IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

	TTER OF APPLICATION NUMBER	85584			
FILED BY	Kobeh Valley Ranch LLC (c/o General N	foly, Inc.)	PROTEST		
ON	October 28	, 20 15	·······		
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whose occup	ation is POLITICAL SUBDIVISION		r PO Box, City, State and ZIP Code	and protests the	granting
of Application	on Number 85584	, filed	OCTOBER 28	est of the control of the second state of the	, 20 15
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		Signed	Agent or protestan	ıt	
		C	Printed or typed name, i	f agent	->*******
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by J.J. GOIC	OECHEA		Phone Number jjgoicoechea@eurekanv.org		
i	Signature of Notary Public Required	nnen	Notary Publi Appointment Re	M. WRIGHT ic - State of Nevada ecorded in Euroka County Expires December 20, 2018	

+ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

- These Applications should be denied because they are practically identical¹ to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in Eureka County et al. v. The State of Nevada, State Engineer, et al., 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
- 5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order...." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied. As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.
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² See Eureka County's filings regarding this matter in the District Court.

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights. reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
- 8. Applications to Change 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 must be denied because they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127. Applications to Change the Point of Diversion, Manner of Use and Place of Use of a water right can only be filed if the right to be changed is valid. Once a permit is abrogated, it is no longer in force. There are no water rights which can be changed by the current round of Change Applications.
- 9. These Applications should be denied because sustained large-scale pumping in Kobeh Valley will impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. According to the applicant's ground water model, sustained over-pumping in Kobeh Valley will impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley, Pine Valley and other adjacent basins. The owners of these rights contribute to the long-term economic viability of the greater Eureka community and such impacts will prove detrimental to the health and welfare of Eureka County.

³ "Because we reverse and remand on this basis, we do not reach the remaining issues raised in these consolidated appeals." Supreme Court Opinion, p. 16.

- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout. and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
- 12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

Diamond Valley and will remove water from Diamond Valley in conflict with a recent State Engineer Order in Diamond Valley prohibiting any new groundwater appropriations in Diamond Valley. Sustained over pumping in Kobeh Valley is likely to reduce that amount and affect prior existing municipal water rights held by Eureka County and the Devils Gate GID that supply the majority of the population in Diamond Valley. Granting the change applications will cause the basin to be over pumped to the detriment of the basin, adjacent connected basins, and prior existing water rights holders.

There is consensus underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobeh Valley may provide underground flow to Diamond Valley. However, it is USGS's opinion that data are currently insufficient with which to determine the amount of inter-basin flow with any level of certainty. Groundwater modeling by the applicant's consultants suggests pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley and the applicant's model shows drawdown into Diamond Valley from KVR's project pumping. north of Whistler Mountain, suggesting a hydrologic continuum between the two basins. These previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearings in support of the mine's groundwater rights applications concluded that geologic materials comprising the mountains that separate the Kobeh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobeh Valley to Diamond Valley through the mountains was previously characterized as trivial. The locations of some of the points of diversion for these change applications suggest significant secondary permeability exists in the rocks separating Kobeh and Diamond Valleys, otherwise there would be little reason to propose constructing wells at these locations. The most recent iteration of the regional groundwater model developed by the applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Whistler Mountain that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

206T as well as declines in the flow in Nichols Spring.⁴ If Diamond Valley pumping is a possible cause for water level declines in Kobeh Valley, the pumping from eastern Kobeh Valley should be expected to affect water levels in Diamond Valley. Given that Diamond Valley has been designated by the State Engineer as a Critical Management Area, any capture of inter-basin groundwater flow to Diamond Valley or drawdown in Diamond Valley interferes with efforts to manage the groundwater resources there and represents a conflict with existing rights. A recent State Engineer Order in Diamond Valley disallows any new groundwater appropriations and any drawdown in Diamond Valley from Kobeh Valley should also be disallowed.

13. These Applications should be denied because they include no Monitoring, Management and Mitigation (3M) Plan developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants. The Nevada Supreme Court concluded that ". . . allowing the State Engineer to grant applications conditioned upon development of a future 3M Plan when the resulting appropriations would otherwise conflict with existing rights, could potentially violate the protestants' rights to a full and fair hearing on the matter, a rule rooted in due process. (cite omitted)" See Supreme Court Opinion, p. 15.

The Supreme Court determined the record before the State Engineer shows conflicts with existing rights will occur as a consequence of KVR's Applications. Consistent with the Supreme Court's Opinion interpreting NRS 533.370(2) at this time, Eureka County insists that a Monitoring, Management and Mitigation (3M) Plan be developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants, before any action be taken on the Applications. Because groundwater modeling by the applicant shows drawdown and resulting impacts will persist for decades after the mining project concludes, the 3M Plan must provide a vehicle to ensure mitigation will be funded in perpetuity, or until there is no longer any potential for future impacts.

Any proposed management, monitoring and mitigation plan to address known and potential impacts from the applicant's proposed pumping must be developed with supporting analytical data prior to any approval of the Applications, consistent with the Supreme Court Opinion. A plan for monitoring and mitigation of potential impacts to water rights holders and threatened species must include specific, attainable, realistic, relevant, and time-fixed measures and acceptable substitute water sources to mitigate these conflicts and adverse impacts. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect.

14. These Applications should be denied because KVR cannot show it has the intention in good faith or financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence as required by NRS 533.370(1)(c). The works

⁴ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over \$12.00 per share. Today, it is worth about \$0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was \$5.30/lb. General Moly's latest presentation on its website⁵ highlights that "General Moly's 80% ownership NPV breakeven price is \$10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is \$9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

- lost millions of dollars in stock value,
- needed to tap into funds reserved for equipment purchases,
- laid off personnel,
- closed its office in Eureka,
- deferred construction of the water-supply wells, pipelines and other infrastructure needed to divert the water, and
- postponed the purchase of equipment essential to putting the water to beneficial use.

Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

⁵ http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

Eureka County no extensions would be granted. This failure to simply resume irrigation of established fields at the Bobcat Ranch is yet another symptom of KVR's underlying lack of intent and financial problems showing a lack of intent or financial ability to put the water to beneficial use.

General Moly has recently received a small infusion of capital from investors, amounting to a minor fraction of the cost to put the water to beneficial use. This small investment is coupled to promises to fund the project if worldwide economic conditions change. Clearly, funding of the project is based on speculation in the molybdenum market and funding will not be secured anytime soon based on moly demand and the world economy. How long is the State Engineer and other potential appropriators of the water resource supposed to wait for such a speculative venture to bear fruit? In the meantime, there is no unappropriated water in Kobeh Valley that might be put to use by others.

- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

	ATTER OF APPLICATION NUMBER	85585			
FILED BY	Kobeh Valley Ranch LLC (c/o General N	loly, Inc.)	PROTEST		
ON	October 28	, 20 15	NOTES (
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Exhibit "A"

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- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout. and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
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Diamond Valley and will remove water from Diamond Valley in conflict with a recent State Engineer Order in Diamond Valley prohibiting any new groundwater appropriations in Diamond Valley. Sustained over pumping in Kobeh Valley is likely to reduce that amount and affect prior existing municipal water rights held by Eureka County and the Devils Gate GID that supply the majority of the population in Diamond Valley. Granting the change applications will cause the basin to be over pumped to the detriment of the basin, adjacent connected basins, and prior existing water rights holders.

There is consensus underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobeh Valley may provide underground flow to Diamond Valley. However, it is USGS's opinion that data are currently insufficient with which to determine the amount of inter-basin flow with any level of certainty. Groundwater modeling by the applicant's consultants suggests pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley and the applicant's model shows drawdown into Diamond Valley from KVR's project pumping, north of Whistler Mountain, suggesting a hydrologic continuum between the two basins. These previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearings in support of the mine's groundwater rights applications concluded that geologic materials comprising the mountains that separate the Kobeh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobeh Valley to Diamond Valley through the mountains was previously characterized as trivial. The locations of some of the points of diversion for these change applications suggest significant secondary permeability exists in the rocks separating Kobeh and Diamond Valleys, otherwise there would be little reason to propose constructing wells at these locations. The most recent iteration of the regional groundwater model developed by the applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Whistler Mountain that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

206T as well as declines in the flow in Nichols Spring.⁴ If Diamond Valley pumping is a possible cause for water level declines in Kobeh Valley, the pumping from eastern Kobeh Valley should be expected to affect water levels in Diamond Valley. Given that Diamond Valley has been designated by the State Engineer as a Critical Management Area, any capture of inter-basin groundwater flow to Diamond Valley or drawdown in Diamond Valley interferes with efforts to manage the groundwater resources there and represents a conflict with existing rights. A recent State Engineer Order in Diamond Valley disallows any new groundwater appropriations and any drawdown in Diamond Valley from Kobeh Valley should also be disallowed.

