

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

MICHEL AND MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
Registered Foreign Limited Partnership;
DIAMOND CATTLE COMPANY, LLC, a
Nevada Limited Liability Company; and
KENNETH F. BENSON, an individual,
Appellants,

v.

STATE ENGINEER, STATE OF NEVADA,
OFFICE OF THE STATE ENGINEER,
DIVISION OF WATER RESOURCES,
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES; and KOBEH
VALLEY RANCH, LLC, a Nevada Limited
Liability Company,
Respondents.

No. 63258

Electronically Filed
Jun 13 2013 03:24 p.m.

DOCKETING STATEMENT
CIVIL APPEALS
Tara K. Lindeman
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Seventh Department 2
County Eureka County Judge J. Charles Thompson
District Ct. Case No. CV 1207-178

2. Attorney filing this docketing statement:

Attorney Therese A. Ure & Laura A. Schroeder Telephone 775-786-8800

Firm Schroeder Law Offices, P.C.

Address 440 Marsh Avenue
Reno, NV 89509

Client(s) Michel & Margaret Ann Etcheverry Family, LP; Diamond Cattle Co., LLC;
Kenneth F. Benson ("Etcheverry et al.")

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Bryan L. Stockton Telephone 775-684-1228

Firm Nevada Attorney General's Office

Address 100 North Carson Street
Carson City, NV 89701-4717

Client(s) State Engineer, State of Nevada, Division of Water Resources

Attorney Ross de Lipkau & John Zimmerman Telephone 775-323-1601

Firm Parsons Behle & Latimer

Address 50 W. Liberty Street, Suite 750
Reno, NV 89501

Client(s) Kobeh Valley Ranch, LLC

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

- Michel and Margaret Ann Etcheverry Family, LP, et al. v. State Engineer of Nevada et al., Nevada Supreme Court Case No. 61324 (presently pending before this Court with motion to consolidate with this case).

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

- Michel and Margaret Ann Etcheverry Family, LP, et al. v. State Engineer of Nevada et al., Seventh Judicial District Court for the County of Eureka, Case No. CV 1207-178, May 17, 2013.

- Eureka County v. State of Nevada, ex. rel., State Engineer, Division of Water Resources, CV 1108-155, June 13, 2012.

- Conley Land & Livestock, LLC; Lloyd Morrison v. The Office of the State Engineer of the State of Nevada, CV 1108-156, June 13, 2012.

(See attached Supplement to Docketing Statement for additional related cases.)

8. Nature of the action. Briefly describe the nature of the action and the result below:

See attached Supplement to Docketing Statement.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

See attached Supplement to Docketing Statement.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

- Michel and Margaret Ann Etcheverry Family, LP, et al. v. State Engineer of Nevada et al., Nevada Supreme Court Case No. 61324

Same or similar issues:

- Ruling 6127/the 3M Plan violate NRS 533.370(2) by allowing conflicts with existing water use rights.
- Ruling 6127/the 3M Plan violate NRS 534.110(4) by failing to determine whether the proposed drawdown of the static water level is reasonable.
- Ruling 6127/the 3M Plan violate NRS 534.110(5) by failing to impose express conditions to ensure existing rights will be satisfied.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A: oral argument only

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from May 15, 2013

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

Findings of Fact, Conclusions of Law, and Judgment was executed on May 15, 2013 and filed with the Court on May 17, 2013.

16. Date written notice of entry of judgment or order was served May 21, 2013

Was service by:

☒ Delivery

☐ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed May 21, 2013

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|--|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input checked="" type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) provides that an appeal may be taken from: "A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." Here, Appellants seek review of the final judgment entered in the district court.

NRS 233B.150 provides: "An aggrieved party may obtain a review of any final judgment of the district court by appeal to the Supreme Court. The appeal shall be taken as in other civil cases." Here, Appellants petitioned the district court for judicial review of an administrative ruling. Appellants' petitions were denied by the district court and are thus "aggrieved." Appellants now appeal the district court's final judgment denying their petitions to the Nevada Supreme Court.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Michel and Margaret Ann Etcheverry Family, LP; Diamond Cattle Co., LLC;
Kenneth F. Benson; State of Nevada, State Engineer, Division of Water Resources;
Kobeh Valley Ranch, LLC

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Etcheverry/Diamond Cattle/Benson: State Engineer approval of the 3M Plan should be reversed. Denied by district court on May 17, 2013.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A because #24 is N/A

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order


VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Etcheverry et al.
Name of appellant

Schroeder Law Offices, P.C.
Name of counsel of record

Jun 13, 2013
Date


Signature of counsel of record

Washoe County, Nevada
State and county where signed

CERTIFICATE OF SERVICE


I certify that on the 13th day of June, 2013, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

X Via the Court's eFlex Electronic Filing System.

Bryan L. Stockton, Attorney for Nevada State Engineer
Ross E. de Lipkau, Attorney for Kobeh Valley Ranch
John R. Zimmerman, Attorney for Kobeh Valley Ranch
Francis M. Wikstrom, Attorney for Kobeh Valley Ranch
*See attached Supplement to Docketing Statement for addresses.

Dated this 13th day of June, 2013


Signature

SUPPLEMENT TO DOCKETING STATEMENT (CIVIL APPEAL)

3. Attorney(s) representing respondent(s) (continued)

Attorney: Francis M. Wikstrom Telephone: 801-532-1234
Firm: Parsons Behle & Latimer
Address: 201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Client(s): Kobeh Valley Ranch, LLC

7. Pending and prior proceedings in other courts (continued)

- Kenneth F. Benson; Diamond Cattle Co. LLC; Michel and Margaret Ann Etcheverry Family LP v. State Engineer of Nevada, CV 1108-157, June 13, 2012.

- Eureka County v. State of Nevada, ex. rel., State Engineer, Division of Water Resources, CV 1112-164, June 13, 2012.

- Kenneth F. Benson; Diamond Cattle Co. LLC; Michel and Margaret Ann Etcheverry Family LP v. State Engineer of Nevada, CV 1112-165, June 13, 2012.

- Kenneth F. Benson; Diamond Cattle Co. LLC; Michel and Margaret Ann Etcheverry Family LP v. State Engineer of Nevada, CV 1202-170, June 13, 2012.

8. Nature of the action.

Between 2005-2010, Kobeh Valley Ranch ("KVR") filed numerous water use applications to appropriate water and change water use rights. After administrative hearing, the State Engineer issued Ruling No. 5966, which was appealed, reversed and remanded by the Seventh Judicial District Court on due process grounds in Case Nos. CV 0904-122 and -123.

On remand, after additional administrative hearing, the State Engineer issued Ruling No. 6127 on July 15, 2011. Appellants filed petitions for judicial review with the Seventh Judicial District Court for Eureka County and oral argument was held before the court on April 3, 2012. The district court affirmed the State Engineer's Ruling No. 6127 and the State Engineer's issuance of water use permits, denying the petitions for judicial review in Case Nos. CV 1108-157, CV 1112-165, and CV 1202-170. Those cases are being reviewed by the Nevada Supreme Court in Case No. 61324.

As provided in Ruling No. 6127, the State Engineer approved a Monitoring, Management and Mitigation Plan (“3M Plan”) on June 6, 2012. Appellants filed a petition for judicial review in the Seventh Judicial District Court for Eureka County in Case No. CV 1207-178, and oral argument was held on April 15, 2013. The district court affirmed the State Engineer’s approval of the 3M Plan, and Appellants now seek judicial review of the district court’s decision with the Nevada Supreme Court in Case No. 63258.

Because Nevada Supreme Court Case Nos. 61324 and 63258 share common issues of law and fact, Appellants filed a motion for consolidation in Case No. 61324 (Case No. 63258 had not been assigned at the time of the motion). The motion to consolidate is being considered by the Court in Case No. 61324.

9. Issues on appeal.

- 1) The State Engineer must deny applications that would conflict with existing water use rights. Here, the State Engineer relied in Ruling No. 6127 on a future, nonexistent 3M Plan to cure known conflicts. The 3M Plan does not comply with NRS § 533.370 or Ruling No. 6127’s requirement to ensure existing rights are satisfied.
- 2) The State Engineer must determine whether the static water level lowering proposed by an application is reasonable, and whether senior rights will be satisfied by express conditions. NRS § 534.110(4) and (5). Here, the 3M Plan does not make such findings or provide express conditions to ensure existing senior rights will be fully satisfied.
- 3) The State Engineer is charged with the obligation and duty to administer water appropriations. Here, the 3M Plan provides for the impermissible delegation of authority to outside committees to conduct rulemaking, policy, and adjudication tasks.
- 4) The State Engineer has the power to make rules and regulations necessary to carry out its obligations and duties. Here, the 3M Plan constitutes impermissible ad hoc rulemaking in violation of NRS §§ 532.110 and 534.110 because the 3M Plan creates a rule of general applicability affecting all water users in the relevant basins, and the State Engineer does not have authority to promulgate rules or regulations that are contrary to Nevada law.

5) The 3M Plan is vague and deficient, and therefore the State Engineer's approval of the 3M Plan was arbitrary, capricious, and an abuse of discretion.

Certificate of Service (continued)

The completed docketing statement was served upon all counsel of record via the Court's eFlex Electronic Filing System to the following email addresses:

Bryan L. Stockton
bstockton@ag.nv.gov

Ross E. de Lipkau
rdelipkau@parsonsbehle.com

Francis M. Wikstrom
fwikstrom@parsonsbehle.com

John R. Zimmerman
jzimmerman@parsonsbehle.com

INDEX OF ATTACHMENTS

<u>Attachment No.</u>	<u>Document</u>
1	Michel and Margaret Ann Etcheverry Family, LP, Diamond Cattle Company, LLC, and Kenneth F. Benson's Petition for Judicial Review
2	Kobeh Valley Ranch's Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment
3	Findings of Fact, Conclusions of Law, and Judgment

JUL 05 2012

Eureka County Clerk

By

B. ConleyCASE NO.: CV 1207-178DEPT. NO.: 2

SCHROEDER LAW OFFICES, P.C.

Laura A. Schroeder, Nevada State Bar #3595

Therese A. Ure, Nevada State Bar #10255

440 Marsh Ave.

Reno, Nevada 89509-1515

PHONE: (775) 786-8800, FAX: (877) 600-4971

counsel@water-law.com

Attorneys for the Petitioners

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

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

Petitioners,

v.

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

Respondent.

PETITION FOR JUDICIAL REVIEW

COME NOW Petitioners MICHEL AND MARGARET ANN ETCHEVERRY
FAMILY, LP, DIAMOND CATTLE COMPANY, LLC, and KENNETH F. BENSON
(collectively referred to herein as "Petitioners"), by and through their attorneys of record,
Schroeder Law Offices, P.C., and file this petition for judicial review of the STATE
ENGINEER's decision dated June 6, 2012 approving a monitoring, measurement, and mitigation
plan relating to STATE ENGINEER Ruling No. 6127.



Petitioners petition and allege as follows:

JURISDICTION AND PARTIES

1. Michel and Margaret Ann Etcheverry Family LP (“Etcheverry LP”), a foreign limited partnership registered in Nevada, is a landowner, agricultural operator and water right holder in Kobeh Valley and Diamond Valley, Nevada.

2. Diamond Cattle Company, LLC (“Diamond Cattle”), a Nevada limited liability company, is an agricultural operator in Diamond Valley and Kobeh Valley, Nevada, whose managing members include Mark and Martin Etcheverry. Martin Etcheverry is also a general partner in Michel and Margaret Ann Etcheverry Family LP.

3. Kenneth F. Benson (“Benson”) is a water right holder and agricultural operator in Diamond Valley, Nevada.

4. Respondent NEVADA STATE ENGINEER (“STATE ENGINEER”) is an agent of the State of Nevada who, together with the Office of the State Engineer, Division of Water Resources, Department of Conservation and Natural Resources, regulates the water use in the State.

5. A Notice of this Petition has been or will be served on the STATE ENGINEER and on all known persons affected by permits issued in relation to STATE ENGINEER Ruling No. 6127, and subsequent acceptance of the Monitoring, Management, and Mitigation Plan (“3M Plan”) of the STATE ENGINEER pursuant to NRS 533.450(3).

6. This Court has jurisdiction to address this petition under NRS 533.450.

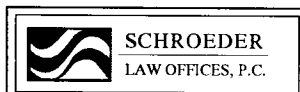
7. Venue is proper under NRS 533.450. The water use in the 3M Plan is related to uses appurtenant to lands in Eureka County.

8. Petitioners have exhausted their administrative remedies.

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BACKGROUND

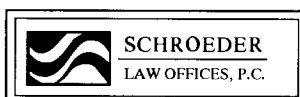
9. Between May of 2005 and June of 2010, numerous applications to appropriate underground water and to change the point of diversion, place of use, and/or manner of use were filed by Idaho General Mines, Inc. and Kobeh Valley Ranch LLC (collectively herein the "Applications"). The Applications filed by Idaho General Mines, Inc. were thereafter assigned to Kobeh Valley Ranch LLC (the "Applicant"). The Applications were filed for a proposed molybdenum mine, known as the Mount Hope Mine Project, requiring underground water for mining and milling and dewatering purposes.

10. The Applications, a combination of applications for new appropriations of water and applications to change the point of diversion, place of use, and/or manner of use of existing water uses (applications, permits and/or certificates), requested a total combined duty under all of the Applications of 11,300 acre feet annually (afa).

11. On July 15, 2011, the STATE ENGINEER issued Ruling No. 6127 granting the majority of the Applications subject to certain terms and conditions. Ruling No. 6127 found that water rights on springs and streams within the Kobeh Valley could potentially be impacted by drawdown of the water table. Approval of the Kobeh Valley Ranch Applications was conditioned upon submission and approval of a monitoring, management, and mitigation plan ("3M Plan") prior to diverting any water under the Kobeh Valley Ranch Applications. State Engineer Ruling No. 6127 at 21-22.

12. On August 11, 2011, Petitioners filed their Petition for Judicial Review before this Court, challenging STATE ENGINEER Ruling No. 6127 (Case No. CV-1108-157). As the STATE ENGINEER continued to issue permits subsequent to STATE ENGINEER Ruling No. 6127, Petitioners filed additional Petitions for Judicial Review designated as Case Nos. CV-1112-165 and CV-1202-170. Petitioners' requests for judicial review were subsequently consolidated with Case Nos. CV-1108-155, CV-1108-156, CV-1112-164 and CV-1112-165.

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13. On June 13, 2012, this Court rendered its Findings of Fact, Conclusions of Law and Order Denying Petitions for Judicial Review (Case Nos. CV-1108-155, CV-1108-156, CV-1108-157, CV-1112-164, CV-1112-165 and CV-1202-170).

DECISION

14. On or about May 30, 2012, Eureka Moly, LLC submitted a Monitoring, Management and Mitigation Plan (“3M Plan”) to the STATE ENGINEER. The 3M Plan “applies to proposed groundwater extraction from Kobeh Valley and Diamond Valley for mining process water rights granted in Ruling 6127 of the of the office of the Nevada State Engineer (NSE) dated July 15, 2011.”

15. On June 6, 2012, Richard Felling, Chief of the Hydrology Section of the Division of Water Resources, communicated to Eureka Moly, LLC that “[t]he Plan as submitted is approved with the understanding that components of the Plan are subject to modification based need, prior monitoring results, or changes in the approved water rights.” *See* Exhibit 1.

AGENCY ERROR(S)

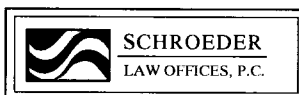
16. The STATE ENGINEER manifestly abused his discretion by approving a 3M Plan which contravenes the conditions expressed in STATE ENGINEER Ruling No. 6127.

17. By approving the 3M Plan, the STATE ENGINEER exceeded his statutory authority under NRS 533.370 by allowing the use of water absent *express* conditions that will protect the rights of existing appropriations and mitigate conflicts with existing rights.

18. The STATE ENGINEER's approval of the 3M Plan fails to include findings of fact or conclusions of law demonstrating that under NRS 534.110, existing appropriations can be satisfied pursuant to express conditions included within the 3M Plan.

19. The STATE ENGINEER's approval of the 3M Plan is in error because the 3M Plan fails to bind the current water right holder and Applicants under Case Nos. CV-1108-155, CV-1108-156, CV-1108-157, CV-1112-164, CV-1112-165 and CV-1202-170.

///



1 20. The STATE ENGINEER's approval of the 3M Plan results in impermissible
2 delegation of administrative authority to an outside committee.

3 21. The STATE ENGINEER's approval of the 3M Plan constitutes impermissible ad
4 hoc rulemaking, in violation of NRS 534.110 and/or NRS 532.110, that establishes an additional
5 administrative remedy that must be exhausted by Petitioners in order to receive relief in the form
6 of mitigation.

7 22. The 3M Plan is deficient in one or more of the following ways, thereby rendering
8 it incapable of serving as "conditions" to monitor and mitigate conflicts with existing rights:

9 a) The 3M Plan is premised upon funding and implementation by unknown third
10 party non-applicants that must act unanimously prior to taking action under the
11 3M Plan;

12 b) The 3M Plan is not reasonably calculated to timely address urgent mitigation
13 needs, conflicts or grievances;

14 c) The 3M Plan is vague and aspirational and fails to expressly articulate what
15 mitigation measures will be taken to avoid conflicts with existing rights on Kobeh
16 Basin valley floor; and

17 d) The 3M Plan offers only non-binding "potential" mitigation measures, many of
18 which are better characterized as speculative or remedial in nature.

19 **REQUEST FOR RELIEF**

20 WHEREFORE, Petitioner requests judgment as follows:

- 21 1. The Court vacate the STATE ENGINEER's approval of the 3M Plan.
- 22 2. The Court enter an order instructing the STATE ENGINEER to disallow water
23 use under Permit Nos. 72695, 72696, 72697, 72698, 73545, 73546, 73547, 73548,
24 73549, 73550, 73551, 73552, 74587, 75988, 75989, 75990, 75991, 75992, 75993,
25 75994, 75995, 75996, 75997, 75998, 75999, 76000, 76001, 76002, 76003, 76004,
26 76005, 76006, 76007, 76008, 76009, 76745, 76746, 76989, 76990, 76802, 76803,



76804, 76805, 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,
79942, and 78424 until a 3M Plan is submitted that satisfactorily provides express
conditions for monitoring and mitigating conflicts with existing rights.

3. Award such other and further relief as the Court deems just and proper.

DATED this 3rd day of July, 2012.

SCHROEDER LAW OFFICE, P.C.



