit that was testified to is based upon
20 different numbers.

21 Mining in Nevada is the paramount use, the
22 paramount industry in the state as set forth in NRS
23 37.010(6). Mining has been paramount since 1866 to present.

24 A tailings pond for a mill is absolutely
25 indispensable. And to suggest otherwise I would submit is

1 sheer falling. Water must be evaporated from the tailings
2 pond, meaning that water which cannot be recycled back in to
3 the system is used. No mining company wants to pump one more
4 drop than it has to. They all try to recycle as much of the
5 water as is possible. There's always evaporation and there's
6 always water ingrained in the tailings waste. The waste is
7 quite small like a very fine sand. Water is ingrained and
8 will be there for basically hundreds of years.

9 Evaporation is a beneficial use of water.
10 Consumption of water or evaporation of water, whether it be
11 an air cooled or a water cooled power plant, consumes water
12 through evaporation. The chemical foot lithium mine in
13 Esmeralda County evaporates every single drop of water toward
14 beneficial use.

15 We will freely admit that there is more than 250
16 acre-feet of Kobeh Valley groundwater being transferred to
17 Diamond Valley. That being true, NRS 533.364 in to play.

18 It's our firm and unequivocal position that there
19 is substantially less, perhaps zero, groundwater from Diamond
20 Valley being transferred to Kobeh Valley.

21 We have agreed that the State Engineer in his
22 ruling and in his ultimate granting of the subject
23 applications can have a term in there to the effect that no
24 more than -- that a sum less than 250 acre-feet of Kobeh
25 Valley, Diamond Valley water can be used in Kobeh Valley.

1 The testimony of Mr. Rogers stated that more
2 water will be utilized and placed to a beneficial use in
3 Diamond Valley than is generated in Diamond Valley, therefore
4 under this scenario there will be no interbasin transfer of
5 Diamond Valley water to Kobeh Valley.

6 With that, I will conclude with the effect
7 that -- to the effect that we will look forward to receiving
8 the State Engineer's ultimate ruling regarding these issues.
9 Thank you all very much for your attention and time.

10 HEARING OFFICER WILSON: Ms. Ure, would you like
11 to go next?

12 MS. URE: That's fine. In summary I would like
13 to say that from what we learned today the water is diverted
14 from Kobeh Valley and is through a transbasin delivery system
15 is beneficially used in Diamond Valley. And tailing waste is
16 not beneficial use in Kobeh Valley. None of the water
17 tailings go in to the hydrologic cycle in Kobeh Valley. The
18 only water that comes back, the only water that comes back to
19 Kobeh Valley is no longer available for appropriation. It is
20 lost in the tailing solids or in evaporation. The mine's 100
21 percent consumptive use in Diamond Valley and minor use for
22 dust control in Kobeh Valley diminishes the total amount for
23 future water for recharge and use in Diamond Valley and Kobeh
24 Valley flow systems accounting provided by the applicant are
25 only estimates.

1 And finally, every process in a water right has a
2 waste component. Evaporation in molybdenum mining as a waste
3 component is not used for the production, actual production
4 and removal of the mineral. Arguing that this component for
5 that evaporation on the tailings in this mining process is
6 beneficial use is a slippery slope. I mean if we have a
7 stock water permit, that's a beneficial. The stock water is
8 then used to feed those livestock. Their livestock then
9 produces some waste. So are you saying that the evaporation
10 off that waste is a beneficial use? And that's it.

11 HEARING OFFICER WILSON: Go ahead, Ms. Peterson.

12 MS. PETERSON: Thank you. In regard to the basin
13 inventory and what we accomplished today, your letter,
14 Mr. Wilson, to the applicant asked for information about
15 whether the inventory statute would apply from water going
16 from Diamond Valley to interbasin transfer to Kobeh Valley.
17 And I guess what we've established through Mr. Rogers'
18 memorandum and testimony today and the information submitted
19 by Eureka County is that that number is definitely an
20 estimate and the applicant certainly understands that it
21 needs a permit term on its permit so that it doesn't violate
22 the inventory statute if there is going to be any water
23 moving from an interbasin transfer from Diamond Valley to
24 Kobeh Valley. So that's what we've accomplished today.
25 Because the first time the permit term came up

1 today and I think the applicant understands that if there's
2 an interbasin transfer greater than 250 acre-feet from
3 Diamond Valley in to Kobeh Valley that either the inventory
4 needs to be done or its permits need to be curtailed or
5 restricted so that that doesn't occur. So that's what was
6 accomplished there, I guess, in response to your letter.