13. These Applications should be denied because they include no Monitoring, Management and Mitigation (3M) Plan developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants. The Nevada Supreme Court concluded that ". . . allowing the State Engineer to grant applications conditioned upon development of a future 3M Plan when the resulting appropriations would otherwise conflict with existing rights, could potentially violate the protestants' rights to a full and fair hearing on the matter, a rule rooted in due process. (cite omitted)" See Supreme Court Opinion, p. 15.

The Supreme Court determined the record before the State Engineer shows conflicts with existing rights will occur as a consequence of KVR's Applications. Consistent with the Supreme Court's Opinion interpreting NRS 533.370(2) at this time, Eureka County insists that a Monitoring, Management and Mitigation (3M) Plan be developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants, before any action be taken on the Applications. Because groundwater modeling by the applicant shows drawdown and resulting impacts will persist for decades after the mining project concludes, the 3M Plan must provide a vehicle to ensure mitigation will be funded in perpetuity, or until there is no longer any potential for future impacts.

Any proposed management, monitoring and mitigation plan to address known and potential impacts from the applicant's proposed pumping must be developed with supporting analytical data prior to any approval of the Applications, consistent with the Supreme Court Opinion. A plan for monitoring and mitigation of potential impacts to water rights holders and threatened species must include specific, attainable, realistic, relevant, and time-fixed measures and acceptable substitute water sources to mitigate these conflicts and adverse impacts. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect.

14. These Applications should be denied because KVR cannot show it has the intention in good faith or financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence as required by NRS 533.370(1)(c). The works

⁴ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over \$12.00 per share. Today, it is worth about \$0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was \$5.30/lb. General Moly's latest presentation on its website⁵ highlights that "General Moly's 80% ownership NPV breakeven price is \$10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is \$9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

- lost millions of dollars in stock value,
- needed to tap into funds reserved for equipment purchases,
- laid off personnel,
- closed its office in Eureka,
- deferred construction of the water-supply wells, pipelines and other infrastructure needed to divert the water, and
- postponed the purchase of equipment essential to putting the water to beneficial use.

Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

⁵ http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

Eureka County no extensions would be granted. This failure to simply resume irrigation of established fields at the Bobcat Ranch is yet another symptom of KVR's underlying lack of intent and financial problems showing a lack of intent or financial ability to put the water to beneficial use.

General Moly has recently received a small infusion of capital from investors, amounting to a minor fraction of the cost to put the water to beneficial use. This small investment is coupled to promises to fund the project if worldwide economic conditions change. Clearly, funding of the project is based on speculation in the molybdenum market and funding will not be secured anytime soon based on moly demand and the world economy. How long is the State Engineer and other potential appropriators of the water resource supposed to wait for such a speculative venture to bear fruit? In the meantime, there is no unappropriated water in Kobeh Valley that might be put to use by others.

- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

	TTER OF APPLICATION NUMBER	85586			
ON FILED BA	Kobeh Valley Ranch LLC (c/o General N October 28	, 20 15	PROTEST		
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^{+ \$30} FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

- 1. These Applications should be denied because they are practically identical¹ to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
- 5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order...." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied. As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.
- 6. These Applications should be denied because they do not include any attempt to resolve the issues identified by the Supreme Court Opinion or the outstanding issues the Supreme Court did not address but nevertheless chose to reference in its Opinion, which highlights

¹ Many applications at issue under these protests were sent back for correction and/or have hand written corrections on them which highlights that perhaps changes are being put forward that do not exactly match some of the previous applications.

² See Eureka County's filings regarding this matter in the District Court.

Exhibit "A"

Eureka County Protest to Application Numbers 85573 through 85604 Filed by Kobeh Valley Ranch LLC

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights. reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
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- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic The valley floor phreatophytic vegetation will continue to occur discharge. notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
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necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over \$12.00 per share. Today, it is worth about \$0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was \$5.30/lb. General Moly's latest presentation on its website⁵ highlights that "General Moly's 80% ownership NPV breakeven price is \$10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is \$9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

- lost millions of dollars in stock value,
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Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

Eureka County no extensions would be granted. This failure to simply resume irrigation of established fields at the Bobcat Ranch is yet another symptom of KVR's underlying lack of intent and financial problems showing a lack of intent or financial ability to put the water to beneficial use.

General Moly has recently received a small infusion of capital from investors, amounting to a minor fraction of the cost to put the water to beneficial use. This small investment is coupled to promises to fund the project if worldwide economic conditions change. Clearly, funding of the project is based on speculation in the molybdenum market and funding will not be secured anytime soon based on moly demand and the world economy. How long is the State Engineer and other potential appropriators of the water resource supposed to wait for such a speculative venture to bear fruit? In the meantime, there is no unappropriated water in Kobeh Valley that might be put to use by others.

- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBE	R 85587	HARTSON	
FILED BY Kobeh Valley Ranch LLC (c/o Gen	eral Moly, Inc.)	PROTEST	
ON October 28	, 20 15	PROTEST	
Comes now EUREKA COUNTY	***************************************	_ /	
Part D 2004 (F.O 2004) D Private D Strate Control (Facility and April 1984) Control (Facility Control 1984) Control (Facility		ed or typed name of protestant	
whose post office address is POST OFFICE BO	X 694, EUREKA,	NEVADA 89316 or PO Box, City, State and ZIP Code	- 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
whose occupation is POLITICAL SUBDIVISION	ON Direct No. (¥ .	the granting
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	Signed	If let //~	
		Agent or protestant L GOICOECHEA, CHAIRMAN	
		Printed or typed name, if agent	*************************
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Subscribed and swom to before me on JAN. 1.3, 2013	5	City; State and ZIP Code (775) 237-5262	erreferenteredikadarberikkeiterdi
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Signature of Notary Public Required		Notary Stamp or Seal Required	

⁺ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE. ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

Exhibit "A"

- 1. These Applications should be denied because they are practically identical to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
- 5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order...." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied. As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.
- 6. These Applications should be denied because they do not include any attempt to resolve the issues identified by the Supreme Court Opinion or the outstanding issues the Supreme Court did not address but nevertheless chose to reference in its Opinion, which highlights

¹ Many applications at issue under these protests were sent back for correction and/or have hand written corrections on them which highlights that perhaps changes are being put forward that do not exactly match some of the previous applications.

² See Eureka County's filings regarding this matter in the District Court.

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
- 8. Applications to Change 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 must be denied because they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127. Applications to Change the Point of Diversion, Manner of Use and Place of Use of a water right can only be filed if the right to be changed is valid. Once a permit is abrogated, it is no longer in force. There are no water rights which can be changed by the current round of Change Applications.
- 9. These Applications should be denied because sustained large-scale pumping in Kobeh Valley will impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. According to the applicant's ground water model, sustained over-pumping in Kobeh Valley will impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley, Pine Valley and other adjacent basins. The owners of these rights contribute to the long-term economic viability of the greater Eureka community and such impacts will prove detrimental to the health and welfare of Eureka County.

³ "Because we reverse and remand on this basis, we do not reach the remaining issues raised in these consolidated appeals." Supreme Court Opinion, p. 16.

- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout, and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
- 12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

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Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

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- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MAT	TER OF APPLICATION NUMBER	85588	SOUTH SEAL	
FILED BY	Kobeh Valley Ranch LLC (c/o General M	ioly, Inc.)	PROTEST	
ON	October 28	, 20 15	T NO 1251	
Com	es now EUREKA COUNTY			
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Subscribed and	sworn to before me on JAN. , 2015		City, State and ZIP Co (775) 237-5262	de
by J.J. GOICO	DECHEA		Phone Number jjgoicoechea@eurekanv.org	
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	Signature of Notary Public Required		Notary Stamp or Seal Rec	

⁺ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE. ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

- 1. These Applications should be denied because they are practically identical to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
- 5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order...." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied. As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.
- 6. These Applications should be denied because they do not include any attempt to resolve the issues identified by the Supreme Court Opinion or the outstanding issues the Supreme Court did not address but nevertheless chose to reference in its Opinion, which highlights

¹ Many applications at issue under these protests were sent back for correction and or have hand written corrections on them which highlights that perhaps changes are being put forward that do not exactly match some of the previous applications.

² See Eureka County's filings regarding this matter in the District Court.

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights. reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
- 8. Applications to Change 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 must be denied because they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127. Applications to Change the Point of Diversion, Manner of Use and Place of Use of a water right can only be filed if the right to be changed is valid. Once a permit is abrogated, it is no longer in force. There are no water rights which can be changed by the current round of Change Applications.
- 9. These Applications should be denied because sustained large-scale pumping in Kobeh Valley will impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. According to the applicant's ground water model, sustained over-pumping in Kobeh Valley will impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley, Pine Valley and other adjacent basins. The owners of these rights contribute to the long-term economic viability of the greater Eureka community and such impacts will prove detrimental to the health and welfare of Eureka County.