Laura A. Schroeder, NSB #3595

Therese A. Ure, NSB #10255

440 Marsh Ave.

Reno, NV 89509

PHONE: (775) 786-8800

FAX: (877) 600-4971

Email: counsel@water-law.com

Attorneys for the Petitioners

1 **AFFIRMATION**

2 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
3 ***PETITION FOR JUDICIAL REVIEW*** does not contain the social security number of any
4 person.

5
6 DATED this 3rd day of July, 2012.

SCHROEDER LAW OFFICE, P.C.

7
8 

9 Laura A. Schroeder, NSB #3595

10 Therese A. Ure, NSB #10255

11 440 Marsh Ave.

12 Reno, NV 89509

13 PHONE: (775) 786-8800

14 FAX: (877) 600-4971

15 Email: counsel@water-law.com

16 *Attorneys for Petitioners*



BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

June 6, 2012

Mr. Patrick Rogers
Director, Environmental and Permitting
Eureka Moly, LLC
2215 North 5th Street
Elko, NV 89801

RE: 3M Plan for Mount Hope Project

Dear Mr. Rogers,

We received your Monitoring, Management, and Mitigation Plan (Plan) for your Mount Hope molybdenum mine dated May 30, 2012. The Plan as submitted is approved with the understanding that components of the Plan are subject to modification based on need, prior monitoring results, or changes in the approved water rights. This Plan is authorized by NRS 534.110, and the State Engineer has final authority over the Plan. Eureka Moly LLC and any successors or assigns will be responsible for implementing and complying with the Plan.

Water level and flow data are to be reported semiannually within 30 days of the end of each reporting period. An annual report is required by March 31st of each year. The annual report shall summarize water production, the results of the monitoring, all management and mitigation actions taken, any proposed or needed changes to the Plan, and any changes to project pumping.

Water level and flow data are to be reported electronically in a prescribed format. Instructions for documentation and reporting, and spreadsheets for tabulating and submitting data can be downloaded from our website: <http://water.nv.gov/forms/>.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Felling".
Richard Felling
Chief, Hydrology Section

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**NEVADA DIVISION OF WATER RESOURCES MONITORING, MANAGEMENT,
AND MITIGATION PLAN FOR THE MT. HOPE PROJECT**

1. BACKGROUND

STATE ENGINEERS OFFICE

- A. This Monitoring, Management, and Mitigation Plan (3M) applies to proposed groundwater extraction from Kobeh Valley and Diamond Valley for mining process water rights granted in Ruling 6127 of the office of the Nevada State Engineer (NSE) dated July 15, 2011. The groundwater extracted will be consumed in activities related to the Mt. Hope Project (Project), including mineral processing and mine dust control. The groundwater will be developed by Eureka Moly, LLC, (EMLLC) through Kobeh Valley Ranch, LLC (KVR), both of which are subsidiaries of General Moly, Inc. (GMI), with KVR being the water rights holder. The Lessee of the water rights and operator of the Project is EMLLC. The groundwater will be supplied primarily from a wellfield in Kobeh Valley and conveyed via pipelines to the mine and mill sites. In addition, groundwater will include water derived from open pit dewatering at rates that are predicted to reach a maximum of 742 af/yr. The distribution of this water from the pit is estimated at 20% from Kobeh Valley Hydrographic Basin and 80% from the Diamond Valley Hydrographic Basin.

2. PURPOSE OF THE 3M

- A. The purpose of this 3M is to assist the NSE in managing development of groundwater resources within and near the Project area to avoid adverse impacts to existing water rights. The 3M is designed to include or develop, as needed or appropriate, express conditions that will protect the rights of domestic well owners, if any, and existing appropriations.
- B. While it is the goal to avoid any adverse impacts due to the groundwater pumping, the 3M outlines a process by which adverse impacts will be identified and ultimately mitigated. It is intended to provide the necessary data to assess the response of the aquifer(s) to the stress of water resource exploitation, provide an early warning capability, and provide safeguards for responsible management of water.

3. AUTHORITIES AND PARTICIPANTS

- A. The NSE has final authority over the 3M, and EMLLC, including all successors and assigns, will be responsible for implementing and complying with the 3M.
- B. In addition to the purpose outlined above, this 3M is intended to provide participation and transparency to the locally affected stakeholders. Eureka County (EC) holds water rights for municipal use in Diamond Valley. Additionally, Eureka County has local natural resource, land-use, and water resource policies, plans, and goals

developed under Nevada State Law that obligate County officials, both elected and appointed, to actively participate in the planning and management of resources within Eureka County. Eureka County, and representatives from locally potentially affected farming, ranching, and domestic interests will be invited to participate in this 3M. In the event there are other water rights holders who may be adversely affected by Mt. Hope Project groundwater extraction, these entities could be invited to participate as described under MANAGEMENT and in accordance with this 3M. The entities that participate in this 3M as outlined in the MANAGEMENT section 5.B are hereinafter referred to as "Parties".

- C. The USGS will be invited to participate expressly to provide impartial technical and scientific input, as described herein.
- D. This 3M is separate from the requirements placed upon EMLLC by other agencies including the United States Bureau of Land Management (BLM) and Nevada Department of Wildlife (NDOW). The BLM has claimed Federal Public Water Reserves (PWR 107) within the area of concern. The BLM and EMLLC have entered into a stipulated settlement agreement as a condition of the BLM withdrawal of protests of EMLLC's water right applications and NDOW is included as a party to the settlement agreement.

4. PRINCIPAL COMPONENTS

The 3M consists of three principal components:

- A. Management
- B. Monitoring
- C. Mitigation

The framework of these components is described in the following sections.

5. MANAGEMENT

- A. Two committees are established. The Water Advisory Committee (WAC) is to establish and carryout policy under this 3M. The Technical Advisory Committee (TAC) is to provide the technical scientific expertise necessary for collection, evaluation and analysis of data. Separation of the roles and responsibilities of these two bodies is considered crucial to maintaining scientific impartiality of the data collection and analysis program.

B. Water Advisory Committee:

- a. Within 30 days after NSE approval of this 3M, EMLLC, NSE, and Eureka County representatives will convene as the three (3) founding members of the WAC. Upon the three founding members convening, the Diamond Natural Resources Protection and Conservation Association (DNRPCA) and the Eureka Producers Cooperative (EPC) (DNRPCA and EPC represent the bulk of water rights holders in the Diamond Valley Flow System) will each be invited to bring forward one representative nominated from their respective membership for inclusion as members of the WAC. Letters of interest will also be accepted from potentially affected ranching interests (i.e., Kober Valley rancher) for inclusion as a member of the WAC. Eureka County, NSE, EMLLC, DNRPCA, and EPC will make the determination on the affected ranching interest to be included on the WAC based on letters of interest received. If any of the potentially affected ranching and farming interests ceases to exist, the remaining WAC members will develop a process so that replacement members will be selected to join the WAC. The WAC may also invite other potentially affected water rights holders to participate as members. The WAC will have no more than seven (7) members. The member of the WAC representing the NSE will be invited to participate as the chair of the WAC. If the NSE member representative declines this invitation, the WAC will elect the chairman. Each WAC member, at its sole discretion, may invite such additional staff or consultants to attend WAC meetings as it deems necessary.
- b. After the full WAC has been convened, the WAC will establish policy and define additional roles and responsibilities of the WAC and TAC, such as scheduling of meetings, agenda setting, publication of minutes, receiving input from the public, and any other necessary components.
- c. The WAC will meet no less than one time in each quarter starting at the execution of this 3M with the primary focus to ensure water monitoring is actively in place. Future meeting frequency may then be adjusted as decided by the WAC, but will be no less than once annually.
- d. The WAC will have an annual meeting, open to the public, to review project operations and to review monitoring, management and mitigation actions of the previous year.
- e. Purposes and Functions of the WAC will be to:
 - i. Provide a forum for the WAC to discuss relevant data and analyses.
 - ii. Share information regarding modeling efforts and model results.
 - iii. Make modifications to the Monitoring component of this 3M, including, but not limited to additional data collection and scientific investigations, based on recommendations from the TAC.
 - iv. Provide status reports and recommendations to the Parties.
 - v. Establish values for monitored variables (water levels, spring discharges, vegetation responses, etc.) known as "action criteria" which, if exceeded,

may be of concern to the Parties and could require mitigation or management actions.

- vi. Determine what constitutes an adverse impact on a case-by-case basis.
- vii. Form and ensure implementation of groundwater management or mitigation measures approved by the WAC based on recommendations of the TAC.
- viii. Review financial assurance periodically and make adjustments to amount as appropriate and recommend release of funds for mitigation and/or management measures.
- ix. Provide the NSE, Parties, and the local stakeholders with data and results of any analyses or technical evaluations, along with reports of specific implemented mitigation or management actions.
- x. Develop and implement a procedure to remove and replace WAC and TAC members as it deems necessary, excluding, however, removal of the founding members consisting of the NSE, EC, and EMLCC.

C. Technical Advisory Committee:

- a. The WAC will appoint a Technical Advisory Committee (TAC) as a subcommittee to the WAC. Each Party represented on the WAC is entitled to appoint a representative and is responsible for funding the participation of their respective TAC member. In addition, the USGS will be invited to participate as a member of the TAC. Funding for the USGS's participation in the 3M will be borne by EMLCC either through new or through existing joint funding agreements with USGS sponsored by Eureka County to study the Diamond Valley Flow System or by a "pass-through" agreement with the NSE. TAC members must exhibit a professional level of technical or scientific expertise and a background or experience in land management, natural resources, water resources, or other related field. Each Party, at its sole discretion may invite additional staff or consultants to attend TAC meetings.
- b. The TAC will meet within 30 days after WAC appointment to review the proposed monitoring provided as Attachment A to this 3M. Upon completing this review, the TAC will make recommendations to the WAC for any changes to the monitoring components of this 3M. Thereafter, the TAC will meet at intervals deemed appropriate by the TAC to review and analyze data, but not less than twice annually or as instructed by the WAC.
- c. At a minimum, purposes and functions of the TAC will be to:
 - i. Review the proposed monitoring and recommend to the WAC implementation, including any changes to the specific monitoring elements, as appropriate.
 - ii. Review historic groundwater level trends, spring and stream flows to determine historic hydrologic trends. Where possible, identify wet and dry

regimes, climate effects on groundwater recharge rates and base flows in surface waters.

- iii. Review, develop, and refine standards and quality control procedures for data collection, management, and analysis.
- iv. Inform the entity or entities that collect data of standard accepted protocols of data collection, recording and analysis (e.g., USGS) that will be used.
- v. Evaluate monitoring data, reports, analyses, etc. to determine whether data gaps exist and make appropriate recommendations to the WAC.
- vi. Develop and recommend action criteria to the WAC for management or mitigation measures based upon available data and analyses.
- vii. Evaluate all monitoring data to determine if any action criterion has been or is predicted to be exceeded, indicating a possible adverse impact and report findings to the WAC.
- viii. Recommend mitigation and management measures and related scope of work details to the WAC. This includes individual resources or a comprehensive list of all resources to support WAC evaluation of the adequacy of mitigation funding.
- ix. Evaluate the effectiveness of mitigation, if implemented, and report findings to the WAC.
- x. Make recommendations to the WAC regarding the numerical groundwater flow model, including appropriate times for any model updates and modes of model output.

D. Numerical Groundwater Flow Model:

- a. EMLLC has developed the Numerical Groundwater Flow Model (FM) to simulate the groundwater flow system and the FM will be updated to incorporate the data collected under this 3M. EMLLC will update the FM after recovering data from the first year of wellfield pumping for mineral processing as recommended under the provisions of this 3M. Thereafter, EMLLC will update the FM on a schedule as determined under the provisions of the 3M.
- b. The FM will be used as a management tool to evaluate predictions of drawdown and impacts and to help define action criteria.

E. Prevention of Interbasin Transfer from Diamond Valley Basin:

- a. If excess water is produced within the Diamond Valley Hydrographic Basin which is not consumed in that basin, this water will be returned to the Diamond Valley Hydrographic Basin. As described in Section 6.E., water derived from pit dewatering and consumed will be documented and reported by EMLLC to verify that the volume of water extracted from Diamond Valley is equal to or less than the volume of water consumed in Diamond Valley (i.e. no transfer of water out of Diamond Valley).

F. Action Criteria:

- a. Specific quantitative action criteria will be developed by the WAC with recommendations from the TAC. These criteria will be developed to provide early warning of potential adverse impacts to water rights, determined to be caused by Project groundwater pumping.
- b. When any action criterion that has been adopted as part of this 3M is reached, the following management actions will be triggered:
 - i. The TAC will meet as soon as possible to assess whether the action criterion exceedance is caused by Project groundwater pumping and present their findings to the WAC.
 - ii. If the WAC determines that any action criterion exceedance is caused by Project groundwater pumping, the TAC will expeditiously develop mitigation or management measures for the WAC to consider. The TAC will analyze the feasibility of the specific measures to assess alternatives, evaluate the potential effectiveness of the measures, and evaluate potential impacts created by implementation of the measures.
 - iii. The WAC will determine whether or not to recommend implementation of the mitigation or management measures and to also recommend if the funds described in MITIGATION will be used to implement such measure.
 - iv. The effectiveness of any implemented measure will be evaluated by the TAC to ensure the measure met or exceeded the intended result. Results and recommendations for any additional measures will be reported to the WAC.
 - v. Any member of the WAC may propose an additional action criterion or a change to existing action criteria. Any such change must be presented in writing to the WAC and accompanied by analyses to support the proposed change.

G. Decision-Making Process:

- a. For technical issues, including, but not limited to monitoring modifications, setting action criteria, and appropriate mitigation, decisions under this 3M will be made after considering the evaluation and recommendations of the TAC.
- b. All Parties shall be afforded the opportunity to attend meetings where decisions will be made. Any decisions made by the WAC under this 3M shall be by unanimous vote of Parties in attendance, provided however, both EMLLC and EC must be present for a vote to occur. If unanimity is not achieved, the Parties may jointly agree to conduct additional data collection and/or data review and analyses directed at resolving the different interpretations or opinions. If that is not successful, the Parties may refer the issue, accompanied by their respective opinions, to the NSE for final determination.

- c. Decisions made by the WAC regarding recommended modifications to the 3M, implementation of mitigation, or other management actions that would be required of EMLLC will be subject to the jurisdiction and authority of the NSE.
- d. Nothing herein limits or changes the NSE authority, and any Party can petition the NSE to consider any issue.

H. Modification of the 3M

- a. The Parties may individually or jointly petition the NSE to modify this 3M in the event that mutual agreement cannot be reached. Any such petition shall be concurrently provided to the other Parties. Prior to the NSE decision, all Parties will be provided the opportunity to submit a written response to the NSE no later than 60 calendar days following the date of receipt of the petition by NSE.
- b. Any modification to the 3M must be approved by the NSE.
- c. Nothing herein seeks to limit, alter, modify or change the exclusive authority of the NSE to approve or modify the 3M.

6. MONITORING

- A. Hydrological related studies for the Project contain data concerning water and related resources in Kobreh Valley, Diamond Valley, Pine Valley, and surrounding areas. These data include locations of existing and proposed supply and monitoring wells, groundwater extraction rates, groundwater level measurements, flow from springs and streams, water quality, precipitation data, and wetland/riparian conditions. Additional data relevant to the Project available from other local, state, and federal agencies or other reliable sources will be compiled into a database by EMLLC and expanded as new data are collected under the provisions of this 3M.
- B. The proposed monitoring is provided in Attachment A to this 3M. As described in MANAGEMENT of this 3M, the TAC will review this proposed monitoring and provide recommendations to the WAC regarding changes and/or implementation. In addition to this initial review, the TAC will review the proposed monitoring and make recommendations to the WAC for changes throughout the Project life based on monitoring data and analysis. Such recommended changes may include, but not be limited to, addition or deletion of monitoring sites, addition or deletion of monitoring parameters, changes to monitoring methods, and increases or decreases in monitoring frequencies. Upon acceptance by the NSE of this 3M, EMLLC will implement the monitoring requirements as set forth in Attachment A.

- C. The term "as is feasible" as used in this 3M relates to mechanical failures or other events/reasons outside the control of the Parties, as agreed upon by the Parties, that interfere with data collection.

D. Groundwater

- a. Groundwater pumping will be measured by flow meters installed on each production well, dewatering well and pit dewatering sump.
- b. Water levels in all wells included as part of the Project monitoring network will be measured by recording pressure transducers (data loggers). The measurement frequency will depend on distance to the wellfield and be based on TAC recommendations.
- c. The Project monitoring network will include "sentinel" wells (i.e., wells strategically located to provide early indication of drawdown propagation towards sensitive or important resources). At a minimum these will be located near the boundary between Kobeh, Diamond, Pine and Antelope Valleys; between the pumping wells and the headwaters of Henderson and Roberts Creeks and Tyrone Gap; between the wellfield and Gravel Pit Spring, Bartine artesian wells, the Antelope Valley Hot Springs (Klobe Hot Springs), and the stock wells at Hay Ranch. Nested wells that monitor individual aquifers at a single location where more than one hydrostratigraphic unit is present or strong vertical gradients may exist will be completed, as is feasible.
- d. Test wells constructed at each Project production well site will be maintained as monitoring wells, as is feasible, and equipped with recording pressure transducers.
- e. Several USGS monitoring wells are located near the proposed well field and within the projected drawdown area. If the USGS is not funded to monitor these specific wells, EMLLC will request USGS permission to collect data from these wells. If the WAC determines that monitoring should continue at these locations, EMLLC may be required to drill replacement wells or develop a suitable alternative.

E. Pit Dewatering

Groundwater will be extracted from the Diamond Valley Hydrographic Basin either by wells or pit dewatering sumps. To determine the amount of water from pit dewatering within the Diamond Valley Hydrographic Basin, the total groundwater removed by pit dewatering sumps will be measured by totalizing flow meters and then multiplied by a factor reflecting the portion of the pit area that is located in Diamond Valley Hydrographic Basin. The discharge from dewatering wells will be measured with totalizing flow meters and allocated to the basin in which the well is located. Water truck loads utilized in the pit complex will be counted and recorded to document water used in

Diamond Valley for mine environmental dust suppression. The amount of water used in Diamond Valley for other uses will be metered or estimated and recorded in the database.