7 And then with regard to the consumptive use of
8 the water, the interbasin transfer statute, it's 533.007,
9 defines an interbasin transfer of water is a transfer of
10 groundwater for which the proposed point of diversion is in a
11 different basin than the proposed place of beneficial use.

12 And you specifically asked in your letter, you
13 referenced pages, transcript pages 104 to 106 of Mr. Rogers'
14 testimony and asked him to relate that to Exhibit 35. And so
15 information was submitted by Mr. Rogers and his testimony.
16 And I'll read from it again. All of it was, I thought,
17 pretty clear as to what was happening with regard to Exhibit
18 35. But when the information was submitted by the applicant,
19 and I'm not trying to pick on Mr. Rogers, but when the
20 information was submitted by the applicant, that information
21 seemed to differ from what was laid forth in the transcript
22 at pages 104 to 106. So it was important that we had a
23 hearing and that we had the opportunity today to
24 cross-examine the witnesses and to go back and try to clarify
25 the record on that.

1 And again, reading -- So I'm looking at
2 beneficial use when I'm referring to an interbasin transfer
3 because that's what the statute requires as I guess opposed
4 to Mr. Rogers who is talking about consumptive use. But
5 whether you want to talk about, or he uses the term
6 consumptive use or just use or beneficial use, he does admit
7 in that answer starting at page 106 for most of the paragraph
8 that I asked him about in the cross-examination when he's
9 talking about this whole process that it just goes to the
10 thickener. So the fresh water consumption, now he's talking
11 about consumption, is a total of 7,000 gallons a minute. And
12 it's again his 11,300 acre-feet annually that they're
13 requesting.

14 So mining and milling is the proposed manner of
15 use of these applications. The moly, which is the reason for
16 this project and it's the reason for the need for the water,
17 the moly is extracted in Diamond Valley at the mill and the
18 mill and the thickener are that process that extracts the
19 moly. And while we understand that there's a whole circuit
20 to this mining and milling process, it's our understanding
21 that there's no moly that's extracted from the tailings
22 impound facility and that the beneficial use of the whole
23 appropriation that's sought for here, the beneficial use is
24 in Diamond Valley in the mining and milling, that part of the
25 circuit.

1 And I guess, I mean the one thing I've been
2 wanting to say since December is if you look at Exhibit 35,
3 and if the -- if there's no interbasin transfer because the
4 water is diverted from the well field in Kobeh Valley and
5 then it's consumed, "consumed" in the tailings in Kobeh
6 Valley, how come there's not an arrow that just goes right
7 here?

8 The whole process needs Diamond Valley and the
9 milling and the mining in Diamond Valley that we heard today
10 is so crucial to the mining operation. So this is an
11 interbasin transfer and I think that's what we've established
12 today.

13 HEARING OFFICER WILSON: All right. Thank you.
14 Thank you, everyone. I appreciate everyone coming down and
15 having the witnesses available. And with that we'll close
16 the hearing and submit the matter to the State Engineer for
17 determination. Thank you.

18 (Hearing concluded at 11:19 a.m.)
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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)
4

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

9 That on Tuesday, the 10th day of May, 2011, I
10 was present at the Division of Water Resources, Carson City,
11 Nevada, for the purpose of reporting in verbatim stenotype
12 notes the within-entitled public hearing;

13 That the foregoing transcript, consisting of
14 pages 853 through 929, inclusive, includes a full, true and
15 correct transcription of my stenotype notes of said public
16 hearing.

17 Dated at Reno, Nevada, this 6th day of June,
18 2011.

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22 CHRISTY Y. JOYCE, CCR #625
23
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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

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