³ "Because we reverse and remand on this basis, we do not reach the remaining issues raised in these consolidated appeals." Supreme Court Opinion, p. 16.

- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout. and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
- 12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

Diamond Valley and will remove water from Diamond Valley in conflict with a recent State Engineer Order in Diamond Valley prohibiting any new groundwater appropriations in Diamond Valley. Sustained over pumping in Kobeh Valley is likely to reduce that amount and affect prior existing municipal water rights held by Eureka County and the Devils Gate GID that supply the majority of the population in Diamond Valley. Granting the change applications will cause the basin to be over pumped to the detriment of the basin, adjacent connected basins, and prior existing water rights holders.

There is consensus underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobeh Valley may provide underground flow to Diamond Valley. However, it is USGS's opinion that data are currently insufficient with which to determine the amount of inter-basin flow with any level of certainty. Groundwater modeling by the applicant's consultants suggests pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley and the applicant's model shows drawdown into Diamond Valley from KVR's project pumping. north of Whistler Mountain, suggesting a hydrologic continuum between the two basins. These previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearings in support of the mine's groundwater rights applications concluded that geologic materials comprising the mountains that separate the Kobeh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobeh Valley to Diamond Valley through the mountains was previously characterized as trivial. The locations of some of the points of diversion for these change applications suggest significant secondary permeability exists in the rocks separating Kobeh and Diamond Valleys, otherwise there would be little reason to propose constructing wells at these locations. The most recent iteration of the regional groundwater model developed by the applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Whistler Mountain that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

206T as well as declines in the flow in Nichols Spring.⁴ If Diamond Valley pumping is a possible cause for water level declines in Kobeh Valley, the pumping from eastern Kobeh Valley should be expected to affect water levels in Diamond Valley. Given that Diamond Valley has been designated by the State Engineer as a Critical Management Area, any capture of inter-basin groundwater flow to Diamond Valley or drawdown in Diamond Valley interferes with efforts to manage the groundwater resources there and represents a conflict with existing rights. A recent State Engineer Order in Diamond Valley disallows any new groundwater appropriations and any drawdown in Diamond Valley from Kobeh Valley should also be disallowed.

13. These Applications should be denied because they include no Monitoring, Management and Mitigation (3M) Plan developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants. The Nevada Supreme Court concluded that ". . . allowing the State Engineer to grant applications conditioned upon development of a future 3M Plan when the resulting appropriations would otherwise conflict with existing rights, could potentially violate the protestants' rights to a full and fair hearing on the matter, a rule rooted in due process. (cite omitted)" See Supreme Court Opinion, p. 15.

The Supreme Court determined the record before the State Engineer shows conflicts with existing rights will occur as a consequence of KVR's Applications. Consistent with the Supreme Court's Opinion interpreting NRS 533.370(2) at this time, Eureka County insists that a Monitoring, Management and Mitigation (3M) Plan be developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants, before any action be taken on the Applications. Because groundwater modeling by the applicant shows drawdown and resulting impacts will persist for decades after the mining project concludes, the 3M Plan must provide a vehicle to ensure mitigation will be funded in perpetuity, or until there is no longer any potential for future impacts.

Any proposed management, monitoring and mitigation plan to address known and potential impacts from the applicant's proposed pumping must be developed with supporting analytical data prior to any approval of the Applications, consistent with the Supreme Court Opinion. A plan for monitoring and mitigation of potential impacts to water rights holders and threatened species must include specific, attainable, realistic, relevant, and time-fixed measures and acceptable substitute water sources to mitigate these conflicts and adverse impacts. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect.

14. These Applications should be denied because KVR cannot show it has the intention in good faith or financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence as required by NRS 533.370(1)(c). The works

⁴ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over \$12.00 per share. Today, it is worth about \$0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was \$5.30/lb. General Moly's latest presentation on its website⁵ highlights that "General Moly's 80% ownership NPV breakeven price is \$10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is \$9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

- lost millions of dollars in stock value.
- needed to tap into funds reserved for equipment purchases,
- laid off personnel,
- closed its office in Eureka,
- deferred construction of the water-supply wells, pipelines and other infrastructure needed to divert the water, and
- postponed the purchase of equipment essential to putting the water to beneficial use.

Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

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- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
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- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MA	ATTER OF APPLICATION NUMBER	85589	
FILED BY	Kobeh Valley Ranch LLC (c/o General N	Aoly, Inc.)	PROTEST
ON	October 28	, 20 15	TROTEST
Со	mes now EUREKA COUNTY		
			ed or typed name of protestant
whose post	office address is POST OFFICE BOX 69-	4, EUREKA,	NEVADA 89316
urbosa osaw	pation is POLITICAL SUBDIVISION	Street No o	or PO Box, City, State and ZIP Code
whose occu	pation is 1 out 11 car 3 out of 11 in 11 i	idin endelembi s. kungsappa agrapadana pa e re	and protests the granting
of Applicati	on Number 85589	, filed	on OCTOBER 28 , 20 15
by KOBE	H VALLEY RANCH LLC (c/o General M	oly, Inc.)	for the
waters of	UNDERGROUND	leth threen relatively to tok conspense.	situated in EUREKA
County State	an underground source or name of stream, lak		
County, Stat	te of Nevada, for the following reasons and	on the follow	ving grounds, to wit:
TH	EREFORE the Protestant requests that the sorder be entered for such relief as the State is		Denied, issued subject to prior rights, etc., as the case may be
		Address	Printed or typed name, if agent POST OFFICE BOX 694
State of Neva		1	Street No. or PO Box
County of E	UREKA		EUREKA, NV 89316
Subscribed an	d swom to before me on JAN. 🍀, 2015		City, State and ZIP Code (775) 237-5262
by J.J. GOICOECHEA			Phone Number jjgoicoechea@eurekanv.org
· mare	. \ \		E-mail TONI M. WRIGHT Notary Public - State of Nevada Appointment Recorded in Europe 20 2018
<u> </u>	work to be compared by		189.5-5-A. C. CARS SECTION OF THE STREET
	Signature of Notary Public Required		Notary Stamp or Seal Required

+ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE. ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

Exhibit "A"

- 1. These Applications should be denied because they are practically identical¹ to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
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- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
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² See Eureka County's filings regarding this matter in the District Court.

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights. reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
- 8. Applications to Change 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 must be denied because they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127. Applications to Change the Point of Diversion, Manner of Use and Place of Use of a water right can only be filed if the right to be changed is valid. Once a permit is abrogated, it is no longer in force. There are no water rights which can be changed by the current round of Change Applications.
- 9. These Applications should be denied because sustained large-scale pumping in Kobeh Valley will impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. According to the applicant's ground water model, sustained over-pumping in Kobeh Valley will impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley, Pine Valley and other adjacent basins. The owners of these rights contribute to the long-term economic viability of the greater Eureka community and such impacts will prove detrimental to the health and welfare of Eureka County.

³ "Because we reverse and remand on this basis, we do not reach the remaining issues raised in these consolidated appeals." Supreme Court Opinion, p. 16.

- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout, and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
- 12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

Diamond Valley and will remove water from Diamond Valley in conflict with a recent State Engineer Order in Diamond Valley prohibiting any new groundwater appropriations in Diamond Valley. Sustained over pumping in Kobeh Valley is likely to reduce that amount and affect prior existing municipal water rights held by Eureka County and the Devils Gate GID that supply the majority of the population in Diamond Valley. Granting the change applications will cause the basin to be over pumped to the detriment of the basin, adjacent connected basins, and prior existing water rights holders.

There is consensus underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobeh Valley may provide underground flow to Diamond Valley. However, it is USGS's opinion that data are currently insufficient with which to determine the amount of inter-basin flow with any level of certainty. Groundwater modeling by the applicant's consultants suggests pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley and the applicant's model shows drawdown into Diamond Valley from KVR's project pumping. north of Whistler Mountain, suggesting a hydrologic continuum between the two basins. These previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearings in support of the mine's groundwater rights applications concluded that geologic materials comprising the mountains that separate the Kobeh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobeh Valley to Diamond Valley through the mountains was previously characterized as trivial. The locations of some of the points of diversion for these change applications suggest significant secondary permeability exists in the rocks separating Kobeh and Diamond Valleys, otherwise there would be little reason to propose constructing wells at these locations. The most recent iteration of the regional groundwater model developed by the applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Whistler Mountain that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

206T as well as declines in the flow in Nichols Spring.⁴ If Diamond Valley pumping is a possible cause for water level declines in Kobeh Valley, the pumping from eastern Kobeh Valley should be expected to affect water levels in Diamond Valley. Given that Diamond Valley has been designated by the State Engineer as a Critical Management Area, any capture of inter-basin groundwater flow to Diamond Valley or drawdown in Diamond Valley interferes with efforts to manage the groundwater resources there and represents a conflict with existing rights. A recent State Engineer Order in Diamond Valley disallows any new groundwater appropriations and any drawdown in Diamond Valley from Kobeh Valley should also be disallowed.