F. Surface Water

- a. At a minimum, the monitoring of stream flow will be conducted as follows:
 - i. Monitoring will include continuous measurements of stream stage at selected control sections for each stream, as is feasible.
 - ii. The geometry of the control sections will be measured at the start of monitoring and re-measured at least annually.
 - iii. Stage measurements will be collected with recording pressure transducers on a frequency of not less than one hour.
 - iv. The flow in the streams at the control sections will be gaged monthly, as is feasible, for the first year of record to establish stage-discharge relationship for each gaging station and following any changes in the control section geometry.
 - v. All control sections in streams will be assessed routinely for any changes in the control section geometry and the stage discharge relationship be re-established accordingly.
 - vi. Following the first year of gaging, stream-flow measurements will be collected at least quarterly.
 - vii. Flow data will be recorded at least quarterly and hydrographs updated at least annually.

G. Water Quality

Water quality samples will be collected from selected production and monitoring wells, surface waters and pit water and analyzed by a laboratory certified by the State of Nevada using standard accepted protocols and a standard water test. Macroinvertebrate monitoring will take place in select streams as an indicator of general stream and/or fishery health.

H. Biological Resources

To assess if there is any loss of vegetative communities in phreatophytic and riparian areas, monitoring of vegetation, including phreatophyte vegetation and riparian zones will be conducted. Specific locations are to be determined by the WAC and itemized in Attachment A, and will include sites in Kobeh Valley, Diamond Valley, Pine Valley and Antelope Valley that may be affected by groundwater extraction. Data will be collected using a variety of techniques and will include on-site measurement of vegetation cover, frequency, and type. Shallow wells will be co-located with vegetation monitoring transects. Remote sensing will be employed to help define and monitor the extent of vegetation communities at a larger spatial scale.

I. Meteorology

Weather/Climate stations will be installed and maintained to continuously monitor wind speed and direction, precipitation, temperature, barometric pressure, humidity, and solar radiation. Existing precipitation stations will be used where possible. The purpose of collecting weather/climate data is to provide the WAC with a basis for evaluating whether changes in groundwater levels or stream and spring flow are due to changes in weather or climate.

J. Elevation Control/Subsidence

Monitoring locations for subsidence, groundwater measuring point elevations and ground surface elevations will be established using survey-grade GPS instrumentation. A standard GPS data collection protocol (i.e., common geographic datum) will be used to allow a comparative base for all elevation associated data. Subsidence monitoring will be augmented using remote sensing technologies (e.g. InSAR). Frequency and methodology of remote sensing to monitor subsidence will be reviewed and determined by the WAC in consideration of TAC recommendations.

K. Data Management

- a. All monitoring data will be entered into the 3M database on a regular, timely, and continual basis as it is collected and verified using WAC-approved quality assurance and quality control (QA/QC). Data collected under or as described in this 3M will be fully and cooperatively shared among the Parties. Verified data within the 3M database will become available to the public, upon request.
- b. In addition to updating the 3M database on a regular and continual basis, EMLLC will provide an annual report that summarizes all information and analysis. This report, due in the NSE's office by March 31, will be prepared based on recommendations and in cooperation with the TAC. These reports will summarize water production, the results of monitoring, and all management and mitigation actions taken during the year. Copies of the annual report will be provided to each of the Parties.
- c. All water level, spring discharge, and stream flow data shall be submitted semi-annually to the NSE in an electronic format specified by the NSE. Data shall be submitted within 30 days of the end of the reporting period.

7. MITIGATION

- A. EMLLC will mitigate adverse impacts, if any, as agreed upon under the provisions of this 3M. The WAC will take necessary steps, including recommending whether funding described below may be used as outlined in this 3M, to ensure that mitigation actions are feasible, reasonable, timely, and effective.

- B. Effectiveness of implemented mitigation measures will be evaluated under the provisions of this 3M. Additional measures will be implemented if a previous mitigation measure does not meet its intended purpose(s).
- C. To ensure funding exists for any required future monitoring and mitigation after the cessation of active mining, EMLLC will provide financial assurances under the provisions of this 3M.
- D. EMLLC's financial assurances (FA) funding will be placed into an interest bearing trust account to be established as a part of this 3M. The initial funding will occur in a manner as follows:
 - a. Initial funding of \$250,000 will occur within 60 days of GMI's Board of Directors formal approval authorizing the start of construction of the Project.
 - b. Additional funding of \$750,000 will occur no later than the end of month six of wellfield pumping for mineral processing (plant startup).
 - c. Funding will be examined and adjusted, as recommended by the WAC, every three years to ensure that sufficient funding is in place to mitigate all potential adverse impacts, including funding for operating and maintenance and long-term replacement costs.
- E. After cessation of mining and groundwater pumping by EMLLC, if the NSE determines that there is no longer a reasonable potential for future impacts attributable to the Project, any excess funds, including interest, remaining in the account will be returned to EMLLC.
- F. This 3M outlines measures and procedures to identify and mitigate adverse impacts that may result from project pumping, all of which are uncertain. Due to the uncertainty, this 3M is intended to set forth procedures and methods for identifying adverse impacts and require mitigation of those identified impacts.
- G. To ensure wildlife have continued access to customary use, adversely impacted surface water sources will be mitigated through such measures including, but not limited to, installation and maintenance of replacement water sources of equal or greater volume (e.g. guzzlers) in the same area as the impacted water source.
- H. EMLLC will mitigate permitted water rights and determined and undetermined claims of vested or reserved rights should adverse impacts occur.
- I. Mitigation measures, if necessary, will be developed and implemented on a case-by-case basis under provisions of this 3M.
- J. Potential mitigation measures include the following:

- a. Supply (Project) water will be provided from wells located in Kobeh Valley that are completed in the carbonate and alluvial aquifers. Pumping of these different aquifers will have different impacts to the groundwater and surface water flow systems. Adjustment of carbonate/alluvium groundwater pumping ratio could be employed to either minimize or mitigate effects.
- b. Impacts can be greatly influenced by the specific location of groundwater pumping. Mitigation measures include reduction or cessation of groundwater extraction from one or more wells and/or geographic redistribution of groundwater extraction.
- c. Replacement wells can be constructed to mitigate impacted surface water or groundwater rights, or to supply water for wildlife.
- d. Revegetation of affected areas to achieve appropriate vegetative communities.
- e. Financial compensation or, if agreed upon, property (i.e., land and water rights) of equal value could be purchased for replacement.
- f. If adverse impacts to the Diamond Valley Flow System, or other adjacent basins are determined to be caused by Project groundwater pumping, active and current water rights (water currently pumped) within the affected basin could be purchased and retired.
- g. Implement technology to reduce water consumption of the Project. Pumping rates may be decreased if alternative technology emerges that could reduce water requirements or increase water recycling rates. Water conservation techniques will be proactively employed in order to reduce other mitigation measures (i.e. before any impact is measured).
- h. If surface fissures develop due to land subsidence, they shall be mitigated by filling with a suitable material to prevent injury to wildlife, livestock or people.
- i. Other measures as agreed to by the Parties and/or required by the NSE.

Mount Hope Mine Project
Attachment A to 3M - Monitoring Plan

This Monitoring Plan has been developed by Eureka Moly, LLC (EMLLC) to provide the monitoring component of the 3M (Monitoring, Management and Mitigation) Plan prepared and submitted to the Nevada State Engineer (NSE). Preparation of the 3M and acceptance by NSE is required by Ruling #6127 dated July 15, 2011.

EMLLC will implement documented quality assurance and quality control procedures. Monitoring data will be recorded using a standardized protocol and format for each monitoring event. It is anticipated that protocols will be based on those described by Rantz and others (1982) for surface water flow monitoring, Lapham and others (1995) for groundwater level monitoring, and Wilde (2005) for water sampling. Laboratory analyses will be conducted by Nevada-certified laboratories using standard laboratory quality control procedures.

Tables 1 and 2, provided at the end of this document, lists the proposed monitoring site locations, type of monitoring, monitoring frequency and a brief rationale for selecting each location. Wells identified in Table 1 include both existing wells and wells that EMLLC proposes to construct upon project approval. Mine Well Sets designate production wells, each with a paired monitoring well nearby. Some wells are located within pit limits that would be mined out as the project advances, and these locations would be dropped from the monitoring plan at that time. Site locations are shown on Figures 1 and 2. The monitoring sites in Tables 1 and 2 are organized by locations corresponding to those shown on the Figures 1 and 2.

REFERENCES

- Lapham, W.W., Wilde, F.D., and Koterba, M.T., 1995, *Ground-water data collection protocols and procedures for the National Water-Quality Assessment Program: Selection, installation, and documentation of wells, and collection of related data*: U.S. Geological Survey Open-File Report 95-398, 70 p.
- Rantz, S.E., et al., 1982, *Measurement and computation of streamflow*, U.S. Geological Survey Water Supply Paper 2175, Volumes 1 and 2, 631 p.
- Wilde, F.D., 2005, *National field manual for the collection of water-quality data*: Book 9, Handbooks for Water-Resources Investigations, U.S. Department of the Interior and the U.S. Geological Survey.

Table 1 – Hydrologic Monitoring

Area	Site Name(s)	Parameters	Frequency	Formation	Rationale
Diamond Valley Groundwater	GMI-PDT-1	Depth to Water	Continuous	Vinini Hornfels	Pit area groundwater drawdown monitoring
	GMI-PDT-2	Depth to Water	Continuous	Vinini and Hornfels	Pit area groundwater drawdown monitoring
	GMI-PDT-3B	Depth to Water	Continuous	Vinini Hornfels	Pit area groundwater drawdown monitoring
	IGMI-152	Depth to Water	Continuous	Vinini Fm	Pit area groundwater drawdown monitoring
	IGMI-155	Depth to Water	Continuous	Qtz Porphyry	Pit area groundwater drawdown monitoring
	IGMI-156	Depth to Water	Continuous	Vinini Fm	Pit area groundwater drawdown monitoring
	IGMI-157	Depth to Water	Continuous	Vinini Fm	Pit area groundwater drawdown monitoring
	IGM-169	Depth to Water	Continuous	Vinini Hornfels	Pit area groundwater drawdown monitoring
	IGMI-226P	Depth to Water	Continuous	Vinini Fm	Pit area groundwater drawdown monitoring
	IGMI-228P	Depth to Water	Continuous	Vinini Fm	Pit area groundwater drawdown monitoring
	IGMI-230P	Depth to Water	Continuous	Tuff	Pit area groundwater drawdown monitoring
	IGMI-232P	Depth to Water	Continuous	Vinini Fm	Pit area groundwater drawdown monitoring
	IGMI-233P	Depth to Water	Continuous	Tuff	Pit area groundwater drawdown monitoring
	IGMI-MH-248	Depth to Water	Continuous	Bedrock	Pit area groundwater drawdown monitoring
	NDWR-15462	Depth to Water	Continuous	Alluvium	Pit area groundwater drawdown monitoring

Area	Site Name(s)	Parameters	Frequency	Formation	Rationale
Diamond Valley Groundwater	MH-300	Depth to Water	Continuous	Alluvium	Monitoring groundwater gradient changes in Tyrone Gap with MH – 301
	MH-301	Depth to Water	Continuous	Alluvium	Monitoring groundwater gradient changes in Tyrone Gap with MH – 300
	MH-302	Depth to Water	Continuous	Alluvium	Monitor influence of potential increased transmissivity zone through Whistler Range.
	MH-303	Depth to Water	Continuous	Alluvium	Monitor groundwater elevation trend on west side of Diamond Valley; Sentinel well.
	MH-304	Depth to Water	Continuous	Alluvium	Monitor groundwater elevation trend on west side of Diamond Valley; Sentinel well.
	MH-305	Depth to Water	Continuous	Alluvium	Monitor drawdown east of pit.
	IGMI-158	Depth to Water	Continuous	Alluvium	Monitor groundwater elevation trend on west side of Diamond Valley; Sentinel well.
	IGMI - 236P	Depth to Water	Continuous	Vinini Fm	Monitor groundwater elevation change in Whistler Range; Sentinel well.
	Romano Well	Depth to Water	Continuous	Vinini Fm	Monitor groundwater elevation trend on west side of Diamond Valley; Sentinel well.
	MH – 306 (153 N21 E52 10AAC1)	Depth to Water	Continuous		Monitor groundwater elevation trend on west side of Diamond Valley
	MH – 307 (153 N20 E52 26AABC1)	Depth to Water	Continuous		Monitor groundwater elevation changes in Devil's Gate.
	MH – 308 (153 N20 E52 26AABC2)	Depth to Water	Continuous		Monitor groundwater elevation changes in Devil's Gate.
Diamond Valley Springs	KV-059 (Stinking)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	KV-060 (Hash)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	KV-061 (Railroad)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts

Area	Site Name(s)	Parameters	Frequency	Formation	Rationale
Diamond Valley Springs	KV-062 (Trap Corral)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	DV -065 (Shipley)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	SP-1 (McBride)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	SP-2 (Garden pass)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	SP-3 (unnamed)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	SP-4 (Mt Hope)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	SP-7 (unnamed)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
Kobeh Valley Groundwater	All production wells	Flow and Depth to Water	Continuous	Alluvium and carbonate	Measure well field production, individual well response to pumping stress, and drawdown progression in wellfield
	GMI-RWX-228T (Mine Well Set)	Depth to Water	Continuous	Alluvium	Measure drawdown progression in wellfield
	GMI-RWX-229 (Mine Well Set)	Depth to Water	Continuous	Alluvium	Measure drawdown progression in wellfield
	IGMI-MH-RWX-206 (Mine Well Set)	Depth to Water	Continuous	Alluvium	Measure drawdown progression in wellfield
	RWX -205	Depth to Water	Continuous	Alluvium	Measure drawdown progression in wellfield
					Monitor groundwater elevation change in alluvium on west side of Whistlers paired w/ MH-401 to assess connection between alluvium and bedrock aquifers; assess effect of inferred structure located to the east.
	MH-400	Depth to Water	Continuous	Alluvium	
	MH-401	Depth to Water	Continuous	Bedrock	Monitor groundwater elevation change in bedrock on west side of Whistlers

Area	Site Name(s)	Parameters	Frequency	Formation	Rationale
Kobeh Valley Groundwater					paired w/ MH-400 to assess connection between alluvium and bedrock aquifers; assess effect of inferred structure located to the west.
	MH-402	Depth to Water	Continuous	Alluvium	Monitor drawdown at east edge of Kobeh Valley.
	MH-403	Depth to Water	Continuous	Alluvium	Monitor potential drawdown in upper Roberts Creek; Sentinel.
	MH-404	Depth to Water	Continuous	Bedrock	Monitor potential drawdown in western part of Robert's Creek watershed; Sentinel.
	MH-405 (Mine Well Set)	Depth to Water	Continuous	Alluvium	Measure drawdown progression in wellfield
	MH-406 (Mine Well Set)	Depth to Water	Continuous	Alluvium	Measure drawdown progression in wellfield
	MH-407 (Mine Well Set)	Depth to Water	Continuous	Alluvium	Measure drawdown progression in wellfield
	MH-408 (Mine Well Set)	Depth to Water	Continuous	Alluvium	Measure drawdown progression in wellfield
	MH-409 (Mine Well Set)	Depth to Water	Continuous	Alluvium	Measure drawdown progression in wellfield
	MH-410 (Mine Well Set)	Depth to Water	Continuous	Alluvium	Measure drawdown progression in wellfield
	MH-411 (Mine Well Set)	Depth to Water	Continuous	Alluvium	Measure drawdown progression in wellfield
	MH-412	Depth to Water	Continuous	Alluvium	Monitor groundwater elevation change in transition zone between wellfield and pit area
	MH-413	Depth to Water	Continuous	Alluvium	Monitor groundwater elevation change in transition zone between wellfield and pit area

Area	Site Name(s)	Parameters	Frequency	Formation	Rationale
Kobeh Valley Groundwater	MH - 414 (139 N21 E49 25BBDA)	Depth to Water	Continuous	Alluvium	Monitoring of west side of KV wellfield drawdown
	MH - 415 (139 N21 E50 17BACC)	Depth to Water	Continuous	Alluvium	Monitoring of west side of KV wellfield drawdown
	MH - 416 (139 N20 E51 05CBCC)	Depth to Water	Continuous	Alluvium	Monitoring of south side of KV wellfield drawdown
	MH - 417 (139 N21 E51 36DCDB1)	Depth to Water	Continuous	Alluvium	Monitoring of southeast side of KV wellfield drawdown
	MH - 418 (139 N21 E51 24DDDB1)	Depth to Water	Continuous	Alluvium	Monitoring of southeast side of KV wellfield drawdown
	MH - 419 (139 N20 E49 23ACCB1)	Depth to Water	Continuous	Alluvium	Monitoring of drawdown between wellfield and Bean Flat phreatophytes
	MH - 420 (139 N20 E49 24ACAB)	Depth to Water	Continuous	Alluvium	Monitoring of drawdown between wellfield and Bean Flat phreatophytes
	MH - 421 (139 N21 E49 16CCBB1)	Depth to Water	Continuous	Alluvium	Monitoring of west side of KV wellfield drawdown
	RWX - 209 shallow and deep	Depth to Water	Continuous	Alluvium / Vinini	Monitoring of northwest side of KV wellfield drawdown
	MRCMW	Depth to Water	Continuous	Alluvium	Monitoring of potential drawdown in Roberts Creek watershed
	LRCMW	Depth to Water	Continuous	Alluvium	Monitoring of potential drawdown in Roberts Creek watershed
	IGMI-154	Depth to Water	Continuous	Alluvium	Pit area groundwater monitoring
	IGMI-234P	DTW and Chemistry	Continuous	Alluvium	Monitor groundwater elevation change in Whistler Range; Sentinel well
	IGMI-235P	DTW and Chemistry	Continuous	Vinini Fm	Monitor groundwater elevation change in Whistler Range; Sentinel well
	IGMI-237P	DTW and Chemistry	Continuous	Vinini Fm	Monitor groundwater elevation change in Whistler Range; Sentinel well
	TMI-B	DTW and Chemistry	Continuous	Alluvium	Monitoring of east side of KV wellfield drawdown