13. These Applications should be denied because they include no Monitoring, Management and Mitigation (3M) Plan developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants. The Nevada Supreme Court concluded that ". . . allowing the State Engineer to grant applications conditioned upon development of a future 3M Plan when the resulting appropriations would otherwise conflict with existing rights, could potentially violate the protestants' rights to a full and fair hearing on the matter, a rule rooted in due process. (cite omitted)" *See* Supreme Court Opinion, p. 15.

The Supreme Court determined the record before the State Engineer shows conflicts with existing rights will occur as a consequence of KVR's Applications. Consistent with the Supreme Court's Opinion interpreting NRS 533.370(2) at this time, Eureka County insists that a Monitoring, Management and Mitigation (3M) Plan be developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants, before any action be taken on the Applications. Because groundwater modeling by the applicant shows drawdown and resulting impacts will persist for decades after the mining project concludes, the 3M Plan must provide a vehicle to ensure mitigation will be funded in perpetuity, or until there is no longer any potential for future impacts.

Any proposed management, monitoring and mitigation plan to address known and potential impacts from the applicant's proposed pumping must be developed with supporting analytical data prior to any approval of the Applications, consistent with the Supreme Court Opinion. A plan for monitoring and mitigation of potential impacts to water rights holders and threatened species must include specific, attainable, realistic, relevant, and time-fixed measures and acceptable substitute water sources to mitigate these conflicts and adverse impacts. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect.

14. These Applications should be denied because KVR cannot show it has the intention in good faith or financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence as required by NRS 533.370(1)(c). The works

⁴ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over \$12.00 per share. Today, it is worth about \$0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was \$5.30/lb. General Moly's latest presentation on its website⁵ highlights that "General Moly's 80% ownership NPV breakeven price is \$10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is \$9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

- lost millions of dollars in stock value,
- needed to tap into funds reserved for equipment purchases,
- laid off personnel,
- closed its office in Eureka,
- deferred construction of the water-supply wells, pipelines and other infrastructure needed to divert the water, and
- postponed the purchase of equipment essential to putting the water to beneficial use.

Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

⁵ http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

Eureka County no extensions would be granted. This failure to simply resume irrigation of established fields at the Bobcat Ranch is yet another symptom of KVR's underlying lack of intent and financial problems showing a lack of intent or financial ability to put the water to beneficial use.

General Moly has recently received a small infusion of capital from investors, amounting to a minor fraction of the cost to put the water to beneficial use. This small investment is coupled to promises to fund the project if worldwide economic conditions change. Clearly, funding of the project is based on speculation in the molybdenum market and funding will not be secured anytime soon based on moly demand and the world economy. How long is the State Engineer and other potential appropriators of the water resource supposed to wait for such a speculative venture to bear fruit? In the meantime, there is no unappropriated water in Kobeh Valley that might be put to use by others.

- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
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IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

	APPLICATION NUMBER	85590		
FILED BY Kobeh Va	illey Ranch LLC (c/o General M	oly, Inc.)	PROTEST	
ON	October 28	, 20_15		
Comes now	EUREKA COUNTY			
bvali či	an Crammona y may nay angga et y nikolonik et egiptot johnor et angge et repana i koronere et y ant et et en k		ed or typed name of protestant	99453 Fryskes (CDARC Landscord) e eskander e 1647 de enkander de Barren (2044 4760 564 ar 1644 464 4747 3746
whose post office address	ss is POST OFFICE BOX 694	, EUREKA	, NEVADA 89316	E-Wassaccccastcrams a regular gas a versage and a read a
where accountion is	POLITICAL SUBDIVISION	Street No.	or PO Box, City, State and ZIP Code	
whose occupation is	- Courte and Sopolivision	nioria) otambolomed kon evro kyspava		and protests the granting
of Application Number	85590	, filed	on OCTOBER 28	, 20 15
by KOBEH VALLEY	' RANCH LLC (c/o General Mo	ly, Inc.)	Namen (com transportation design (company) de la company (company) de la company (company) de la company (comp	for the
waters of UNDERGR	ROUND	apila nddio nh acf full na dnio add nhan ga	situated in EUREKA	
an unde	rground source or name of stream, lake,	spring or othe	er source	Section of the sectio
County, State of Nevada	, for the following reasons and o	in the follow	wing grounds, to wit:	
PLEASE SEE EXHIBIT	<u> "A" ATTACHED HERETO.</u>			
	he Protestant requests that the apreced for such relief as the State E		Denied, issued subject to prior ri	
			Printed or typed name	, if agent
State of Nevada		Address	POST OFFICE BOX 694	nci Craddonwara (1884 on pick)) kww.c.caappiego wo) pwpor angpang Educija o (1944 aaneel 1992 aaneel 1992 aa
County of EUREKA			Street No. or PO EUREKA, NV 89316	***************************************
Subscribed and sworn to before me on JAN. 1 + , 2015			City, State and ZIP (775) 237-5262	Code
J.J. GOICOECHEA			Phone Number jjgoicoechea@eurekanv.org E-mail	The state of the s
Signature of N	Notary Public Required	_	TORS M. V Notary Public - S Appliance - Expected No 50x4567-2 - Expected Notary Stamp or Seal	/RIGHT late of Nevada i in Eveka County Epochaet 20, 2015

+ \$30 filing fee must accompany protest. Protest must be filed in Duplicate. ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

Notary Stamp or Seal Required

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- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout, and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic The valley floor phreatophytic vegetation will continue to occur discharge. notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
- 12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

Diamond Valley and will remove water from Diamond Valley in conflict with a recent State Engineer Order in Diamond Valley prohibiting any new groundwater appropriations in Diamond Valley. Sustained over pumping in Kobeh Valley is likely to reduce that amount and affect prior existing municipal water rights held by Eureka County and the Devils Gate GID that supply the majority of the population in Diamond Valley. Granting the change applications will cause the basin to be over pumped to the detriment of the basin, adjacent connected basins, and prior existing water rights holders.

There is consensus underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobeh Valley may provide underground flow to Diamond Valley. However, it is USGS's opinion that data are currently insufficient with which to determine the amount of inter-basin flow with any level of certainty. Groundwater modeling by the applicant's consultants suggests pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley and the applicant's model shows drawdown into Diamond Valley from KVR's project pumping. north of Whistler Mountain, suggesting a hydrologic continuum between the two basins. These previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearings in support of the mine's groundwater rights applications concluded that geologic materials comprising the mountains that separate the Kobeh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobeh Valley to Diamond Valley through the mountains was previously characterized as trivial. The locations of some of the points of diversion for these change applications suggest significant secondary permeability exists in the rocks separating Kobeh and Diamond Valleys, otherwise there would be little reason to propose constructing wells at these locations. The most recent iteration of the regional groundwater model developed by the applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Whistler Mountain that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

206T as well as declines in the flow in Nichols Spring.⁴ If Diamond Valley pumping is a possible cause for water level declines in Kobeh Valley, the pumping from eastern Kobeh Valley should be expected to affect water levels in Diamond Valley. Given that Diamond Valley has been designated by the State Engineer as a Critical Management Area, any capture of inter-basin groundwater flow to Diamond Valley or drawdown in Diamond Valley interferes with efforts to manage the groundwater resources there and represents a conflict with existing rights. A recent State Engineer Order in Diamond Valley disallows any new groundwater appropriations and any drawdown in Diamond Valley from Kobeh Valley should also be disallowed.

13. These Applications should be denied because they include no Monitoring, Management and Mitigation (3M) Plan developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants. The Nevada Supreme Court concluded that ". . . allowing the State Engineer to grant applications conditioned upon development of a future 3M Plan when the resulting appropriations would otherwise conflict with existing rights, could potentially violate the protestants' rights to a full and fair hearing on the matter, a rule rooted in due process. (cite omitted)" *See* Supreme Court Opinion, p. 15.

The Supreme Court determined the record before the State Engineer shows conflicts with existing rights will occur as a consequence of KVR's Applications. Consistent with the Supreme Court's Opinion interpreting NRS 533.370(2) at this time, Eureka County insists that a Monitoring, Management and Mitigation (3M) Plan be developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants, before any action be taken on the Applications. Because groundwater modeling by the applicant shows drawdown and resulting impacts will persist for decades after the mining project concludes, the 3M Plan must provide a vehicle to ensure mitigation will be funded in perpetuity, or until there is no longer any potential for future impacts.

Any proposed management, monitoring and mitigation plan to address known and potential impacts from the applicant's proposed pumping must be developed with supporting analytical data prior to any approval of the Applications, consistent with the Supreme Court Opinion. A plan for monitoring and mitigation of potential impacts to water rights holders and threatened species must include specific, attainable, realistic, relevant, and time-fixed measures and acceptable substitute water sources to mitigate these conflicts and adverse impacts. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect.

14. These Applications should be denied because KVR cannot show it has the intention in good faith or financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence as required by NRS 533.370(1)(c). The works

⁴ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

Exhibit "A"

Eureka County Protest to Application Numbers 85573 through 85604 Filed by Kobeh Valley Ranch LLC

necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over \$12.00 per share. Today, it is worth about \$0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was \$5.30/lb. General Moly's latest presentation on its website⁵ highlights that "General Moly's 80% ownership NPV breakeven price is \$10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is \$9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

- lost millions of dollars in stock value,
- needed to tap into funds reserved for equipment purchases,
- laid off personnel,
- closed its office in Eureka,
- deferred construction of the water-supply wells, pipelines and other infrastructure needed to divert the water, and
- postponed the purchase of equipment essential to putting the water to beneficial use.

Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

⁵ http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

Eureka County no extensions would be granted. This failure to simply resume irrigation of established fields at the Bobcat Ranch is yet another symptom of KVR's underlying lack of intent and financial problems showing a lack of intent or financial ability to put the water to beneficial use.

General Moly has recently received a small infusion of capital from investors, amounting to a minor fraction of the cost to put the water to beneficial use. This small investment is coupled to promises to fund the project if worldwide economic conditions change. Clearly, funding of the project is based on speculation in the molybdenum market and funding will not be secured anytime soon based on moly demand and the world economy. How long is the State Engineer and other potential appropriators of the water resource supposed to wait for such a speculative venture to bear fruit? In the meantime, there is no unappropriated water in Kobeh Valley that might be put to use by others.

- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

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+ s30 filing fee must accompany protest. Protest must be filed in duplicate. All copies must contain <u>original</u> signature.

Exhibit "A"

- 1. These Applications should be denied because they are practically identical¹ to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
- 5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order...." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied. As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.
- 6. These Applications should be denied because they do not include any attempt to resolve the issues identified by the Supreme Court Opinion or the outstanding issues the Supreme Court did not address but nevertheless chose to reference in its Opinion, which highlights

¹ Many applications at issue under these protests were sent back for correction and/or have hand written corrections on them which highlights that perhaps changes are being put forward that do not exactly match some of the previous applications.

² See Eureka County's filings regarding this matter in the District Court.

Exhibit "A"

Eureka County Protest to Application Numbers 85573 through 85604 Filed by Kobeh Valley Ranch LLC

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
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- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic The valley floor phreatophytic vegetation will continue to occur discharge. notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
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- lost millions of dollars in stock value,
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Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

⁵ http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

Eureka County no extensions would be granted. This failure to simply resume irrigation of established fields at the Bobcat Ranch is yet another symptom of KVR's underlying lack of intent and financial problems showing a lack of intent or financial ability to put the water to beneficial use.

General Moly has recently received a small infusion of capital from investors, amounting to a minor fraction of the cost to put the water to beneficial use. This small investment is coupled to promises to fund the project if worldwide economic conditions change. Clearly, funding of the project is based on speculation in the molybdenum market and funding will not be secured anytime soon based on moly demand and the world economy. How long is the State Engineer and other potential appropriators of the water resource supposed to wait for such a speculative venture to bear fruit? In the meantime, there is no unappropriated water in Kobeh Valley that might be put to use by others.

- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MAT	TER OF APPLICATION NUMBER	85592	Manus del	
FILED BY	Kobeh Valley Ranch LLC (c/o General	Moly, Inc.)	PROTEST	
ON	October 28	, 20 15	PROTEST	
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⁺ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE. ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

Exhibit "A"

Eureka County Protest to Application Numbers 85573 through 85604 Filed by Kobeh Valley Ranch LLC

- 1. These Applications should be denied because they are practically identical¹ to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
- 5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order...." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied. As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.
- 6. These Applications should be denied because they do not include any attempt to resolve the issues identified by the Supreme Court Opinion or the outstanding issues the Supreme Court did not address but nevertheless chose to reference in its Opinion, which highlights

¹ Many applications at issue under these protests were sent back for correction and/or have hand written corrections on them which highlights that perhaps changes are being put forward that do not exactly match some of the previous applications.

² See Eureka County's filings regarding this matter in the District Court.

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
- 8. Applications to Change 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 must be denied because they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127. Applications to Change the Point of Diversion, Manner of Use and Place of Use of a water right can only be filed if the right to be changed is valid. Once a permit is abrogated, it is no longer in force. There are no water rights which can be changed by the current round of Change Applications.
- 9. These Applications should be denied because sustained large-scale pumping in Kobeh Valley will impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. According to the applicant's ground water model, sustained over-pumping in Kobeh Valley will impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley, Pine Valley and other adjacent basins. The owners of these rights contribute to the long-term economic viability of the greater Eureka community and such impacts will prove detrimental to the health and welfare of Eureka County.

³ "Because we reverse and remand on this basis, we do not reach the remaining issues raised in these consolidated appeals." Supreme Court Opinion, p. 16.

- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout, and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
- 12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

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- postponed the purchase of equipment essential to putting the water to beneficial use.

Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

⁵ http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

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- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
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- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

Exhibit "A"

Eureka County Protest to Application Numbers 85573 through 85604 Filed by Kobeh Valley Ranch LLC

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from inigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from inigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER	OF APPLICATION NUMBER	85578						
FILED BY Kobel	ı Valley Ranch LLC (c/o General N	ioly, Inc.)	PROT	FST				
ON	October 28	, 20 15	1101	LUI				
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Subscribed and sworn t	City, State and ZIP Code abscribed and sworn to before me on JAN. 1, 2015 (775) 237-5262							
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+ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

Exhibit "A"

Eureka County Protest to Application Numbers 85573 through 85604 Filed by Kobeh Valley Ranch LLC

- 1. These Applications should be denied because they are practically identical to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
- 5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order..." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied. As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.
- 6. These Applications should be denied because they do not include any attempt to resolve the issues identified by the Supreme Court Opinion or the outstanding issues the Supreme Court did not address but nevertheless chose to reference in its Opinion, which highlights

¹ Many applications at issue under these protests were sent back for correction and/or have hand written corrections on them which highlights that perhaps changes are being put forward that do not exactly match some of the previous applications.

² See Eureka County's filings regarding this matter in the District Court.

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
- 8. Applications to Change 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 must be denied because they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127. Applications to Change the Point of Diversion, Manner of Use and Place of Use of a water right can only be filed if the right to be changed is valid. Once a permit is abrogated, it is no longer in force. There are no water rights which can be changed by the current round of Change Applications.
- 9. These Applications should be denied because sustained large-scale pumping in Kobeh Valley will impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. According to the applicant's ground water model, sustained over-pumping in Kobeh Valley will impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley, Pine Valley and other adjacent basins. The owners of these rights contribute to the long-term economic viability of the greater Eureka community and such impacts will prove detrimental to the health and welfare of Eureka County.

³ "Because we reverse and remand on this basis, we do not reach the remaining issues raised in these consolidated appeals." Supreme Court Opinion, p. 16.

- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout. and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
- 12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

Diamond Valley and will remove water from Diamond Valley in conflict with a recent State Engineer Order in Diamond Valley prohibiting any new groundwater appropriations in Diamond Valley. Sustained over pumping in Kobeh Valley is likely to reduce that amount and affect prior existing municipal water rights held by Eureka County and the Devils Gate GID that supply the majority of the population in Diamond Valley. Granting the change applications will cause the basin to be over pumped to the detriment of the basin, adjacent connected basins, and prior existing water rights holders.