Area	Site Name(s)	Parameters	Frequency	Formation	Rationale
Kobeh Valley Groundwater	Atlas 1	DTW/ pressure	Continuous	Alluvium	Monitoring northwest of predicted 10 foot drawdown contour
	Bartine Ranch Well 1, 2, 3 (flowing)	DTW/pressure	Continuous	Alluvium	Assess impact of pumping on artesian flows outside predicted 10 foot drawdown contour
	Big Windmill	DTW/pressure	Continuous	Alluvium	Monitor groundwater elevation change in transition zone between wellfield and pit area
	Colby well	DTW/pressure	Continuous	Alluvium	Assess impact of pumping on artesian flows outside predicted 10 foot drawdown contour
	KV 064	DTW/pressure	Continuous	Alluvium	Assess impact of pumping on artesian flows outside predicted 10 foot drawdown contour
	Depco INC	DTW/pressure	Continuous	Alluvium	Monitoring of drawdown between wellfield and Bean Flat phreatophytes
	Etcheverry Windmill	DTW/pressure	Continuous	Alluvium	Monitoring of west side of KV wellfield drawdown
	IGMI-MH-RWX-203 T	DTW/pressure	Continuous	Alluvium	Monitor groundwater elevation change in transition zone between wellfield and pit area
	GMI-RWX-219	DTW/pressure	Continuous	Alluvium	Monitor groundwater elevation change in transition zone between wellfield and pit area
	NDWR9211R (Risi Well)	DTW/pressure	Continuous	Alluvium	Assess impact of pumping on artesian flows outside predicted 10 foot drawdown contour
	RWX- 204	DTW/pressure	Continuous	Alluvium	Monitor groundwater elevation change in transition zone between wellfield and pit area
	KFE	DTW/pressure	Continuous	Alluvium	Monitor groundwater elevation change in transition zone between wellfield and pit area
	KFW	DTW/pressure	Continuous	Alluvium	Monitoring northwest of predicted 10

Area	Site Name(s)	Parameters	Frequency	Formation	Rationale
Kobeh Valley Groundwater					foot drawdown contour
	Treasure Well	DTW/pressure	Continuous	Alluvium	Assess impact of pumping on artesian flows outside predicted 10 foot drawdown contour
	GMI-RWX-223	DTW/pressure	Continuous	Alluvium	Measure drawdown progression in wellfield
Kobeh Valley Streams	LRC (Lower Roberts Creek)	Flow Rate; Water Quality	Continuous		Potential indirect impacts to perennial streams
	URC (Upper Roberts Creek)	Flow Rate; Water Quality	Continuous		Potential indirect impacts to perennial streams
	MH 700 (Cottonwood Canyon)	Flow	Continuous		Potential indirect impacts to perennial streams
	MH 701 (Cottonwood Canyon)	Flow	Continuous		Potential indirect impacts to perennial streams
	MH 704 (West Cottonwood Canyon)	Flow	Continuous		Potential indirect impacts to perennial streams
Kobeh Valley Springs	KV-002 (Potato Canyon)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	KV-026 (Rutabaga)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts near wellfield
	KV-034 (Mud)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts near wellfield
	KV-035 (Lone Mtn)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts south of wellfield
	KV-044 (Hot)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	KV-015 (Unnamed)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	KV-016 (Unnamed)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	KV-020 (Unnamed)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	OT-6 (Unnamed)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts

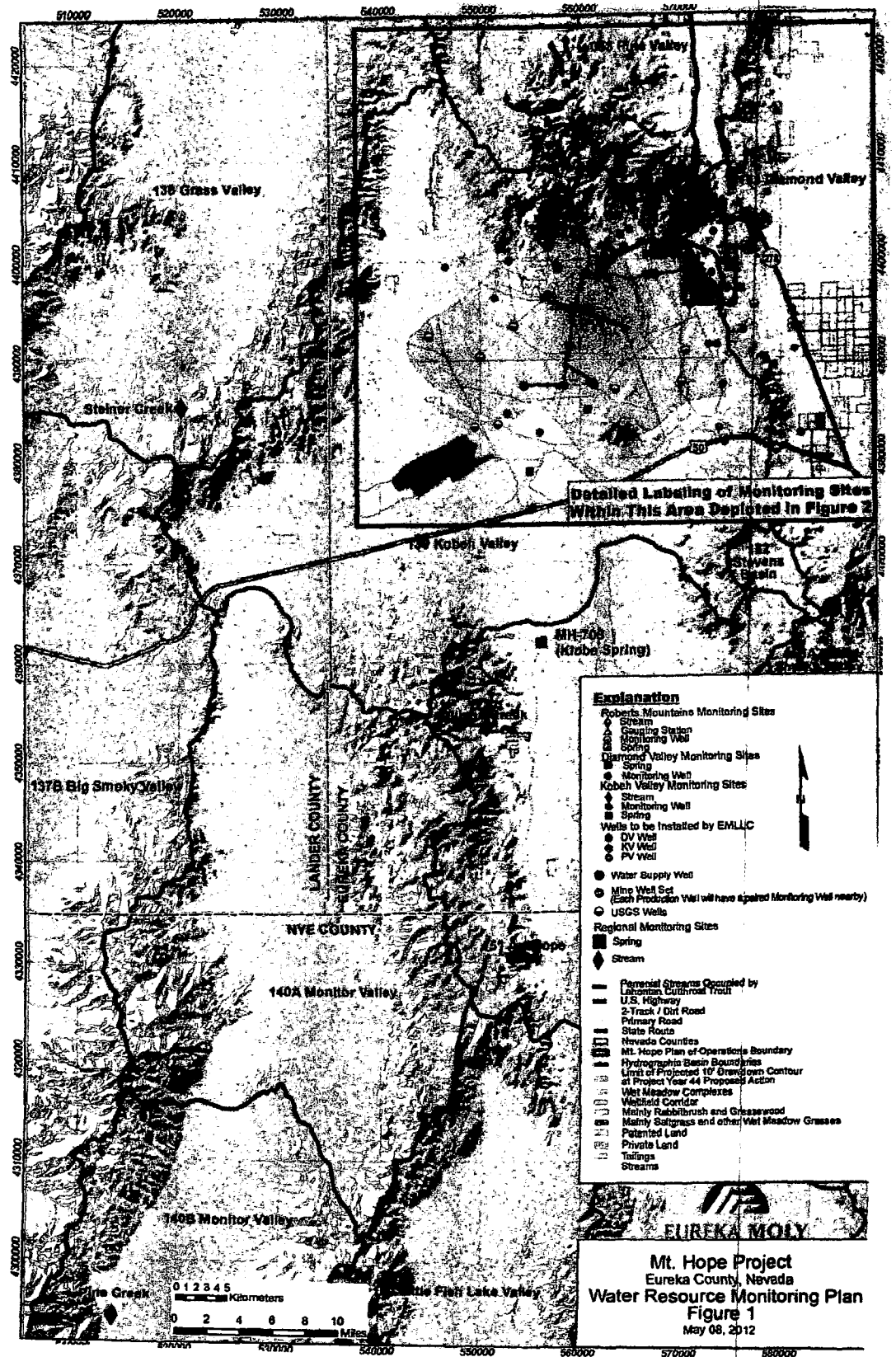
Area	Site Name(s)	Parameters	Frequency	Formation	Rationale
Kobeh Valley Springs	OT-7 (Nichols Spring)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	MH - 702 (Jack Spring)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts, west side of Roberts Mtn.
Antelope Valley Spring	MH - 703 (Klobe Spring)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts in Antelope Valley
Antelope Valley Stream	Allison Creek	Flow, Photograph	Continuous		Potential indirect impacts to perennial streams
Grass Valley Stream	Steiner Creek	Flow, Photograph	Continuous		Potential indirect impacts to perennial streams
Pine Valley Springs	PV-059 (Dry Creek headwater spring)	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	PV-060	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	PV-061	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	PV-062	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	PV-063	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	PV-064	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	PV-065	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	OT-2	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	OT-3	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	OT-5	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
	OT-10A	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts

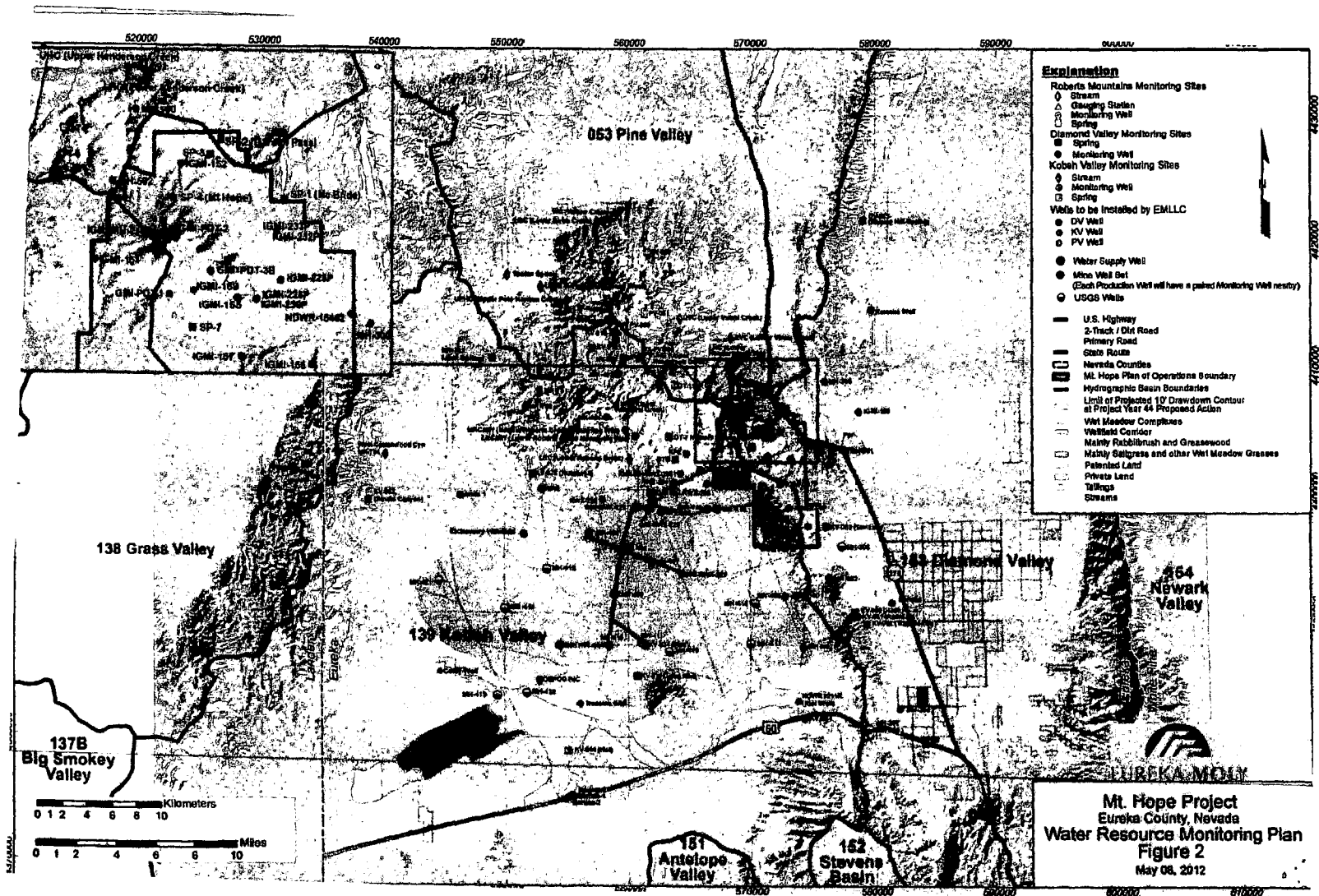
Area	Site Name(s)	Parameters	Frequency	Formation	Rationale
Pine Valley Springs	OT-11	Flow, Photograph	Quarterly		Monitor potential indirect spring impacts
Pine Valley Streams	LBC (Lower Birch Cr.)	Flow, Photograph	Continuous		Potential indirect impacts to perennial streams
	LHC (Lower Henderson Cr.)	Flow, Photograph	Continuous		Potential indirect impacts to perennial streams
	UHC (Upper Henderson Cr.)	Flow, Photograph	Continuous		Potential indirect impacts to perennial streams
	LPHC (Lower Pete Hansen Cr.)	Flow, Photograph	Continuous		Potential indirect impacts to perennial streams
	UPHC (Upper Pete Hansen Cr.)	Flow, Photograph	Continuous		Potential indirect impacts to perennial streams
	Tonkin Springs	Flow, Photograph	Continuous		Potential indirect impacts to perennial streams
	LVC (Lower Vinini)	Flow, Photograph	Continuous		Potential indirect impacts to perennial streams
	UVC (Upper Vinini Cr.)	Flow, Photograph	Continuous		Potential indirect impacts to perennial streams
	WC (Willow Cr.)	Flow, Photograph	Continuous		Potential indirect impacts to perennial streams
Pine Valley Groundwater	MH-500	Depth to Water	Continuous	Bedrock	Sentinel well in mountain block south of Henderson Creek
	MH-501	Depth to Water	Continuous	Alluvium	Henderson Creek groundwater elevations
	MH-502	Depth to Water	Continuous	Bedrock	Sentinel well in mountain block east of springs in upper Henderson Creek

Table 2 - Biological and Meteorological Monitoring

Area	Site Name(s)	Parameters	Frequency
Wet Meadow Complexes in Roberts Mountains	Three to five vegetation transects in each of the WMC. Locations to include areas where phreatophytic and riparian vegetation transitions to upland vegetation and sites within the core of the WMC	Species composition, species richness, and plant cover	Semi-Annually (May and July)
Phreatophytic vegetation in lower Koebe Valley	Three to five vegetation transects in phreatophyte vegetation communities. Locations to include areas where phreatophytes transition to upland communities and sites within the core of the phreatophyte vegetation community.	Species composition, species richness, and plant cover	Transects - Semi-Annually (April and June)
Phreatophytic and riparian vegetation in lower Roberts Creek	Three to five vegetation transects in the watershed. Locations to include areas where phreatophytic and riparian vegetation transitions to upland vegetation and sites within the core of the phreatophytic and riparian vegetation	Species composition, species richness, and plant cover	Transects - Semi-Annually (April; June)
Phreatophytic and riparian vegetation in Henderson Creek	Three to five vegetation transects in the watershed. Locations to include areas where phreatophytic and riparian vegetation transitions to upland vegetation and sites within the core of the phreatophytic and riparian vegetation	Species composition, species richness, and plant cover	Transects - Semi-Annually (April; June)
Roberts Mountain	Not applicable	Remote sensing (Aerial photography or satellite imagery)	Initially for entire mountain; Every two years for riparian areas
Streams in Roberts Mountains	Roberts Creek, Vinini Creek, Henderson Creek	Macro-invertebrate monitoring	Annually (late summer/early fall base flow)
Mine site	Existing Mt Hope met station	Temperature, precipitation, humidity,	Hourly

Area	Site Name(s)	Parameters	Frequency
		wind speed and wind direction	
Roberts Mountains	Minimum of 3 high-altitude sites in Roberts Mountains, locations to be determined.	Precipitation	To be determined





ORIGINAL

NO. _____

FILED

MAY 23 2013

Eureka County Clerk

By *Heena M. Cantello*

Ross E. de Lipkau, NSB No. 1628
John R. Zimmerman, NSB No. 9729
PARSONS BEHLE & LATIMER
50 West Liberty Street, Suite 750
Reno, NV 89501
Ph: 775.323.1601
Em: rdelipkau@parsonsbehle.com

Francis M. Wikstrom, *Pro Hac Vice*
UT Bar No. 3462
201 South Main Street; Suite 1800
Salt Lake City, UT 84111
Ph: 801.532.1234
Em: fwikstrom@parsonsbehle.com
ecf@parsonsbehle.com

Attorneys for Intervenor

KOBEH VALLEY RANCH, LLC

**IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF EUREKA**

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

Petitioners,

v.

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

Respondent.

KOBEH VALLEY RANCH, LLC,

Intervenor.

Case No.: CV1207-178

Dept. No.: 2

**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND JUDGMENT**

1 PLEASE TAKE NOTICE that on May 17, 2013, the Court entered its Findings of Fact,
2 Conclusions of Law, and Judgment in the above-entitled action.


3 A copy of the Order is attached hereto as Exhibit 1.

4 **AFFIRMATION**

5 The undersigned hereby affirms that this document does not contain a social security
6 number.

7 Dated: May 21, 2013.

8 PARSONS BEHLE & LATIMER

9 By: 
10 Ross E. de Lipkau, NV Bar No. 1628
11 John R. Zimmerman, NV Bar No. 9729
12 50 W. Liberty Street; Suite 750
13 Reno, NV 89501
14 Ph: 775.323.1601
15 Em: rdelipkau@parsonsbehle.com
16 Em: jzimmerman@parsonsbehle.com

17 Francis M. Wikstrom, *Pro Hac Vice*
18 UT Bar No. 3462
19 201 South Main Street; Suite 1800
20 Salt Lake City, UT 84111
21 Ph: 801.532.1234
22 Em: fwikstrom@parsonsbehle.com
23 ecf@parsonsbehle.com

24 Attorneys for Kobeh Valley Ranch
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Parsons Behle &
3 Latimer, and that on this 21 day of May, 2013, I served a true and correct copy of the
4 foregoing document, **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF**
5 **LAW, AND JUDGMENT**, by hand delivery and by U.S. Mail, at Reno, Nevada, in a sealed
6 envelope, with first-class postage fully prepaid and addressed as follows:

7 Bryan L. Stockton, Esq.
8 Senior Deputy Attorney General
9 NEVADA ATTORNEY GENERAL'S OFFICE
10 100 North Carson Street
11 Carson City NV 89701
12 Courtesy Email: bstockton@ag.nv.gov

By U.S. Mail Only

Attorneys for Nevada State Engineer

13 Therese A. Ure, Esq.
14 SCHROEDER LAW OFFICES, P.C.
15 440 Marsh Avenue
16 Reno, NV 89509
17 Courtesy Email: therese@water-law.com

By Hand Delivery Only

18 *Attorneys for Etcheverry Family, Kenneth*
19 *F. Benson and Diamond Cattle Company,*
20 *LLC*

21 
22 _____
23 Employee of Parsons Behle & Latimer
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INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Document</u>	<u>Pages</u>
1	Findings of Fact, Conclusions of Law, and Judgment	17

Exhibit 1

Exhibit 1

Case No: CV1207-178

Dept. No: 2

ORIGINAL

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF EUREKA

MICHEL AND MARGARET ANN
ETCHEVERRY FAMILY, LP, a
Nevada Registered Foreign Limited
Partnership; DIAMOND CATTLE
COMPANY, LLC, a Nevada Limited
Liability Company; and KENNETH F.
BENSON, an individual,

Petitioners,

-vs-

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

Respondent.

KOBEH VALLEY RANCH, LLC.

Intervenor.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND JUDGMENT

THIS MATTER came on for hearing before this Court on the Petition for Judicial Review filed by Petitioners Michel and Margaret Ann Etcheverry Family, LP a Nevada registered foreign limited partnership, Diamond Cattle Company, LLC, a Nevada limited liability company, and Kenneth F. Benson, an individual (hereafter "Benson-Etcheverry") on July 5, 2012.