There is consensus underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobeh Valley may provide underground flow to Diamond Valley. However, it is USGS's opinion that data are currently insufficient with which to determine the amount of inter-basin flow with any level of certainty. Groundwater modeling by the applicant's consultants suggests pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley and the applicant's model shows drawdown into Diamond Valley from KVR's project pumping. north of Whistler Mountain, suggesting a hydrologic continuum between the two basins. These previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearings in support of the mine's groundwater rights applications concluded that geologic materials comprising the mountains that separate the Kobeh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobeh Valley to Diamond Valley through the mountains was previously characterized as trivial. The locations of some of the points of diversion for these change applications suggest significant secondary permeability exists in the rocks separating Kobeh and Diamond Valleys, otherwise there would be little reason to propose constructing wells at these locations. The most recent iteration of the regional groundwater model developed by the applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Whistler Mountain that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

206T as well as declines in the flow in Nichols Spring.⁴ If Diamond Valley pumping is a possible cause for water level declines in Kobeh Valley, the pumping from eastern Kobeh Valley should be expected to affect water levels in Diamond Valley. Given that Diamond Valley has been designated by the State Engineer as a Critical Management Area, any capture of inter-basin groundwater flow to Diamond Valley or drawdown in Diamond Valley interferes with efforts to manage the groundwater resources there and represents a conflict with existing rights. A recent State Engineer Order in Diamond Valley disallows any new groundwater appropriations and any drawdown in Diamond Valley from Kobeh Valley should also be disallowed.

13. These Applications should be denied because they include no Monitoring, Management and Mitigation (3M) Plan developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants. The Nevada Supreme Court concluded that ". . . allowing the State Engineer to grant applications conditioned upon development of a future 3M Plan when the resulting appropriations would otherwise conflict with existing rights, could potentially violate the protestants' rights to a full and fair hearing on the matter, a rule rooted in due process. (cite omitted)" *See* Supreme Court Opinion, p. 15.

The Supreme Court determined the record before the State Engineer shows conflicts with existing rights will occur as a consequence of KVR's Applications. Consistent with the Supreme Court's Opinion interpreting NRS 533.370(2) at this time, Eureka County insists that a Monitoring, Management and Mitigation (3M) Plan be developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants, before any action be taken on the Applications. Because groundwater modeling by the applicant shows drawdown and resulting impacts will persist for decades after the mining project concludes, the 3M Plan must provide a vehicle to ensure mitigation will be funded in perpetuity, or until there is no longer any potential for future impacts.

Any proposed management, monitoring and mitigation plan to address known and potential impacts from the applicant's proposed pumping must be developed with supporting analytical data prior to any approval of the Applications, consistent with the Supreme Court Opinion. A plan for monitoring and mitigation of potential impacts to water rights holders and threatened species must include specific, attainable, realistic, relevant, and time-fixed measures and acceptable substitute water sources to mitigate these conflicts and adverse impacts. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect.

14. These Applications should be denied because KVR cannot show it has the intention in good faith or financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence as required by NRS 533.370(1)(c). The works

⁴ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over \$12.00 per share. Today, it is worth about \$0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was \$5.30/lb. General Moly's latest presentation on its website⁵ highlights that "General Moly's 80% ownership NPV breakeven price is \$10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is \$9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

- lost millions of dollars in stock value,
- needed to tap into funds reserved for equipment purchases.
- laid off personnel,
- closed its office in Eureka,
- deferred construction of the water-supply wells, pipelines and other infrastructure needed to divert the water, and
- postponed the purchase of equipment essential to putting the water to beneficial use.

Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

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http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

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- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
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- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

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- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER	85579		
FILED BY Kobeh Valley Ranch LLC (c/o General M	loly, Inc.)	PROTEST	
ON October 28	, 20 15		
Comes now EUREKA COUNTY			
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whose post office address is POST OFFICE BOX 694	, EUREKA, NI	EVADA 89316 O Box, City, State and ZIP Code	radional francisco de la contraction de compaño de contraction de contraction de contraction de contraction de
whose occupation is POLITICAL SUBDIVISION	Street No. or P	O Box, City, State and ZIP Code	and protests the granting
of Application Number 85579	, filed on	OCTOBER 28	, 20 15
by KOBEH VALLEY RANCH LLC (c/o General Mo	oly, Inc.)	teri tinitti vali varnjjalavini era vivi ati (majama etti viça stra johina eribi vara ang ja palam	for the
waters of UNDERGROUND	ette de de de la company de la	situated in EUREKA	
an underground source or name of stream, lake County, State of Nevada, for the following reasons and			
PLEASE SEE EXHIBIT "A" ATTACHED HERETO.			
THEREFORE the Protestant requests that the a and that an order be entered for such relief as the State E	wast.	DENIED Denied, issued subject to prior rigit	nts.etc., as the case-may be
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County of EUREKA	E	UREKA, NV 89316	
Subscribed and sworn to before me on JAN. 1-2, 2015	ode		
by J.J. GOICOECHEA	زز	Phone Number goicoechea@eurekanv.org	
		TONI M. W	ate of Nevada 🍹
their of a light		Appointment Recorded No: 63-34367-3 - Expires	in Euraka County

+ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

Notary Stamp or Seal Required

Signature of Notary Public Required

- 1. These Applications should be denied because they are practically identical to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
- 5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order...." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied. As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.
- 6. These Applications should be denied because they do not include any attempt to resolve the issues identified by the Supreme Court Opinion or the outstanding issues the Supreme Court did not address but nevertheless chose to reference in its Opinion, which highlights

⁴ Many applications at issue under these protests were sent back for correction and/or have hand written corrections on them which highlights that perhaps changes are being put forward that do not exactly match some of the previous applications.

² See Eureka County's filings regarding this matter in the District Court.

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project. 3

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights. reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
- 8. Applications to Change 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 must be denied because they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127. Applications to Change the Point of Diversion, Manner of Use and Place of Use of a water right can only be filed if the right to be changed is valid. Once a permit is abrogated, it is no longer in force. There are no water rights which can be changed by the current round of Change Applications.
- 9. These Applications should be denied because sustained large-scale pumping in Kobeh Valley will impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. According to the applicant's ground water model, sustained over-pumping in Kobeh Valley will impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley, Pine Valley and other adjacent basins. The owners of these rights contribute to the long-term economic viability of the greater Eureka community and such impacts will prove detrimental to the health and welfare of Eureka County.

³ "Because we reverse and remand on this basis, we do not reach the remaining issues raised in these consolidated appeals." Supreme Court Opinion, p. 16.

- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout. and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic The valley floor phreatophytic vegetation will continue to occur discharge. notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
- 12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

Diamond Valley and will remove water from Diamond Valley in conflict with a recent State Engineer Order in Diamond Valley prohibiting any new groundwater appropriations in Diamond Valley. Sustained over pumping in Kobeh Valley is likely to reduce that amount and affect prior existing municipal water rights held by Eureka County and the Devils Gate GID that supply the majority of the population in Diamond Valley. Granting the change applications will cause the basin to be over pumped to the detriment of the basin, adjacent connected basins, and prior existing water rights holders.

There is consensus underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobeh Valley may provide underground flow to Diamond Valley. However, it is USGS's opinion that data are currently insufficient with which to determine the amount of inter-basin flow with any level of certainty. Groundwater modeling by the applicant's consultants suggests pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley and the applicant's model shows drawdown into Diamond Valley from KVR's project pumping, north of Whistler Mountain, suggesting a hydrologic continuum between the two basins. These previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearings in support of the mine's groundwater rights applications concluded that geologic materials comprising the mountains that separate the Kobeh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobeh Valley to Diamond Valley through the mountains was previously characterized as trivial. The locations of some of the points of diversion for these change applications suggest significant secondary permeability exists in the rocks separating Kobeh and Diamond Valleys, otherwise there would be little reason to propose constructing wells at these locations. The most recent iteration of the regional groundwater model developed by the applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Whistler Mountain that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

206T as well as declines in the flow in Nichols Spring.⁴ If Diamond Valley pumping is a possible cause for water level declines in Kobeh Valley, the pumping from eastern Kobeh Valley should be expected to affect water levels in Diamond Valley. Given that Diamond Valley has been designated by the State Engineer as a Critical Management Area, any capture of inter-basin groundwater flow to Diamond Valley or drawdown in Diamond Valley interferes with efforts to manage the groundwater resources there and represents a conflict with existing rights. A recent State Engineer Order in Diamond Valley disallows any new groundwater appropriations and any drawdown in Diamond Valley from Kobeh Valley should also be disallowed.

13. These Applications should be denied because they include no Monitoring, Management and Mitigation (3M) Plan developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants. The Nevada Supreme Court concluded that ". . . allowing the State Engineer to grant applications conditioned upon development of a future 3M Plan when the resulting appropriations would otherwise conflict with existing rights, could potentially violate the protestants' rights to a full and fair hearing on the matter, a rule rooted in due process. (cite omitted)" *See* Supreme Court Opinion, p. 15.

The Supreme Court determined the record before the State Engineer shows conflicts with existing rights will occur as a consequence of KVR's Applications. Consistent with the Supreme Court's Opinion interpreting NRS 533.370(2) at this time, Eureka County insists that a Monitoring, Management and Mitigation (3M) Plan be developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants, before any action be taken on the Applications. Because groundwater modeling by the applicant shows drawdown and resulting impacts will persist for decades after the mining project concludes, the 3M Plan must provide a vehicle to ensure mitigation will be funded in perpetuity, or until there is no longer any potential for future impacts.