1 The case was fully briefed and oral argument was heard on April 15, 2013 in Eureka District
2 Court. Benson-Etcheverry are represented by Laura A. Schroeder, Esq. and Therese A. Ure, Esq.;
3 Respondent, State Engineer of Nevada, Office of the State Engineer, Division of Water Resources,
4 Department of Conservation and Natural Resources (hereinafter "State Engineer") are represented by
5 Attorney General Catherine Cortez Masto and Senior Deputy Attorney General Bryan L. Stockton,
6 Esq.; and Respondent in Intervention, Kobeh Valley Ranch, LLC (hereinafter "KVR") is represented
7 by Francis M. Wikstrom, Esq., Ross E. de Lipkau, Esq., and John R. Zimmerman, Esq.

8 The Court having reviewed the records on appeal¹, and this Court's prior Order dated June 13,
9 2012 denying the petitions for judicial review of State Engineer Ruling 6127, and having considered
10 the argument of the parties, the applicable law and findings of fact by the State Engineer, and all
11 pleadings and papers on file in this matter, hereby makes the following findings of fact, conclusions
12 of law, and judgment.

13 **FACTS AND PROCEDURAL HISTORY**

14 On July 15, 2011, the State Engineer issued Ruling 6127, which granted KVR 11,300 acre-
15 feet annually (afa) of groundwater rights to be used for mining purposes for the Mt. Hope Project.
16 Approximately 95% of the groundwater needed for the Project will be supplied by production wells
17 in the Kobeh Valley hydrographic basin.²

18 In Ruling 6127, the State Engineer determined that existing water rights that could potentially
19 be impacted by KVR's pumping are those that exist on the valley floor of Kobeh Valley and are
20 within the predicted water level drawdown area.³ The State Engineer specifically found, however,
21 that "because the groundwater flow model is only an approximation of a complex and partially
22

23 ¹ The record in this case includes the record on appeal from the first State Engineer hearings filed in
24 the prior appeals of Eureka County, Tim Halpin, Eureka Producers' Cooperative, and Cedar Ranches, LLC in
25 2009 under cases CV 0904-122 and -123. The record on appeal from these cases is identified herein as
26 "2009 R" or "2009 R. Tr. Vol. ___ page:line" for transcript citations. The record also includes the record on
27 appeal from the second State Engineer hearings filed in the prior appeals of Eureka County, Conley Land &
28 Livestock, LLC, Lloyd Morrison, and Benson-Etcheverry under cases CV-1108-155; -156; -157; -164; -165;
and -170. The record on appeal from these cases, dated October 27, 2011, is identified herein as "R" or
"R. page:line" for transcript citations. The records on appeal filed in this case are identified as follows: State
Engineer Record on Appeal "SE ROA;" State Engineer Supplemental Record on Appeal "SUP SE ROA;" and
Benson-Etcheverry's Supplemental Record on Appeal "PSROA."

² R. 104:23-25, 105:1-2, 106:1-25, 107:1-9, 1079.

³ PSROA 22.

1 understood flow system, the estimates of interbasin flow and drawdown cannot be considered
2 absolute values.”⁴ Accordingly, the State Engineer conditioned his approval of KVR’s applications
3 on the submission of a monitoring, management, and mitigation plan (3M Plan), which he required to
4 be prepared in cooperation with Eureka County and to be approved by the State Engineer prior to
5 pumping any groundwater.⁵ This Court previously analyzed the State Engineer’s decision in this
6 regard by an Order dated June 13, 2012 and concluded that the decision was reasonable, within the
7 State Engineer’s expertise, and supported by substantial evidence.⁶

8 The approved 3M Plan was the result of numerous meetings between KVR, Eureka County,
9 and the State Engineer and went through several revisions.⁷ The public, including Benson and
10 Etcheverry, had an opportunity to comment on a draft of the plan and Eureka County received input
11 from its Natural Resource Department.⁸ The State Engineer approved the 3M Plan with the caveat
12 that it was subject to change based on future need and monitoring results and his continuing authority
13 over the Plan.⁹

14 The purpose of the 3M Plan is to assist the State Engineer with managing KVR’s groundwater
15 use to prevent conflicts with existing water rights.¹⁰ A conflict occurs when a senior water right
16 cannot be used because of water use by a junior water appropriator.¹¹ The impacts from KVR’s
17 groundwater pumping in Kobeh Valley are predicted to manifest over a period of years and the
18 monitoring element of the 3M Plan will provide an early warning of where impacts will appear and
19 allow time to implement specific and effective mitigation measures. If monitoring shows that KVR’s
20 groundwater pumping may impact an existing senior water right holder, including domestic well
21 owners, then the 3M Plan requires KVR to mitigate the effect by ensuring that the existing right has
22
23

24 ⁴ PSROA 19.

25 ⁵ PSROA 42.

26 ⁶ PSROA 186.

27 ⁷ SE ROA 54-167, 178, 181, 195-96, 204, 207-08, 214, 227-41, 295-335, 354-76. SUP SE ROA 13;
28 SE ROA 5-30, SE ROA 2; SUP SE ROA 14.

⁸ SE ROA 181, 195-96, 204, 207-08, 214, 227-41.

⁹ SUP SE ROA 27-28.

¹⁰ SE ROA 5.

¹¹ State Engineer Br. p. 1:26-27.

1 full beneficial use of the water to which it is entitled according to their specific water right in a
2 manner that is feasible, reasonable, timely, and effective—all at KVR’s expense.¹²

3 The Plan allows for local stakeholders and potentially affected water right holders to
4 participate in the monitoring, management, and mitigation process and work through issues before
5 they become a problem that requires action by the State Engineer. The 3M Plan is intended to be,
6 and will be, an evolving and dynamic resource to the State Engineer and stakeholders for responsible
7 management of water. The 3M Plan creates a water advisory committee (“WAC”) and technical
8 advisory committee (“TAC”). The role of the WAC is to establish and carry out 3M policy. The role
9 of the TAC is to provide technical scientific expertise necessary for collection, evaluation and
10 analysis of data. The State Engineer, Eureka County, and KVR will be the initial members of the
11 WAC and members from the two Diamond Valley farming associations¹³ and a Kobeh Valley
12 rancher must be invited to join as well. The TAC will be appointed by the WAC, which is required
13 to appoint people who have a professional level of technical or scientific expertise in land
14 management, natural resources, water resources, or related fields.¹⁴

15 The TAC has numerous responsibilities under the 3M Plan.¹⁵ The TAC must review the
16 initial monitoring requirements of the 3M Plan within thirty days after WAC appointment and
17 recommend to the WAC whether KVR should monitor additional water sources or modify its
18 monitoring of the currently-identified sources.¹⁶ Any modifications recommended and agreed to by
19 the WAC, however, will require State Engineer approval.¹⁷ The TAC will also meet as soon as
20 possible after any action criteria are triggered, and not less than twice annually or on a schedule
21 required by the WAC.¹⁸

22 The WAC will provide a forum for water right holders and local stakeholders to share
23 information and discuss monitoring data, analyses, technical studies, and mitigation and management
24

25 ¹² SE ROA 14.

26 ¹³ The two associations are the Eureka Producers’ Cooperative (EPC) and the Diamond Valley Natural
Resources Protection and Conservation Association (DNRPCA).

27 ¹⁴ SE ROA 8.

28 ¹⁵ SE ROA 8.

¹⁶ SE ROA 8.

¹⁷ SE ROA 11.

¹⁸ SE ROA 8, 10.

1 actions.¹⁹ The WAC may recommend changes to the 3M Plan, but any modification must be
2 approved by the State Engineer because he retains sole authority over the Plan.²⁰ The WAC must
3 hold an annual meeting open to the public to review the prior year's monitoring data and
4 management and mitigation measures.²¹

5 The WAC will set the so-called "action criteria" for monitored water sources (e.g. water table
6 levels and stream or spring flow rates) that will trigger a response from the WAC and TAC if they are
7 exceeded.²² The action criteria will be recommended by the TAC based on available data and
8 analyses and will be set by the WAC at levels that will provide advance warning of potential impacts
9 so that management or mitigation measures can be employed to prevent or mitigate them.²³ If any
10 WAC member disagrees with an action criterion, then the 3M Plan requires the issue to be resolved
11 by the State Engineer and also states that any party to the 3M Plan may petition the State Engineer to
12 consider any issue.²⁴ The State Engineer retains his authority to review the action criteria after they
13 are set and to revise them if he deems it appropriate.²⁵

14 The TAC and WAC are both involved in the review process under the 3M Plan. As
15 monitoring data is collected, the TAC must review it to determine if action criteria have been
16 exceeded.²⁶ And, if an action criterion is exceeded, then the WAC, with assistance from the TAC,
17 will determine whether KVR's pumping caused the levels to be exceeded.²⁷ If KVR's pumping is
18 causing an impact, then the WAC determines what management or mitigation measures should be
19 recommended to the State Engineer to protect existing rights from adverse impacts.²⁸ The State
20 Engineer then reviews the WAC's recommendations and determines which management or
21 mitigation measures to require of KVR.²⁹ The TAC reviews the effectiveness of any mitigation
22

23 ¹⁹ SE ROA 7-8.

24 ²⁰ SE ROA 11.

25 ²¹ SE ROA 7.

26 ²² SE ROA 7-8, 10.

27 ²³ SE ROA 5, 7-10.

28 ²⁴ SE ROA 10-11.

29 ²⁵ SE ROA 11, SUP SE ROA 27.

²⁶ SE ROA 9.

²⁷ SE ROA 9-10.

²⁸ SE ROA 10.

²⁹ SE ROA 10-11.

1 measures and reports its findings to the WAC.³⁰ Because KVR is required to mitigate any adverse
2 impact to existing water rights, the standard for effectiveness is whether the specific mitigation
3 method prevented or mitigated the adverse impact to the existing water right so that a conflict does
4 not occur.

5 The State Engineer retains exclusive control over the 3M Plan and has not delegated any of
6 his authority. The 3M Plan states that all decisions made by the WAC “will be subject to the
7 jurisdiction and authority of the [State Engineer].”³¹ The WAC may recommend certain mitigation or
8 management actions, but the State Engineer makes the final decision.³² Additionally, the State
9 Engineer, with or without a recommendation, may make any order he deems necessary and
10 appropriate based on data he receives under the 3M Plan or from other sources. Also, any existing
11 water right holder may seek relief directly from the State Engineer if he believes that KVR’s
12 pumping will cause or has caused an adverse impact on his water rights and any State Engineer
13 decision is subject to judicial review. The 3M Plan clearly states that it does not limit or change the
14 State Engineer’s authority and KVR’s permits provide that the State Engineer “retains the right to
15 regulate the use of the water herein granted at any and all times.”³³

16 The 3M Plan is a condition of KVR’s permits, and therefore, only KVR and its successors are
17 bound by it.³⁴ Any failure to comply with the 3M Plan will be a violation of KVR’s permits and the
18 State Engineer will be able to enforce the 3M Plan requirements or order KVR to stop pumping. If
19 KVR disobeys the State Engineer’s order to comply with the 3M Plan or stop pumping, then the State
20 Engineer may seek injunctive relief from this Court under NRS 533.482 and levy fines under NRS
21 533.481. Existing water right holders may take advantage of the procedure described in the 3M Plan,
22 but they are not required to do so. Benson-Etcheverry³⁵ may participate in the 3M Plan process by
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25 ³⁰ SE ROA 9.

26 ³¹ SE ROA 11.

27 ³² SE ROA 10-11.

28 ³³ SE ROA 11, SUP SE ROA 27, R. 438.

³⁴ SE ROA 5.

³⁵ Martin Etcheverry represents the Etcheverry Family LP and Diamond Cattle Company and is a member of the WAC.

1 attending meetings and receiving information developed through the 3M Plan, but they are not
2 obligated to do so.

3 DISCUSSION

4 I. Standard of Review

5 The State Engineer is appointed by and is responsible to the Director of the Nevada
6 Department of Conservation and Natural Resources and performs duties prescribed by law and by the
7 Director.³⁶ The State Engineer duties include administering the appropriation and management of
8 Nevada's public water, both surface and groundwater, under NRS Chapters 533 and 534.

9 Nevada law allows every person aggrieved by an order or decision of the State Engineer to
10 have that matter reviewed on appeal.³⁷ On appeal, the State Engineer's decision is presumed to be
11 correct and the burden of proof to show otherwise is on the party challenging it.³⁸ As to questions of
12 fact, a court must limit its determination to whether substantial evidence in the record supports the
13 State Engineer's decision.³⁹ Substantial evidence is defined as "that which a reasonable mind might
14 accept as adequate to support a conclusion."⁴⁰

15 Unless an administrative agency decision is arbitrary or capricious it should not be disturbed
16 on appeal.⁴¹ A decision is regarded as arbitrary and capricious if it is "baseless or despotic" or
17 evidences "a sudden turn of mind without apparent motive; a freak, whim, mere fancy."⁴² In
18 reviewing a State Engineer decision for an abuse of discretion, the court's function is "to review the
19 evidence upon which the Engineer based his decision and ascertain whether that evidence supports
20 the order" and, if so, the court is bound to sustain it.⁴³

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23 ³⁶ NRS 532.020, 532.110.

³⁷ NRS 533.450(1).

24 ³⁸ NRS 533.450(10); *State Eng'r v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 205 (1991); *Town of Eureka v. State Eng'r*, 108 Nev. 163, 165, 826 P.2d 948, 949 (1992).

25 ³⁹ *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979) (citing *No. Las Vegas v. Pub. Serv. Comm'n.*, 83 Nev. 278, 429 P.2d 66 (1967)).

26 ⁴⁰ *City of Reno v. Estate of Wells*, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (1994).

⁴¹ *U.S. v. Alpine Land & Reservoir Co.*, 919 F. Supp. 1470, 1474 (D. Nev. 1996).

27 ⁴² *Estate of Wells*, 110 Nev. at 1222, 885 P.2d at 548 (citing *City Council v. Irvine*, 102 Nev. 277, 278-79, 721 P.2d 371, 372 (1986)).

28 ⁴³ *Office of State Eng'r, Div. of Water Res. v. Curtis Park Manor Water Users Ass'n*, 101 Nev. 30, 32, 692 P.2d 495, 497 (1985) (citing *Gandy v. State ex rel. Div. Investigation*, 96 Nev. 281, 283, 607 P.2d 581, 582 (1980)).

1 Because the State Engineer is authorized by Nevada law to decide and regulate the
2 appropriation of water, “that office has the implied power to construe the State’s water law provisions
3 and great deference should be given to the State Engineer’s interpretation when it
4 is within the language of those provisions.”⁴⁴ Similarly, the State Engineer’s conclusions of law, to
5 the extent they are closely related to his view of the facts, are entitled to deference and must not be
6 disturbed if they are supported by substantial evidence.⁴⁵ A reviewing court, however, is not
7 compelled to defer to the State Engineer’s interpretation of a regulation or statute if the plain
8 language of the provision requires an alternative interpretation.⁴⁶

9 II. Benson-Etcheverry’s Assignment of Error

10 A. Whether The State Engineer’s Approval Of The 3M Plan Is A Delegation Of 11 Authority.

12 Benson-Etcheverry asserts that the State Engineer delegated his quasi-legislative and quasi-
13 judicial authority to the committees created under the 3M Plan. This assertion, however, ignores the
14 plain language of the 3M Plan, which states that the committees are intended to assist the State
15 Engineer in managing KVR’s groundwater pumping to prevent adverse impacts to existing water
16 rights.⁴⁷ Further, as their names imply, the committees are advisory only and the 3M Plan does not
17 give them legislative or adjudicatory authority. The Court concludes that the State Engineer is not
18 prohibited from receiving input and advice from local stakeholders and those with technical expertise
19 in order to better manage water resources in a particular area. Receiving advice from a committee, as
20 the State Engineer has done here, increases the integrity and quality of such advice. This is especially
21 so where, as is the case here, the input and advice are provided by a technical committee.

22 Further, the State Engineer retains exclusive control over the 3M Plan and it does not change
23 or limit his authority to manage water resources in Nevada. First, a member of the State Engineer’s

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25 ⁴⁴ *Anderson Family Assocs. v. Ricci*, 124 Nev. 182, 186, 179 P.3d 1201, 1203 (2008) (recognizing that
26 the State Engineer “has the implied power to construe the state’s water law provisions and great deference
27 should be given to the State Engineer’s interpretation when it is within the language of those provisions”); *U.S.*
v. State Eng’r, 117 Nev. 585, 589, 27 P.3d 51, 53 (2001); *Pyramid Lake Paiute Tribe v. Washoe Cnty.*, 112
Nev. 743, 747-48, 918 P.2d 697, 700 (1996); *State v. Morros*, 104 Nev. 709, 713, 766 P.2d 263, 266 (1988).

⁴⁵ *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986).

⁴⁶ *Anderson Family Assocs. v. Ricci*, 124 Nev. at 186, 179 P.3d at 1203.

⁴⁷ SE ROA 5-6.

1 staff will serve on the WAC and will be invited to chair the committee.⁴⁸ Second, any changes to the
2 3M Plan or recommended management and mitigation actions from the committees require State
3 Engineer approval.⁴⁹ Therefore, even though the TAC is required to review KVR's monitoring
4 obligations and recommend necessary changes to the WAC, all changes must be approved by the
5 State Engineer.⁵⁰

6 The WAC will set action criteria levels to provide advance warning of potential adverse
7 impacts, all subject to State Engineer oversight.⁵¹ If the WAC does not agree on any action criterion,
8 then the State Engineer will decide the issue.⁵² If the WAC determines that KVR triggered any
9 action criteria, then the State Engineer decides what management or mitigation response is necessary
10 to prevent the potential impact from adversely affecting existing rights.⁵³ The State Engineer is not
11 limited to the WAC's recommended management or mitigation measures and may independently
12 require any other measures, whether or not they are currently listed in the 3M Plan.⁵⁴ And if any
13 existing water right holders believe that KVR's groundwater pumping will cause or has caused an
14 adverse impact to their rights, then the 3M Plan does not prevent them from seeking relief directly
15 from the State Engineer without going to the WAC.

16 Benson-Etcheverry argue that the State Engineer has delegated adjudicative authority by
17 approving the 3M Plan. By its specific terms, the 3M Plan is an express condition of the water rights
18 granted under the Ruling, and, therefore, does not bind anyone other than KVR.⁵⁵ The 3M Plan does
19 not create a new adjudicatory process or require holders of existing water rights to submit their
20 complaints to the WAC for adjudication or to waive any available legal remedy. The 3M Plan does
21 not limit the State Engineer's authority, and, therefore, he will have the ability to consider any
22 complaint by an existing water right holder regarding KVR's use of water. The State Engineer may
23 order any action necessary based on the facts and circumstances of each case. Therefore, any water
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25 ⁴⁸ SE ROA 7.

26 ⁴⁹ SE ROA 11.

⁵⁰ SE ROA 11.

⁵¹ SE ROA 7-8, 10.

⁵² SE ROA 10.

⁵³ SE ROA 11.

⁵⁴ SE ROA 16.

⁵⁵ SE ROA 5.

1 right holder who believes that his water rights have been impacted by KVR's use of groundwater
2 may petition the State Engineer to investigate the matter and can seek judicial relief of the State
3 Engineer's decision if he is dissatisfied. The 3M Plan does not limit or modify any water right
4 holder's legal rights to such remedies.

5 Because the monitoring, management, and mitigation related to KVR's use of water is at all
6 times subject to the State Engineer's review and control, Benson-Etcheverry's argument that he has
7 delegated his authority fails. Therefore, the Court concludes that the 3M Plan does not delegate
8 authority because the committees are advisory only and the State Engineer retains full and exclusive
9 control over the Plan and KVR's water use.

10 **B. Whether The State Engineer's Approval Of The 3M Plan Is Rulemaking.**

11 Benson-Etcheverry argue that the 3M Plan creates a new administrative process for
12 groundwater regulation and provides remedies for conflicts with existing water rights that were not
13 promulgated under the State Engineer's rulemaking authority and that are contrary to his statutory
14 duties under NRS 534.110(6) and (8).⁵⁶ Rulemaking occurs where an agency "promulgates, amends,
15 or repeals "[a]n agency rule, standard, directive or statement of general applicability which
16 effectuates or interprets law or policy, or describes the organization, procedure or practice
17 requirements of any agency."⁵⁷ The 3M Plan is designed to assist the State Engineer with collecting
18 and analyzing data regarding the effects of KVR's water use for the Mt. Hope Project and applies
19 only to KVR's water permits and pumping. Therefore, the 3M Plan does not authorize or require the
20 WAC to make regulations of general applicability and any determination by the WAC will not bind
21 other water right holders in Kobeh Valley or the surrounding basins.

22 Benson-Etcheverry also assert that the 3M Plan transfers the State Engineer's authority under
23 NRS 534.110(6) and (8) to the WAC and TAC. NRS 534.110(6) and (8) provide:

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25 (6). . . [T]he State Engineer shall conduct investigations in any basin or
26 portion thereof where it appears that the average annual replenishment
to the groundwater supply may not be adequate for the needs of all

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28 ⁵⁶ Br. pp. 18-19.

⁵⁷ *Labor Com'r of State of Nevada v. Littlefield*, 123 Nev. 35, 39-40, 153 P.3d 26, 29 (2007) (quoting
NRS 233B.038(1)(a)-(c)).

1 permittees and all vested-right claimants, and if the findings of the
2 State Engineer so indicate, the State Engineer may order that
3 withdrawals, including, without limitation, withdrawals from domestic
4 wells, be restricted to conform to priority rights.

5 (8) In any basin or portion thereof in the State designated by the State
6 Engineer, the State Engineer may restrict drilling of wells in any
7 portion thereof if the State Engineer determines that additional wells
8 would cause an undue interference with existing wells.

9 The 3M Plan does not give the WAC or TAC the authority to regulate Koebe Valley, or any other
10 basin, based on priority under NRS 534.110(6). Similarly, the 3M Plan does not empower the WAC
11 or TAC to issue orders restricting the drilling of new wells in any basin based on undue interference
12 under NRS 534.110(8). Therefore, the Court concludes that the State Engineer's approval of the 3M
13 Plan does not violate NRS 534.110(6) or (8).

14 Lastly, Benson-Etcheverry point to Section 5(G) of the 3M Plan, which states that any
15 decisions made by the WAC shall be by unanimous vote, that the WAC may jointly agree to conduct
16 additional data collection and/or data review and analyses directed at resolving the different
17 interpretations or opinions, and that if unanimity is not achieved the WAC may refer the issue to the
18 State Engineer for final determination. ⁵⁸ This language does not preclude the State Engineer from
19 investigating a potential impact at any time, or from taking any other action within his authority. The
20 unanimity requirement is a limitation on the WAC, not on the State Engineer. If the WAC fails to
21 make recommendations regarding a potential impact, any existing water right holder can complain to
22 the State Engineer and the State Engineer can order KVR to mitigate or stop pumping at any time or
23 undertake any other mitigation measure he deems necessary to protect existing water rights.

24 **C. Express Conditions Under NRS 534.110.**

25 Benson-Etcheverry next contends that the 3M Plan does not contain express conditions as
26 required by NRS 534.110(5).⁵⁹ They argue that the 3M Plan will cause long delays if existing water

27 ⁵⁸ SE ROA 10.

28 ⁵⁹ Benson-Etcheverry also assert that the Ruling does not contain express conditions. This issue was
raised in Benson-Etcheverry's prior petition for judicial review, which this Court denied.

rights must wait for the advisory committees to act and that the State Engineer should adopt specific mitigation measures before the nature and extent of any conflicts are known. The 3M Plan, however, is proactive, not reactive, in that it (1) requires extensive monitoring of numerous water resources, (2) advises the State Engineer in advance, through the WAC and TAC, of potential impacts, and (3) sets up a process to respond to potential impacts before they cause adverse effects to existing water rights.

NRS 534.110(5) provides:

[t]his section does not prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as any protectable interests in existing domestic wells as set forth in NRS 533.024 and the rights of holders of existing appropriations can be satisfied under such express conditions.

Under the 3M Plan, KVR must monitor water conditions in numerous creeks, springs, and wells “to provide the necessary data to assess the response of the aquifer(s) to the stress of water resource exploitation, provide an early warning capability, and provide safeguards for responsible management of water.”⁶⁰ KVR must monitor water levels in 89 wells, 59 of which are in Kobeh Valley.⁶¹ These wells include KVR’s production and test wells, USGS wells, and “sentinel” wells, which will be located to provide early indication of drawdown propagation towards sensitive or important resources.⁶² The static water level in all wells will be measured continuously.⁶³ KVR must monitor the flow of several creeks in the Roberts Mountains and in the Pine Valley and Kobeh Valley hydrographic basins.⁶⁴ KVR must monitor 34 springs in the Diamond Valley, Kobeh Valley and Pine Valley hydrographic basins.⁶⁵ Measurements will be taken continuously for streams and quarterly for springs.⁶⁶ Monitoring will also include several biological and meteorological factors for springs and streams in Kobeh Valley, Roberts Mountain, and at the mine site.⁶⁷

⁶⁰ SE ROE 5.

⁶¹ SE ROA 18-26.

⁶² SE ROA 12.

⁶³ SE ROA 18-26.

⁶⁴ SE ROA 24-26.

⁶⁵ SE ROA 19-20, 24-26.

⁶⁶ SE ROA 19-26.

⁶⁷ SE ROA 27-28.

1 In addition, the 3M Plan describes a process for responding to the effects of KVR's pumping
2 based on monitoring results in order to ensure that existing rights are satisfied. The 3M Plan requires
3 the establishment of quantitative thresholds or "action criteria" which, if triggered, serve as early
4 warnings of potential impacts to existing rights.⁶⁸ These thresholds will be set at appropriate levels to
5 provide advance warning of potential impacts to existing water rights that might result from KVR's
6 pumping.⁶⁹ When any threshold is reached, the TAC must meet as soon as possible to assess whether
7 the threshold was caused by KVR's pumping and report its findings to the WAC.⁷⁰ If KVR's
8 pumping caused an action criterion to be exceeded, the WAC must recommend appropriate
9 mitigation or management measures to the State Engineer that it believes will protect existing
10 rights.⁷¹ Therefore, the 3M Plan requires action criteria to be set at levels to detect any effects of
11 pumping that warn of a potential adverse impact.⁷² This early warning system ensures that KVR, the
12 State Engineer, and other 3M Plan participants will have a reasonable amount of time to respond to
13 the effects of KVR's pumping and to prevent or mitigate potential impacts from adversely affecting
14 existing water rights. Accordingly, if the effect of KVR's pumping shows that a certain water right
15 will be impacted, then the 3M Plan requires KVR to implement specific management actions or
16 mitigation measures to satisfy existing rights. The Court concludes that this process satisfies the
17 express conditions requirement of NRS 534.110(5).

18 Through his approval of the 3M Plan, the State Engineer has determined that the conditions
19 and provisions of the 3M Plan are adequate to ensure that existing rights will be satisfied. His
20 decision is supported by the 3M Plan itself since it requires KVR to carefully monitor the effects of
21 its pumping, to forecast potential impacts in cooperation with parties to the 3M, and to prevent or
22 mitigate such impacts from adversely affecting existing water rights. Although Benson-Etcheverry
23 would require the State Engineer to include express measures for mitigating existing water rights,
24 NRS 534.110(5) requires only that the State Engineer include express conditions to ensure that
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26 ⁶⁸ SE ROA 7-8, 10.

27 ⁶⁹ SE ROA 10.

28 ⁷⁰ SE ROA 10.

⁷¹ SE ROA 10.

⁷² SE ROA 7-8, 10.

1 existing water rights are satisfied. The 3M Plan is an express condition to monitor the effects of
2 KVR's pumping, to detect and identify potential impacts, and to prevent them from adversely
3 affecting existing water rights through management and mitigation measures recommended by the
4 advisory committees and ordered by the State Engineer. The Court finds that the 3M Plan contains
5 appropriate standards to protect existing water rights and concludes that the State Engineer's approval
6 of the 3M Plan is reasonable, within his area of expertise, and supported by substantial evidence in
7 the record.

8 **D. Whether The 3M Plan Complies With Ruling 6127 And NRS 533.370(2).**

9 Benson-Etcheverry argue that the 3M Plan does not ensure that existing water rights will be
10 fully satisfied, and, therefore, violates Ruling 6127 and NRS 533.370(2). They contend that the 3M
11 Plan is a plan for a plan that allows a conflict to occur before mitigation. As stated above, the 3M
12 Plan is designed to be proactive and requires action in advance of a conflict. The 3M Plan describes
13 concrete requirements of the TAC and WAC, and does not limit or change the authority of the State
14 Engineer. Under the 3M Plan, KVR must monitor numerous springs, streams, and wells to detect any
15 changes to those water sources that occur after KVR begins pumping.⁷³ This monitoring is
16 comprehensive and reasonably designed to detect potential impacts because it covers numerous water
17 sources in several hydrographic basins.⁷⁴ The Court concludes that such monitoring will allow early
18 detection of impacts so that available mitigation measures can be implemented to prevent any
19 impacts from adversely affecting existing water rights.

20 In addition, the Court concludes that the 3M Plan will not delay mitigation. If the WAC
21 determines that KVR's pumping causes action criteria exceedance, then the TAC must expeditiously
22 formulate mitigation or management measures and submit them to the WAC.⁷⁵ Because the 3M Plan
23 provides an early warning system against potential impacts, the WAC will be able to develop and
24 implement mitigation measures. The 3M Plan lists several methods to mitigate adverse impacts,
25 including drilling replacement wells, shifting pumping ratios among the production wells, or stopping
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27 ⁷³ SE ROA 5, 17-30.

28 ⁷⁴ The 3M Plan requires KVR to monitor numerous streams, springs, and wells in Kobeh Valley and in
the four surrounding basins (Diamond, Pine, Antelope, and Grass Valley hydrographic basins).⁷⁴

⁷⁶ SE ROA 15-16.

1 pumping from one or more production wells.⁷⁶ The 3M Plan also states that mitigation may include
2 any other measures agreed to by the WAC and/or required by the State Engineer.⁷⁷ The Court
3 concludes that this process will ensure that water sources are carefully monitored and that existing
4 water rights are satisfied to the full extent of their water right permit before an adverse impact occurs.

5 Lastly, Benson-Etcheverry assert that the 3M Plan allows financial compensation as a
6 substitute for satisfying existing water rights. The 3M plan states several potential mitigation
7 measures, one of which is that “Financial compensation or, if agreed upon, property (i.e., land and
8 water rights) of equal value could be purchased for replacement.” The mitigation measures listed in
9 the 3M Plan are not exclusive and any of the Plan participants can recommend, or the State Engineer
10 can independently require, other mitigation measures.⁷⁸ Additionally, the State Engineer retains
11 authority to take action with or without recommendations from the 3M Plan participants.

12 Accordingly, the Court concludes that the State Engineer’s approval of the 3M Plan complies
13 with the Ruling and NRS 533.370(2).

14 **E. Whether The 3M Plan Is Vague Or Deficient, Arbitrary And Capricious, Or An**
15 **Abuse Of Discretion.**

16 Benson-Etcheverry reasserts several contentions to support their argument that the 3M Plan is
17 vague and deficient and that the State Engineer’s decision is arbitrary and capricious or an abuse of
18 discretion. These arguments are fully addressed above in Sections A-D, above. Benson-Etcheverry
19 also disagree with this Court’s prior Order, which concluded that Nevada law does not prevent the
20 State Engineer from granting applications that may impact existing rights so long as the existing right
21 can be mitigated to prevent conflicts. These arguments have already been rejected by this Court in
22 Benson-Etcheverry’s prior appeal of the Ruling and that decision will not be disturbed in this appeal.

23 Additionally, Benson-Etcheverry asserts that because the WAC and TAC set the action
24 criteria levels, it is the committees that make the decision whether it is necessary to respond to
25 complaints by existing water right holders. As discussed above, the action criteria under the 3M Plan
26 are required to be set at levels that will detect the effects of KVR’s pumping and provide an early

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28 ⁷⁷ SE ROA 16.

⁷⁸ SE ROA 16.

1 warning of potential impacts so that the WAC and TAC can respond with recommendations to the
2 State Engineer in time to prevent the impact from occurring or, if the impacts cannot be prevented, to
3 ensure that mitigation is in place to prevent the impacts from adversely affecting existing water
4 rights. The Court concludes that the WAC and TAC are not authorized under the 3M Plan to decide
5 claims by existing water right holders against KVR. The State Engineer retains the authority to
6 decide those claims if they arise.

7 Benson-Etcheverry also contends that the 3M Plan is devoid of urgency and that the WAC
8 and TAC meet annually or bi-annually only and without regard to any reported impact to a water
9 right holder. The Court concludes that this argument lacks merit and is contrary to the plain language
10 of the 3M Plan. The 3M Plan sets forth minimum meeting requirements, but provides that the TAC
11 will meet as frequently as necessary.⁷⁹ The State Engineer may also exercise his authority and
12 require more frequent meetings by amending the 3M Plan. Additionally, if an action criterion is
13 triggered that signals a potential impact, the 3M Plan requires the TAC to meet as soon as possible to
14 investigate why the criterion was triggered.⁸⁰ And if the impact is caused by KVR, then the 3M Plan
15 requires the TAC to expeditiously develop mitigation or management measures to prevent adverse
16 impacts to existing rights.⁸¹ Finally, the WAC must ensure that mitigation is timely.⁸² This Court
17 concludes that Benson-Etcheverry's assertion that the 3M Plan is not reasonably calculated to address
18 impacts in a timely fashion is without merit.

19 Lastly, Benson-Etcheverry assert that this Court's prior order required KVR and the State
20 Engineer to conduct additional test pumping prior to approving a 3M Plan. This argument was not
21 raised in Benson-Etcheverry's Opening Brief, and therefore, has been waived.⁸³ Even if the Court
22 considered Benson-Etcheverry's assertion, it would not affect the outcome of this case because the
23 record shows that KVR conducted extensive test pumping and hydrogeological studies prior to the
24 State Engineer's Ruling and the only way to observe the aquifer's response to pumping 11,300 afa is
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26 ⁷⁹ SE ROA 8.

27 ⁸⁰ SE ROA 10.

28 ⁸¹ SE ROA 10.

⁸² SE ROA 14.

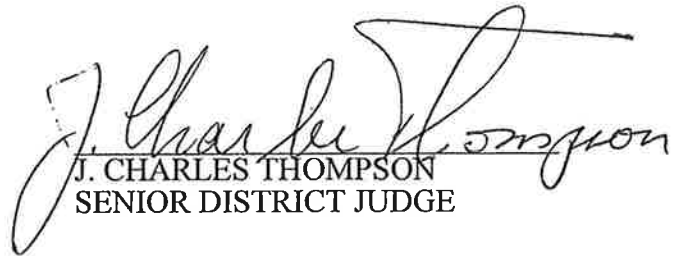
⁸³ *Bongiovi v. Sullivan*, 122 Nev. 556, 570 n. 5, 138 P.3d 433, 444 n. 5 (2006).

1 to allow pumping to begin under the permits. Further, as discussed above, the 3M Plan sets forth a
2 process by which the effects of pumping will be closely monitored and managed to ensure that
3 existing water rights are protected. The 3M Plan fully complies with this Court's prior Order dated
4 June 13, 2012.

5 The Court having considered, analyzed, discussed, and issued its findings and conclusions as
6 to the issues raised in the Petition for Judicial Review; and good cause appearing;

7 **IT IS HEREBY ORDERED** that the Petition for Judicial Review is **DENIED**

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9 DATED this 15th day of May 2013.

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12 J. CHARLES THOMPSON
13 SENIOR DISTRICT JUDGE
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Case No: CV1207-178

Dept. No: 2

ORIGINAL

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF EUREKA

MICHEL AND MARGARET ANN
ETCHEVERRY FAMILY, LP, a
Nevada Registered Foreign Limited
Partnership; DIAMOND CATTLE
COMPANY, LLC, a Nevada Limited
Liability Company; and KENNETH F.
BENSON, an individual,

Petitioners,

-vs-

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

Respondent.

KOBEH VALLEY RANCH, LLC.

Intervenor.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND JUDGMENT

THIS MATTER came on for hearing before this Court on the Petition for Judicial Review filed by Petitioners Michel and Margaret Ann Etcheverry Family, LP a Nevada registered foreign limited partnership, Diamond Cattle Company, LLC, a Nevada limited liability company, and Kenneth F. Benson, an individual (hereafter "Benson-Etcheverry") on July 5, 2012.

1 The case was fully briefed and oral argument was heard on April 15, 2013 in Eureka District
2 Court. Benson-Etcheverry are represented by Laura A. Schroeder, Esq. and Therese A. Ure, Esq.;
3 Respondent, State Engineer of Nevada, Office of the State Engineer, Division of Water Resources,
4 Department of Conservation and Natural Resources (hereinafter "State Engineer") are represented by
5 Attorney General Catherine Cortez Masto and Senior Deputy Attorney General Bryan L. Stockton,
6 Esq.; and Respondent in Intervention, Kobeh Valley Ranch, LLC (hereinafter "KVR") is represented
7 by Francis M. Wikstrom, Esq., Ross E. de Lipkau, Esq., and John R. Zimmerman, Esq.

8 The Court having reviewed the records on appeal¹, and this Court's prior Order dated June 13,
9 2012 denying the petitions for judicial review of State Engineer Ruling 6127, and having considered
10 the argument of the parties, the applicable law and findings of fact by the State Engineer, and all
11 pleadings and papers on file in this matter, hereby makes the following findings of fact, conclusions
12 of law, and judgment.

13 **FACTS AND PROCEDURAL HISTORY**

14 On July 15, 2011, the State Engineer issued Ruling 6127, which granted KVR 11,300 acre-
15 feet annually (afa) of groundwater rights to be used for mining purposes for the Mt. Hope Project.
16 Approximately 95% of the groundwater needed for the Project will be supplied by production wells
17 in the Kobeh Valley hydrographic basin.²

18 In Ruling 6127, the State Engineer determined that existing water rights that could potentially
19 be impacted by KVR's pumping are those that exist on the valley floor of Kobeh Valley and are
20 within the predicted water level drawdown area.³ The State Engineer specifically found, however,
21 that "because the groundwater flow model is only an approximation of a complex and partially
22

23 ¹ The record in this case includes the record on appeal from the first State Engineer hearings filed in
24 the prior appeals of Eureka County, Tim Halpin, Eureka Producers' Cooperative, and Cedar Ranches, LLC in
25 2009 under cases CV 0904-122 and -123. The record on appeal from these cases is identified herein as
26 "2009 R" or "2009 R. Tr. Vol. ___ page:line" for transcript citations. The record also includes the record on
27 appeal from the second State Engineer hearings filed in the prior appeals of Eureka County, Conley Land &
28 Livestock, LLC, Lloyd Morrison, and Benson-Etcheverry under cases CV-1108-155; -156; -157; -164; -165;
and -170. The record on appeal from these cases, dated October 27, 2011, is identified herein as "R" or
"R. page:line" for transcript citations. The records on appeal filed in this case are identified as follows: State
Engineer Record on Appeal "SE ROA;" State Engineer Supplemental Record on Appeal "SUP SE ROA;" and
Benson-Etcheverry's Supplemental Record on Appeal "PSROA."

² R. 104:23-25, 105:1-2, 106:1-25, 107:1-9, 1079.

³ PSROA 22.

1 understood flow system, the estimates of interbasin flow and drawdown cannot be considered
2 absolute values.”⁴ Accordingly, the State Engineer conditioned his approval of KVR’s applications
3 on the submission of a monitoring, management, and mitigation plan (3M Plan), which he required to
4 be prepared in cooperation with Eureka County and to be approved by the State Engineer prior to
5 pumping any groundwater.⁵ This Court previously analyzed the State Engineer’s decision in this
6 regard by an Order dated June 13, 2012 and concluded that the decision was reasonable, within the
7 State Engineer’s expertise, and supported by substantial evidence.⁶

8 The approved 3M Plan was the result of numerous meetings between KVR, Eureka County,
9 and the State Engineer and went through several revisions.⁷ The public, including Benson and
10 Etcheverry, had an opportunity to comment on a draft of the plan and Eureka County received input
11 from its Natural Resource Department.⁸ The State Engineer approved the 3M Plan with the caveat
12 that it was subject to change based on future need and monitoring results and his continuing authority
13 over the Plan.⁹

14 The purpose of the 3M Plan is to assist the State Engineer with managing KVR’s groundwater
15 use to prevent conflicts with existing water rights.¹⁰ A conflict occurs when a senior water right
16 cannot be used because of water use by a junior water appropriator.¹¹ The impacts from KVR’s
17 groundwater pumping in Kobeh Valley are predicted to manifest over a period of years and the
18 monitoring element of the 3M Plan will provide an early warning of where impacts will appear and
19 allow time to implement specific and effective mitigation measures. If monitoring shows that KVR’s
20 groundwater pumping may impact an existing senior water right holder, including domestic well
21 owners, then the 3M Plan requires KVR to mitigate the effect by ensuring that the existing right has
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23

24 ⁴ PSROA 19.

25 ⁵ PSROA 42.

26 ⁶ PSROA 186.

27 ⁷ SE ROA 54-167, 178, 181, 195-96, 204, 207-08, 214, 227-41, 295-335, 354-76. SUP SE ROA 13;
28 SE ROA 5-30, SE ROA 2; SUP SE ROA 14.

⁸ SE ROA 181, 195-96, 204, 207-08, 214, 227-41.

⁹ SUP SE ROA 27-28.

¹⁰ SE ROA 5.

¹¹ State Engineer Br. p. 1:26-27.

1 full beneficial use of the water to which it is entitled according to their specific water right in a
2 manner that is feasible, reasonable, timely, and effective—all at KVR’s expense.¹²

3 The Plan allows for local stakeholders and potentially affected water right holders to
4 participate in the monitoring, management, and mitigation process and work through issues before
5 they become a problem that requires action by the State Engineer. The 3M Plan is intended to be,
6 and will be, an evolving and dynamic resource to the State Engineer and stakeholders for responsible
7 management of water. The 3M Plan creates a water advisory committee (“WAC”) and technical
8 advisory committee (“TAC”). The role of the WAC is to establish and carry out 3M policy. The role
9 of the TAC is to provide technical scientific expertise necessary for collection, evaluation and
10 analysis of data. The State Engineer, Eureka County, and KVR will be the initial members of the
11 WAC and members from the two Diamond Valley farming associations¹³ and a Kobeh Valley
12 rancher must be invited to join as well. The TAC will be appointed by the WAC, which is required
13 to appoint people who have a professional level of technical or scientific expertise in land
14 management, natural resources, water resources, or related fields.¹⁴

15 The TAC has numerous responsibilities under the 3M Plan.¹⁵ The TAC must review the
16 initial monitoring requirements of the 3M Plan within thirty days after WAC appointment and
17 recommend to the WAC whether KVR should monitor additional water sources or modify its
18 monitoring of the currently-identified sources.¹⁶ Any modifications recommended and agreed to by
19 the WAC, however, will require State Engineer approval.¹⁷ The TAC will also meet as soon as
20 possible after any action criteria are triggered, and not less than twice annually or on a schedule
21 required by the WAC.¹⁸

22 The WAC will provide a forum for water right holders and local stakeholders to share
23 information and discuss monitoring data, analyses, technical studies, and mitigation and management
24

25 ¹² SE ROA 14.

26 ¹³ The two associations are the Eureka Producers’ Cooperative (EPC) and the Diamond Valley Natural
Resources Protection and Conservation Association (DNRPCA).

27 ¹⁴ SE ROA 8.

28 ¹⁵ SE ROA 8.

¹⁶ SE ROA 8.

¹⁷ SE ROA 11.

¹⁸ SE ROA 8, 10.

1 actions.¹⁹ The WAC may recommend changes to the 3M Plan, but any modification must be
2 approved by the State Engineer because he retains sole authority over the Plan.²⁰ The WAC must
3 hold an annual meeting open to the public to review the prior year's monitoring data and
4 management and mitigation measures.²¹

5 The WAC will set the so-called "action criteria" for monitored water sources (e.g. water table
6 levels and stream or spring flow rates) that will trigger a response from the WAC and TAC if they are
7 exceeded.²² The action criteria will be recommended by the TAC based on available data and
8 analyses and will be set by the WAC at levels that will provide advance warning of potential impacts
9 so that management or mitigation measures can be employed to prevent or mitigate them.²³ If any
10 WAC member disagrees with an action criterion, then the 3M Plan requires the issue to be resolved
11 by the State Engineer and also states that any party to the 3M Plan may petition the State Engineer to
12 consider any issue.²⁴ The State Engineer retains his authority to review the action criteria after they
13 are set and to revise them if he deems it appropriate.²⁵

14 The TAC and WAC are both involved in the review process under the 3M Plan. As
15 monitoring data is collected, the TAC must review it to determine if action criteria have been
16 exceeded.²⁶ And, if an action criterion is exceeded, then the WAC, with assistance from the TAC,
17 will determine whether KVR's pumping caused the levels to be exceeded.²⁷ If KVR's pumping is
18 causing an impact, then the WAC determines what management or mitigation measures should be
19 recommended to the State Engineer to protect existing rights from adverse impacts.²⁸ The State
20 Engineer then reviews the WAC's recommendations and determines which management or
21 mitigation measures to require of KVR.²⁹ The TAC reviews the effectiveness of any mitigation
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23 ¹⁹ SE ROA 7-8.

24 ²⁰ SE ROA 11.

25 ²¹ SE ROA 7.

26 ²² SE ROA 7-8, 10.

27 ²³ SE ROA 5, 7-10.

28 ²⁴ SE ROA 10-11.

29 ²⁵ SE ROA 11, SUP SE ROA 27.

²⁶ SE ROA 9.

²⁷ SE ROA 9-10.

²⁸ SE ROA 10.

²⁹ SE ROA 10-11.

1 measures and reports its findings to the WAC.³⁰ Because KVR is required to mitigate any adverse
2 impact to existing water rights, the standard for effectiveness is whether the specific mitigation
3 method prevented or mitigated the adverse impact to the existing water right so that a conflict does
4 not occur.

5 The State Engineer retains exclusive control over the 3M Plan and has not delegated any of
6 his authority. The 3M Plan states that all decisions made by the WAC “will be subject to the
7 jurisdiction and authority of the [State Engineer].”³¹ The WAC may recommend certain mitigation or
8 management actions, but the State Engineer makes the final decision.³² Additionally, the State
9 Engineer, with or without a recommendation, may make any order he deems necessary and
10 appropriate based on data he receives under the 3M Plan or from other sources. Also, any existing
11 water right holder may seek relief directly from the State Engineer if he believes that KVR’s
12 pumping will cause or has caused an adverse impact on his water rights and any State Engineer
13 decision is subject to judicial review. The 3M Plan clearly states that it does not limit or change the
14 State Engineer’s authority and KVR’s permits provide that the State Engineer “retains the right to
15 regulate the use of the water herein granted at any and all times.”³³

16 The 3M Plan is a condition of KVR’s permits, and therefore, only KVR and its successors are
17 bound by it.³⁴ Any failure to comply with the 3M Plan will be a violation of KVR’s permits and the
18 State Engineer will be able to enforce the 3M Plan requirements or order KVR to stop pumping. If
19 KVR disobeys the State Engineer’s order to comply with the 3M Plan or stop pumping, then the State
20 Engineer may seek injunctive relief from this Court under NRS 533.482 and levy fines under NRS
21 533.481. Existing water right holders may take advantage of the procedure described in the 3M Plan,
22 but they are not required to do so. Benson-Etcheverry³⁵ may participate in the 3M Plan process by

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25 ³⁰ SE ROA 9.

26 ³¹ SE ROA 11.

27 ³² SE ROA 10-11.

28 ³³ SE ROA 11, SUP SE ROA 27, R. 438.

³⁴ SE ROA 5.

³⁵ Martin Etcheverry represents the Etcheverry Family LP and Diamond Cattle Company and is a member of the WAC.

1 attending meetings and receiving information developed through the 3M Plan, but they are not
2 obligated to do so.

3 DISCUSSION

4 I. Standard of Review

5 The State Engineer is appointed by and is responsible to the Director of the Nevada
6 Department of Conservation and Natural Resources and performs duties prescribed by law and by the
7 Director.³⁶ The State Engineer duties include administering the appropriation and management of
8 Nevada's public water, both surface and groundwater, under NRS Chapters 533 and 534.

9 Nevada law allows every person aggrieved by an order or decision of the State Engineer to
10 have that matter reviewed on appeal.³⁷ On appeal, the State Engineer's decision is presumed to be
11 correct and the burden of proof to show otherwise is on the party challenging it.³⁸ As to questions of
12 fact, a court must limit its determination to whether substantial evidence in the record supports the
13 State Engineer's decision.³⁹ Substantial evidence is defined as "that which a reasonable mind might
14 accept as adequate to support a conclusion."⁴⁰

15 Unless an administrative agency decision is arbitrary or capricious it should not be disturbed
16 on appeal.⁴¹ A decision is regarded as arbitrary and capricious if it is "baseless or despotic" or
17 evidences "a sudden turn of mind without apparent motive; a freak, whim, mere fancy."⁴² In
18 reviewing a State Engineer decision for an abuse of discretion, the court's function is "to review the
19 evidence upon which the Engineer based his decision and ascertain whether that evidence supports
20 the order" and, if so, the court is bound to sustain it.⁴³

21
22 ³⁶ NRS 532.020, 532.110.

23 ³⁷ NRS 533.450(1).

24 ³⁸ NRS 533.450(10); *State Eng'r v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 205 (1991); *Town of Eureka v. State Eng'r*, 108 Nev. 163, 165, 826 P.2d 948, 949 (1992).

25 ³⁹ *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979) (citing *No. Las Vegas v. Pub. Serv. Comm'n.*, 83 Nev. 278, 429 P.2d 66 (1967)).

26 ⁴⁰ *City of Reno v. Estate of Wells*, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (1994).

27 ⁴¹ *U.S. v. Alpine Land & Reservoir Co.*, 919 F. Supp. 1470, 1474 (D. Nev. 1996).

28 ⁴² *Estate of Wells*, 110 Nev. at 1222, 885 P.2d at 548 (citing *City Council v. Irvine*, 102 Nev. 277, 278-79, 721 P.2d 371, 372 (1986)).

⁴³ *Office of State Eng'r, Div. of Water Res. v. Curtis Park Manor Water Users Ass'n*, 101 Nev. 30, 32, 692 P.2d 495, 497 (1985) (citing *Gandy v. State ex rel. Div. Investigation*, 96 Nev. 281, 283, 607 P.2d 581, 582 (1980)).

1 Because the State Engineer is authorized by Nevada law to decide and regulate the
2 appropriation of water, “that office has the implied power to construe the State’s water law provisions
3 and great deference should be given to the State Engineer’s interpretation when it
4 is within the language of those provisions.”⁴⁴ Similarly, the State Engineer’s conclusions of law, to
5 the extent they are closely related to his view of the facts, are entitled to deference and must not be
6 disturbed if they are supported by substantial evidence.⁴⁵ A reviewing court, however, is not
7 compelled to defer to the State Engineer’s interpretation of a regulation or statute if the plain
8 language of the provision requires an alternative interpretation.⁴⁶

9 **II. Benson-Etcheverry’s Assignment of Error**

10 **A. Whether The State Engineer’s Approval Of The 3M Plan Is A Delegation Of**
11 **Authority.**

12 Benson-Etcheverry asserts that the State Engineer delegated his quasi-legislative and quasi-
13 judicial authority to the committees created under the 3M Plan. This assertion, however, ignores the
14 plain language of the 3M Plan, which states that the committees are intended to assist the State
15 Engineer in managing KVR’s groundwater pumping to prevent adverse impacts to existing water
16 rights.⁴⁷ Further, as their names imply, the committees are advisory only and the 3M Plan does not
17 give them legislative or adjudicatory authority. The Court concludes that the State Engineer is not
18 prohibited from receiving input and advice from local stakeholders and those with technical expertise
19 in order to better manage water resources in a particular area. Receiving advice from a committee, as
20 the State Engineer has done here, increases the integrity and quality of such advice. This is especially
21 so where, as is the case here, the input and advice are provided by a technical committee.

22 Further, the State Engineer retains exclusive control over the 3M Plan and it does not change
23 or limit his authority to manage water resources in Nevada. First, a member of the State Engineer’s
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25 ⁴⁴ *Anderson Family Assocs. v. Ricci*, 124 Nev. 182, 186, 179 P.3d 1201, 1203 (2008) (recognizing that
26 the State Engineer “has the implied power to construe the state’s water law provisions and great deference
27 should be given to the State Engineer’s interpretation when it is within the language of those provisions”); *U.S.*
v. State Eng’r, 117 Nev. 585, 589, 27 P.3d 51, 53 (2001); *Pyramid Lake Paiute Tribe v. Washoe Cnty.*, 112
28 Nev. 743, 747-48, 918 P.2d 697, 700 (1996); *State v. Morros*, 104 Nev. 709, 713, 766 P.2d 263, 266 (1988).

⁴⁵ *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986).

⁴⁶ *Anderson Family Assocs. v. Ricci*, 124 Nev. at 186, 179 P.3d at 1203.

⁴⁷ SE ROA 5-6.

1 staff will serve on the WAC and will be invited to chair the committee.⁴⁸ Second, any changes to the
2 3M Plan or recommended management and mitigation actions from the committees require State
3 Engineer approval.⁴⁹ Therefore, even though the TAC is required to review KVR's monitoring
4 obligations and recommend necessary changes to the WAC, all changes must be approved by the
5 State Engineer.⁵⁰

6 The WAC will set action criteria levels to provide advance warning of potential adverse
7 impacts, all subject to State Engineer oversight.⁵¹ If the WAC does not agree on any action criterion,
8 then the State Engineer will decide the issue.⁵² If the WAC determines that KVR triggered any
9 action criteria, then the State Engineer decides what management or mitigation response is necessary
10 to prevent the potential impact from adversely affecting existing rights.⁵³ The State Engineer is not
11 limited to the WAC's recommended management or mitigation measures and may independently
12 require any other measures, whether or not they are currently listed in the 3M Plan.⁵⁴ And if any
13 existing water right holders believe that KVR's groundwater pumping will cause or has caused an
14 adverse impact to their rights, then the 3M Plan does not prevent them from seeking relief directly
15 from the State Engineer without going to the WAC.

16 Benson-Etcheverry argue that the State Engineer has delegated adjudicative authority by
17 approving the 3M Plan. By its specific terms, the 3M Plan is an express condition of the water rights
18 granted under the Ruling, and, therefore, does not bind anyone other than KVR.⁵⁵ The 3M Plan does
19 not create a new adjudicatory process or require holders of existing water rights to submit their
20 complaints to the WAC for adjudication or to waive any available legal remedy. The 3M Plan does
21 not limit the State Engineer's authority, and, therefore, he will have the ability to consider any
22 complaint by an existing water right holder regarding KVR's use of water. The State Engineer may
23 order any action necessary based on the facts and circumstances of each case. Therefore, any water
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25 ⁴⁸ SE ROA 7.

26 ⁴⁹ SE ROA 11.

27 ⁵⁰ SE ROA 11.

28 ⁵¹ SE ROA 7-8, 10.

⁵² SE ROA 10.

⁵³ SE ROA 11.

⁵⁴ SE ROA 16.

⁵⁵ SE ROA 5.

1 right holder who believes that his water rights have been impacted by KVR's use of groundwater
2 may petition the State Engineer to investigate the matter and can seek judicial relief of the State
3 Engineer's decision if he is dissatisfied. The 3M Plan does not limit or modify any water right
4 holder's legal rights to such remedies.

5 Because the monitoring, management, and mitigation related to KVR's use of water is at all
6 times subject to the State Engineer's review and control, Benson-Etcheverry's argument that he has
7 delegated his authority fails. Therefore, the Court concludes that the 3M Plan does not delegate
8 authority because the committees are advisory only and the State Engineer retains full and exclusive
9 control over the Plan and KVR's water use.

10 **B. Whether The State Engineer's Approval Of The 3M Plan Is Rulemaking.**

11 Benson-Etcheverry argue that the 3M Plan creates a new administrative process for
12 groundwater regulation and provides remedies for conflicts with existing water rights that were not
13 promulgated under the State Engineer's rulemaking authority and that are contrary to his statutory
14 duties under NRS 534.110(6) and (8).⁵⁶ Rulemaking occurs where an agency "promulgates, amends,
15 or repeals "[a]n agency rule, standard, directive or statement of general applicability which
16 effectuates or interprets law or policy, or describes the organization, procedure or practice
17 requirements of any agency."⁵⁷ The 3M Plan is designed to assist the State Engineer with collecting
18 and analyzing data regarding the effects of KVR's water use for the Mt. Hope Project and applies
19 only to KVR's water permits and pumping. Therefore, the 3M Plan does not authorize or require the
20 WAC to make regulations of general applicability and any determination by the WAC will not bind
21 other water right holders in Kobeh Valley or the surrounding basins.

22 Benson-Etcheverry also assert that the 3M Plan transfers the State Engineer's authority under
23 NRS 534.110(6) and (8) to the WAC and TAC. NRS 534.110(6) and (8) provide:

24
25 (6). . . [T]he State Engineer shall conduct investigations in any basin or
26 portion thereof where it appears that the average annual replenishment
to the groundwater supply may not be adequate for the needs of all

27 ⁵⁶ Br. pp. 18-19.

28 ⁵⁷ *Labor Com'r of State of Nevada v. Littlefield*, 123 Nev. 35, 39-40, 153 P.3d 26, 29 (2007) (quoting
NRS 233B.038(1)(a)-(c)).

1 permittees and all vested-right claimants, and if the findings of the
2 State Engineer so indicate, the State Engineer may order that
3 withdrawals, including, without limitation, withdrawals from domestic
4 wells, be restricted to conform to priority rights.

5 . . .

6 (8) In any basin or portion thereof in the State designated by the State
7 Engineer, the State Engineer may restrict drilling of wells in any
8 portion thereof if the State Engineer determines that additional wells
9 would cause an undue interference with existing wells.

10 The 3M Plan does not give the WAC or TAC the authority to regulate Koebe Valley, or any other
11 basin, based on priority under NRS 534.110(6). Similarly, the 3M Plan does not empower the WAC
12 or TAC to issue orders restricting the drilling of new wells in any basin based on undue interference
13 under NRS 534.110(8). Therefore, the Court concludes that the State Engineer's approval of the 3M
14 Plan does not violate NRS 534.110(6) or (8).

15 Lastly, Benson-Etcheverry point to Section 5(G) of the 3M Plan, which states that any
16 decisions made by the WAC shall be by unanimous vote, that the WAC may jointly agree to conduct
17 additional data collection and/or data review and analyses directed at resolving the different
18 interpretations or opinions, and that if unanimity is not achieved the WAC may refer the issue to the
19 State Engineer for final determination. ⁵⁸ This language does not preclude the State Engineer from
20 investigating a potential impact at any time, or from taking any other action within his authority. The
21 unanimity requirement is a limitation on the WAC, not on the State Engineer. If the WAC fails to
22 make recommendations regarding a potential impact, any existing water right holder can complain to
23 the State Engineer and the State Engineer can order KVR to mitigate or stop pumping at any time or
24 undertake any other mitigation measure he deems necessary to protect existing water rights.

25 **C. Express Conditions Under NRS 534.110.**

26 Benson-Etcheverry next contends that the 3M Plan does not contain express conditions as
27 required by NRS 534.110(5).⁵⁹ They argue that the 3M Plan will cause long delays if existing water

28 ⁵⁸ SE ROA 10.

⁵⁹ Benson-Etcheverry also assert that the Ruling does not contain express conditions. This issue was
raised in Benson-Etcheverry's prior petition for judicial review, which this Court denied.

rights must wait for the advisory committees to act and that the State Engineer should adopt specific mitigation measures before the nature and extent of any conflicts are known. The 3M Plan, however, is proactive, not reactive, in that it (1) requires extensive monitoring of numerous water resources, (2) advises the State Engineer in advance, through the WAC and TAC, of potential impacts, and (3) sets up a process to respond to potential impacts before they cause adverse effects to existing water rights.

NRS 534.110(5) provides:

[t]his section does not prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as any protectable interests in existing domestic wells as set forth in NRS 533.024 and the rights of holders of existing appropriations can be satisfied under such express conditions.

Under the 3M Plan, KVR must monitor water conditions in numerous creeks, springs, and wells “to provide the necessary data to assess the response of the aquifer(s) to the stress of water resource exploitation, provide an early warning capability, and provide safeguards for responsible management of water.”⁶⁰ KVR must monitor water levels in 89 wells, 59 of which are in Kobeh Valley.⁶¹ These wells include KVR’s production and test wells, USGS wells, and “sentinel” wells, which will be located to provide early indication of drawdown propagation towards sensitive or important resources.⁶² The static water level in all wells will be measured continuously.⁶³ KVR must monitor the flow of several creeks in the Roberts Mountains and in the Pine Valley and Kobeh Valley hydrographic basins.⁶⁴ KVR must monitor 34 springs in the Diamond Valley, Kobeh Valley and Pine Valley hydrographic basins.⁶⁵ Measurements will be taken continuously for streams and quarterly for springs.⁶⁶ Monitoring will also include several biological and meteorological factors for springs and streams in Kobeh Valley, Roberts Mountain, and at the mine site.⁶⁷

⁶⁰ SE ROE 5.

⁶¹ SE ROA 18-26.

⁶² SE ROA 12.

⁶³ SE ROA 18-26.

⁶⁴ SE ROA 24-26.

⁶⁵ SE ROA 19-20, 24-26.

⁶⁶ SE ROA 19-26.

⁶⁷ SE ROA 27-28.

1 In addition, the 3M Plan describes a process for responding to the effects of KVR's pumping
2 based on monitoring results in order to ensure that existing rights are satisfied. The 3M Plan requires
3 the establishment of quantitative thresholds or "action criteria" which, if triggered, serve as early
4 warnings of potential impacts to existing rights.⁶⁸ These thresholds will be set at appropriate levels to
5 provide advance warning of potential impacts to existing water rights that might result from KVR's
6 pumping.⁶⁹ When any threshold is reached, the TAC must meet as soon as possible to assess whether
7 the threshold was caused by KVR's pumping and report its findings to the WAC.⁷⁰ If KVR's
8 pumping caused an action criterion to be exceeded, the WAC must recommend appropriate
9 mitigation or management measures to the State Engineer that it believes will protect existing
10 rights.⁷¹ Therefore, the 3M Plan requires action criteria to be set at levels to detect any effects of
11 pumping that warn of a potential adverse impact.⁷² This early warning system ensures that KVR, the
12 State Engineer, and other 3M Plan participants will have a reasonable amount of time to respond to
13 the effects of KVR's pumping and to prevent or mitigate potential impacts from adversely affecting
14 existing water rights. Accordingly, if the effect of KVR's pumping shows that a certain water right
15 will be impacted, then the 3M Plan requires KVR to implement specific management actions or
16 mitigation measures to satisfy existing rights. The Court concludes that this process satisfies the
17 express conditions requirement of NRS 534.110(5).

18 Through his approval of the 3M Plan, the State Engineer has determined that the conditions
19 and provisions of the 3M Plan are adequate to ensure that existing rights will be satisfied. His
20 decision is supported by the 3M Plan itself since it requires KVR to carefully monitor the effects of
21 its pumping, to forecast potential impacts in cooperation with parties to the 3M, and to prevent or
22 mitigate such impacts from adversely affecting existing water rights. Although Benson-Etcheverry
23 would require the State Engineer to include express measures for mitigating existing water rights,
24 NRS 534.110(5) requires only that the State Engineer include express conditions to ensure that
25

26 ⁶⁸ SE ROA 7-8, 10.

27 ⁶⁹ SE ROA 10.

28 ⁷⁰ SE ROA 10.

⁷¹ SE ROA 10.

⁷² SE ROA 7-8, 10.

1 existing water rights are satisfied. The 3M Plan is an express condition to monitor the effects of
2 KVR's pumping, to detect and identify potential impacts, and to prevent them from adversely
3 affecting existing water rights through management and mitigation measures recommended by the
4 advisory committees and ordered by the State Engineer. The Court finds that the 3M Plan contains
5 appropriate standards to protect existing water rights and concludes that the State Engineer's approval
6 of the 3M Plan is reasonable, within his area of expertise, and supported by substantial evidence in
7 the record.

8 **D. Whether The 3M Plan Complies With Ruling 6127 And NRS 533.370(2).**

9 Benson-Etcheverry argue that the 3M Plan does not ensure that existing water rights will be
10 fully satisfied, and, therefore, violates Ruling 6127 and NRS 533.370(2). They contend that the 3M
11 Plan is a plan for a plan that allows a conflict to occur before mitigation. As stated above, the 3M
12 Plan is designed to be proactive and requires action in advance of a conflict. The 3M Plan describes
13 concrete requirements of the TAC and WAC, and does not limit or change the authority of the State
14 Engineer. Under the 3M Plan, KVR must monitor numerous springs, streams, and wells to detect any
15 changes to those water sources that occur after KVR begins pumping.⁷³ This monitoring is
16 comprehensive and reasonably designed to detect potential impacts because it covers numerous water
17 sources in several hydrographic basins.⁷⁴ The Court concludes that such monitoring will allow early
18 detection of impacts so that available mitigation measures can be implemented to prevent any
19 impacts from adversely affecting existing water rights.

20 In addition, the Court concludes that the 3M Plan will not delay mitigation. If the WAC
21 determines that KVR's pumping causes action criteria exceedance, then the TAC must expeditiously
22 formulate mitigation or management measures and submit them to the WAC.⁷⁵ Because the 3M Plan
23 provides an early warning system against potential impacts, the WAC will be able to develop and
24 implement mitigation measures. The 3M Plan lists several methods to mitigate adverse impacts,
25 including drilling replacement wells, shifting pumping ratios among the production wells, or stopping
26

27 ⁷³ SE ROA 5, 17-30.

28 ⁷⁴ The 3M Plan requires KVR to monitor numerous streams, springs, and wells in Kober Valley and in
the four surrounding basins (Diamond, Pine, Antelope, and Grass Valley hydrographic basins).⁷⁴

⁷⁶ SE ROA 15-16.

1 pumping from one or more production wells.⁷⁶ The 3M Plan also states that mitigation may include
2 any other measures agreed to by the WAC and/or required by the State Engineer.⁷⁷ The Court
3 concludes that this process will ensure that water sources are carefully monitored and that existing
4 water rights are satisfied to the full extent of their water right permit before an adverse impact occurs.

5 Lastly, Benson-Etcheverry assert that the 3M Plan allows financial compensation as a
6 substitute for satisfying existing water rights. The 3M plan states several potential mitigation
7 measures, one of which is that “Financial compensation or, if agreed upon, property (i.e., land and
8 water rights) of equal value could be purchased for replacement.” The mitigation measures listed in
9 the 3M Plan are not exclusive and any of the Plan participants can recommend, or the State Engineer
10 can independently require, other mitigation measures.⁷⁸ Additionally, the State Engineer retains
11 authority to take action with or without recommendations from the 3M Plan participants.

12 Accordingly, the Court concludes that the State Engineer’s approval of the 3M Plan complies
13 with the Ruling and NRS 533.370(2).

14 **E. Whether The 3M Plan Is Vague Or Deficient, Arbitrary And Capricious, Or An**
15 **Abuse Of Discretion.**

16 Benson-Etcheverry reasserts several contentions to support their argument that the 3M Plan is
17 vague and deficient and that the State Engineer’s decision is arbitrary and capricious or an abuse of
18 discretion. These arguments are fully addressed above in Sections A-D, above. Benson-Etcheverry
19 also disagree with this Court’s prior Order, which concluded that Nevada law does not prevent the
20 State Engineer from granting applications that may impact existing rights so long as the existing right
21 can be mitigated to prevent conflicts. These arguments have already been rejected by this Court in
22 Benson-Etcheverry’s prior appeal of the Ruling and that decision will not be disturbed in this appeal.

23 Additionally, Benson-Etcheverry asserts that because the WAC and TAC set the action
24 criteria levels, it is the committees that make the decision whether it is necessary to respond to
25 complaints by existing water right holders. As discussed above, the action criteria under the 3M Plan
26 are required to be set at levels that will detect the effects of KVR’s pumping and provide an early

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28 ⁷⁷ SE ROA 16.

⁷⁸ SE ROA 16.

1 warning of potential impacts so that the WAC and TAC can respond with recommendations to the
2 State Engineer in time to prevent the impact from occurring or, if the impacts cannot be prevented, to
3 ensure that mitigation is in place to prevent the impacts from adversely affecting existing water
4 rights. The Court concludes that the WAC and TAC are not authorized under the 3M Plan to decide
5 claims by existing water right holders against KVR. The State Engineer retains the authority to
6 decide those claims if they arise.

7 Benson-Etcheverry also contends that the 3M Plan is devoid of urgency and that the WAC
8 and TAC meet annually or bi-annually only and without regard to any reported impact to a water
9 right holder. The Court concludes that this argument lacks merit and is contrary to the plain language
10 of the 3M Plan. The 3M Plan sets forth minimum meeting requirements, but provides that the TAC
11 will meet as frequently as necessary.⁷⁹ The State Engineer may also exercise his authority and
12 require more frequent meetings by amending the 3M Plan. Additionally, if an action criterion is
13 triggered that signals a potential impact, the 3M Plan requires the TAC to meet as soon as possible to
14 investigate why the criterion was triggered.⁸⁰ And if the impact is caused by KVR, then the 3M Plan
15 requires the TAC to expeditiously develop mitigation or management measures to prevent adverse
16 impacts to existing rights.⁸¹ Finally, the WAC must ensure that mitigation is timely.⁸² This Court
17 concludes that Benson-Etcheverry's assertion that the 3M Plan is not reasonably calculated to address
18 impacts in a timely fashion is without merit.

19 Lastly, Benson-Etcheverry assert that this Court's prior order required KVR and the State
20 Engineer to conduct additional test pumping prior to approving a 3M Plan. This argument was not
21 raised in Benson-Etcheverry's Opening Brief, and therefore, has been waived.⁸³ Even if the Court
22 considered Benson-Etcheverry's assertion, it would not affect the outcome of this case because the
23 record shows that KVR conducted extensive test pumping and hydrogeological studies prior to the
24 State Engineer's Ruling and the only way to observe the aquifer's response to pumping 11,300 afa is

26 ⁷⁹ SE ROA 8.

27 ⁸⁰ SE ROA 10.

28 ⁸¹ SE ROA 10.

⁸² SE ROA 14.

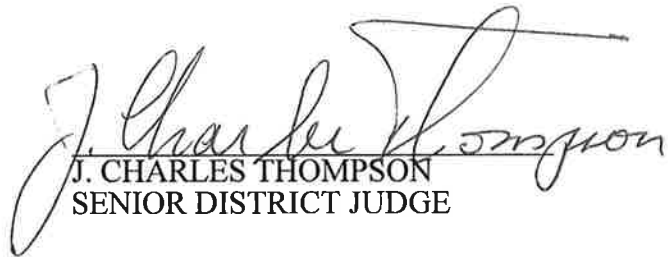
⁸³ *Bongiovi v. Sullivan*, 122 Nev. 556, 570 n. 5, 138 P.3d 433, 444 n. 5 (2006).

1 to allow pumping to begin under the permits. Further, as discussed above, the 3M Plan sets forth a
2 process by which the effects of pumping will be closely monitored and managed to ensure that
3 existing water rights are protected. The 3M Plan fully complies with this Court's prior Order dated
4 June 13, 2012.

5 The Court having considered, analyzed, discussed, and issued its findings and conclusions as
6 to the issues raised in the Petition for Judicial Review; and good cause appearing;

7 **IT IS HEREBY ORDERED** that the Petition for Judicial Review is **DENIED**

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9 DATED this 15th day of May 2013.

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12 J. CHARLES THOMPSON
13 SENIOR DISTRICT JUDGE
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY COURTHOUSE

J. CHARLES THOMPSON
SENIOR DISTRICT JUDGE

330 SOUTH THIRD STREET
SUITE 1120
LAS VEGAS, NV 89101

May 15, 2013

PO Eureka County Clerk/Treasurer
Attn: Leanna M. Cantrell
Deputy Court Clerk
PO Box 677
Eureka, NV 89316

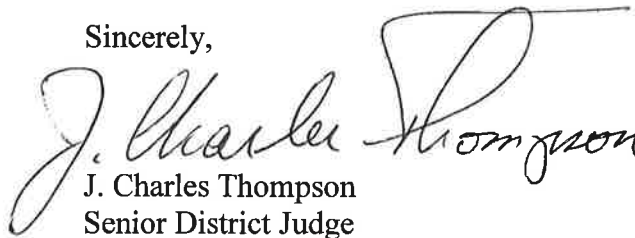
Re: Etcheverry v. State Engineer of Nevada, CV1207-178

Dear Ms. Cantrell,

I enclose the original signed Findings of Fact, Conclusions of Law and Judgment denying the Petition for Judicial Review. Please see that the order is filed and that copies are sent to all counsel.

Thank you for your continued assistance in this matter.

Sincerely,


J. Charles Thompson
Senior District Judge

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5/20/13 LMM