Any proposed management, monitoring and mitigation plan to address known and potential impacts from the applicant's proposed pumping must be developed with supporting analytical data prior to any approval of the Applications, consistent with the Supreme Court Opinion. A plan for monitoring and mitigation of potential impacts to water rights holders and threatened species must include specific, attainable, realistic, relevant, and time-fixed measures and acceptable substitute water sources to mitigate these conflicts and adverse impacts. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect.

14. These Applications should be denied because KVR cannot show it has the intention in good faith or financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence as required by NRS 533.370(1)(c). The works

⁴ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over \$12.00 per share. Today, it is worth about \$0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was \$5.30/lb. General Moly's latest presentation on its website⁵ highlights that "General Moly's 80% ownership NPV breakeven price is \$10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is \$9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

- lost millions of dollars in stock value,
- needed to tap into funds reserved for equipment purchases,
- laid off personnel,
- closed its office in Eureka,
- deferred construction of the water-supply wells, pipelines and other infrastructure needed to divert the water, and
- postponed the purchase of equipment essential to putting the water to beneficial use.

Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

⁵ http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

Eureka County no extensions would be granted. This failure to simply resume irrigation of established fields at the Bobcat Ranch is yet another symptom of KVR's underlying lack of intent and financial problems showing a lack of intent or financial ability to put the water to beneficial use.

General Moly has recently received a small infusion of capital from investors, amounting to a minor fraction of the cost to put the water to beneficial use. This small investment is coupled to promises to fund the project if worldwide economic conditions change. Clearly, funding of the project is based on speculation in the molybdenum market and funding will not be secured anytime soon based on moly demand and the world economy. How long is the State Engineer and other potential appropriators of the water resource supposed to wait for such a speculative venture to bear fruit? In the meantime, there is no unappropriated water in Kobeh Valley that might be put to use by others.

- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

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IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

	TTER OF APPLICATION NUMBER	85580				
FILED BY	Kobeh Valley Ranch LLC (c/o General N	Aoly, Inc.)	>	PROTEST		
ON	October 28	, 20 15				
Соп	nes now EUREKA COUNTY					
	***************************************	Printe	ed or typed name of protestant	**************************************	- e l d w=(4'00 m2) w c wile de là a mile ga 44 e 54,	********************************
whose post o	ffice address is POST OFFICE BOX 69-	4, EUREKA	NEVADA 89316		hoccasty //JANIY i interview hocky y god	(r00) Trans (r)
whose occup	ation is POLITICAL SUBDIVISION	Street No.	or PO Box, City, State and ZIP	Code		sts the granting
of Applicatio	n Number 85580	, filed	on OCTOBER 28	rtt/}}*\re=;}************************************	it dan kumpitara i zowe ca batowa barodow	, 20 15
by KOBEH	I VALLEY RANCH LLC (c/o General M	oly, Inc.)	กร้างกลีรัสแบร์เหล่งครามเรียนใส่เหล0(hiberally/sulfinumu	addid Cognition of the Control of th	(15(3ff-6-prédédapangnapygy)	for the
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	der be entered for such relief as the State		Denied, issu	ed subject to prior right	s, etc', as the ca	
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		Signed	4/1/1	00		
		1	J.J. GOIĆOECHEA, CI	Agent or protestant HAIRMAN		
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County of EU			EUREKA, NV 89316	Street No. or PO Box		
<i>~</i>	1431 1 1 2015		(775) 037 FROM	City, State and ZIP Coo	de	***************************************
Subscribed and	sworn to before me on JAN. 12, 2015		(775) 237-5262	Phone Number	MENERALANDON INCODE CONTRACTOR APPEARS	nakkadikang paning palakang ang dada na taba
by J.J. GOIC	OECHEA		jjgoicoechea@eurekanv			
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	Signature of Notary Public Required	_		TONI M. WR Notary Public - State Appointment Recorded in No: 95-34307-3 - Expires De tarry Stamp or Seal Req	IGHT e of Nevada Eureka County ecombar 20, 2018	

+ \$30 filing fee must accompany protest. Protest must be filed in duplicate. ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

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- 9. These Applications should be denied because sustained large-scale pumping in Kobeh Valley will impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. According to the applicant's ground water model, sustained over-pumping in Kobeh Valley will impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley, Pine Valley and other adjacent basins. The owners of these rights contribute to the long-term economic viability of the greater Eureka community and such impacts will prove detrimental to the health and welfare of Eureka County.

³ "Because we reverse and remand on this basis, we do not reach the remaining issues raised in these consolidated appeals." Supreme Court Opinion, p. 16.

- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout. and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
- 12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

Diamond Valley and will remove water from Diamond Valley in conflict with a recent State Engineer Order in Diamond Valley prohibiting any new groundwater appropriations in Diamond Valley. Sustained over pumping in Kobeh Valley is likely to reduce that amount and affect prior existing municipal water rights held by Eureka County and the Devils Gate GID that supply the majority of the population in Diamond Valley. Granting the change applications will cause the basin to be over pumped to the detriment of the basin, adjacent connected basins, and prior existing water rights holders.

There is consensus underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobeh Valley may provide underground flow to Diamond Valley. However, it is USGS's opinion that data are currently insufficient with which to determine the amount of inter-basin flow with any level of certainty. Groundwater modeling by the applicant's consultants suggests pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley and the applicant's model shows drawdown into Diamond Valley from KVR's project pumping, north of Whistler Mountain, suggesting a hydrologic continuum between the two basins. These previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearings in support of the mine's groundwater rights applications concluded that geologic materials comprising the mountains that separate the Kobeh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobeh Valley to Diamond Valley through the mountains was previously characterized as trivial. The locations of some of the points of diversion for these change applications suggest significant secondary permeability exists in the rocks separating Kobeh and Diamond Valleys, otherwise there would be little reason to propose constructing wells at these locations. The most recent iteration of the regional groundwater model developed by the applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Whistler Mountain that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

206T as well as declines in the flow in Nichols Spring.⁴ If Diamond Valley pumping is a possible cause for water level declines in Kobeh Valley, the pumping from eastern Kobeh Valley should be expected to affect water levels in Diamond Valley. Given that Diamond Valley has been designated by the State Engineer as a Critical Management Area, any capture of inter-basin groundwater flow to Diamond Valley or drawdown in Diamond Valley interferes with efforts to manage the groundwater resources there and represents a conflict with existing rights. A recent State Engineer Order in Diamond Valley disallows any new groundwater appropriations and any drawdown in Diamond Valley from Kobeh Valley should also be disallowed.

13. These Applications should be denied because they include no Monitoring, Management and Mitigation (3M) Plan developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants. The Nevada Supreme Court concluded that ". . . allowing the State Engineer to grant applications conditioned upon development of a future 3M Plan when the resulting appropriations would otherwise conflict with existing rights, could potentially violate the protestants' rights to a full and fair hearing on the matter, a rule rooted in due process. (cite omitted)" *See* Supreme Court Opinion, p. 15.

The Supreme Court determined the record before the State Engineer shows conflicts with existing rights will occur as a consequence of KVR's Applications. Consistent with the Supreme Court's Opinion interpreting NRS 533.370(2) at this time, Eureka County insists that a Monitoring, Management and Mitigation (3M) Plan be developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants, before any action be taken on the Applications. Because groundwater modeling by the applicant shows drawdown and resulting impacts will persist for decades after the mining project concludes, the 3M Plan must provide a vehicle to ensure mitigation will be funded in perpetuity, or until there is no longer any potential for future impacts.

Any proposed management, monitoring and mitigation plan to address known and potential impacts from the applicant's proposed pumping must be developed with supporting analytical data prior to any approval of the Applications, consistent with the Supreme Court Opinion. A plan for monitoring and mitigation of potential impacts to water rights holders and threatened species must include specific, attainable, realistic, relevant, and time-fixed measures and acceptable substitute water sources to mitigate these conflicts and adverse impacts. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect.

14. These Applications should be denied because KVR cannot show it has the intention in good faith or financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence as required by NRS 533.370(1)(c). The works

⁴ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over \$12.00 per share. Today, it is worth about \$0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was \$5.30/lb. General Moly's latest presentation on its website⁵ highlights that "General Moly's 80% ownership NPV breakeven price is \$10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is \$9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

- lost millions of dollars in stock value,
- needed to tap into funds reserved for equipment purchases,
- laid off personnel,
- closed its office in Eureka,
- deferred construction of the water-supply wells, pipelines and other infrastructure needed to divert the water, and
- postponed the purchase of equipment essential to putting the water to beneficial use.

Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

⁵ http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

Eureka County no extensions would be granted. This failure to simply resume irrigation of established fields at the Bobcat Ranch is yet another symptom of KVR's underlying lack of intent and financial problems showing a lack of intent or financial ability to put the water to beneficial use.

General Moly has recently received a small infusion of capital from investors, amounting to a minor fraction of the cost to put the water to beneficial use. This small investment is coupled to promises to fund the project if worldwide economic conditions change. Clearly, funding of the project is based on speculation in the molybdenum market and funding will not be secured anytime soon based on moly demand and the world economy. How long is the State Engineer and other potential appropriators of the water resource supposed to wait for such a speculative venture to bear fruit? In the meantime, there is no unappropriated water in Kobeh Valley that might be put to use by others.

- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

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ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

Exhibit "A"

- 1. These Applications should be denied because they are practically identical to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
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the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

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In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

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Any proposed management, monitoring and mitigation plan to address known and potential impacts from the applicant's proposed pumping must be developed with supporting analytical data prior to any approval of the Applications, consistent with the Supreme Court Opinion. A plan for monitoring and mitigation of potential impacts to water rights holders and threatened species must include specific, attainable, realistic, relevant, and time-fixed measures and acceptable substitute water sources to mitigate these conflicts and adverse impacts. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect.

14. These Applications should be denied because KVR cannot show it has the intention in good faith or financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence as required by NRS 533.370(1)(c). The works

⁴ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over \$12.00 per share. Today, it is worth about \$0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was \$5.30/lb. General Moly's latest presentation on its website⁵ highlights that "General Moly's 80% ownership NPV breakeven price is \$10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is \$9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

- lost millions of dollars in stock value,
- needed to tap into funds reserved for equipment purchases,
- laid off personnel,
- closed its office in Eureka,
- deferred construction of the water-supply wells, pipelines and other infrastructure needed to divert the water, and
- postponed the purchase of equipment essential to putting the water to beneficial use.

Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

⁵ http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

Eureka County no extensions would be granted. This failure to simply resume irrigation of established fields at the Bobcat Ranch is yet another symptom of KVR's underlying lack of intent and financial problems showing a lack of intent or financial ability to put the water to beneficial use.

General Moly has recently received a small infusion of capital from investors, amounting to a minor fraction of the cost to put the water to beneficial use. This small investment is coupled to promises to fund the project if worldwide economic conditions change. Clearly, funding of the project is based on speculation in the molybdenum market and funding will not be secured anytime soon based on moly demand and the world economy. How long is the State Engineer and other potential appropriators of the water resource supposed to wait for such a speculative venture to bear fruit? In the meantime, there is no unappropriated water in Kobeh Valley that might be put to use by others.

- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTE	R OF APPLICATION NUMBER	85582	NA Pari (nas		
FILED BY Kol	beh Valley Ranch LLC (c/o General	Moly, Inc.)	PROTEST		
ON	October 28	, 20 15	INCILSI		
Comes n	10W EUREKA COUNTY				
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whose post office	address is POST OFFICE BOX 69	94, EUREKA	, NEVADA 89316 or PO Box, City, State and ZIP Code	ConffCardiare hai je kaori ng mnog ng ji ji provinsonan ng ng may populong ing ng pyyonon i ng bong yakanang ng	
whose occupation	is POLITICAL SUBDIVISION	Street No.	or PO Box, City, State and ZIP Code	and protests the granting	
of Application Nu	umber 85582	, filed	on OCTOBER 28	, 20 15	
by KOBEH VA	ALLEY RANCH LLC (c/o General N	Joly, Inc.)		for the	
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PLEASE SEE EX	<u> KHIBIT "A" ATTACHED HERETO</u>	<u> -</u>		इं दा भं	
THEREF	FORE the Protestant requests that the	application b	DENIED)	
			Denied, issued subject to prior	rights, etc., as the case may be	
and that an order b	oe entered for such relief as the State	Engineer dee	ems just and proper.		
		Signed		1~	
		Signed	Agent or protes	tant	
			J.J. GOICOECHEA, CHAIRMAN	starit	
			Printed or typed nam	e, if agent	
State of Navada		Address	POST OFFICE BOX 694		
State of Nevada County of EURER	KA	•	Street No. or PC EUREKA, NV 89316	Box	
Subscribed and swor	rn to before me on JAN. 1), 2015		City, State and ZIP Code (775) 237-5262		
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by J.J. GOICOEC	ПЕА		jjgoicoechea@eurekanv.org	Martin and the south superflow of the state of the state of the state of the south of the state	
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+ s30 filing fee must accompany protest. Protest must be filed in duplicate. ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Notary Stamp or Seal Required

Exhibit "A"

- 1. These Applications should be denied because they are practically identical¹ to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
- 5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order...." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied. As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.
- 6. These Applications should be denied because they do not include any attempt to resolve the issues identified by the Supreme Court Opinion or the outstanding issues the Supreme Court did not address but nevertheless chose to reference in its Opinion, which highlights

¹ Many applications at issue under these protests were sent back for correction and or have hand written corrections on them which highlights that perhaps changes are being put forward that do not exactly match some of the previous applications.

² See Eureka County's filings regarding this matter in the District Court.

Exhibit "A"

Eureka County Protest to Application Numbers 85573 through 85604 Filed by Kobeh Valley Ranch LLC

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources. McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
- 8. Applications to Change 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 must be denied because they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127. Applications to Change the Point of Diversion, Manner of Use and Place of Use of a water right can only be filed if the right to be changed is valid. Once a permit is abrogated, it is no longer in force. There are no water rights which can be changed by the current round of Change Applications.
- 9. These Applications should be denied because sustained large-scale pumping in Kobeh Valley will impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. According to the applicant's ground water model, sustained over-pumping in Kobeh Valley will impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley, Pine Valley and other adjacent basins. The owners of these rights contribute to the long-term economic viability of the greater Eureka community and such impacts will prove detrimental to the health and welfare of Eureka County.

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- lost millions of dollars in stock value,
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Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

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- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

	TER OF APPLICATION NUMBER	85583	MANGGARA	
ON	Kobeh Valley Ranch LLC (c/o General I October 28	***********************	PROTEST	
Come	es now EUREKA COUNTY	>>~~43~~~43~~~~~~~~~~~~~~~~~~~~~~~~~~~~		printerration passing of ((constituting to the constituting to the constitution to the
whose post of	fice address is POST OFFICE BOX 69		ed or typed name of protestant NEVADA 89316	
	tion is POLITICAL SUBDIVISION	Street No	or PO Box, City, State and ZIP Code	and protests the granting
of Application	Number 85583	, filed	on OCTOBER 28	, 20 15
	VALLEY RANCH LLC (c/o General M		HANNI BOOTOMIA TURBUNIN KAN ING MANJAKA (Maranda Manjaka (Makangada Jaka Manjaka Jaka Manjaka Jaka Jaka Jaka J	
waters of U	NDERGROUND		THE TIME THE TAX A	
	an underground source or name of stream, lak			
County, State	of Nevada, for the following reasons and	on the follow	wing grounds, to wit:	the second second
PLEASE SEE	EXHIBIT "A" ATTACHED HERETO.			IN 15 PM 1:52
THEF	REFORE the Protestant requests that the	application b	DENIED Denied, issued subject to prior r	inhte ato as the care may be
and that an ord	er be entered for such relief as the State	Engineer dee	,	Englished on the edge thay be
		Signed	Africa p	
		/;	Agent or protest J.J. GOICOECHEA, CHAIRMAN	######################################
		Address	Printed or typed name POST OFFICE BOX 694	e, if agent
State of Nevada County of EUI	REKA	•	Street No. or PO EUREKA, NV 89316	Box
City, State and ZIP Code Subscribed and sworn to before me on JAN. (-+, 2015 (775) 237-5262			Code	
by J.J. GOICO	ECHEA		Phone Numbe jjgoicoechea@eurekanv.org	r
			E-mail	
ر الله الله الله الله الله الله الله الل			TONI M. W Notary Fubile - Str Appointment Accorded No: 50-34507-8 - Expires	RIGHT
S	ignature of Notary Public Required		Notary Stamp or Seal	Required

+ s30 filing fee must accompany protest. Protest must be filed in duplicate. ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Notary Stamp or Seal Required

- 1. These Applications should be denied because they are practically identical¹ to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
- 5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order...." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied. As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.
- 6. These Applications should be denied because they do not include any attempt to resolve the issues identified by the Supreme Court Opinion or the outstanding issues the Supreme Court did not address but nevertheless chose to reference in its Opinion, which highlights

¹ Many applications at issue under these protests were sent back for correction and/or have hand written corrections on them which highlights that perhaps changes are being put forward that do not exactly match some of the previous applications.

² See Eureka County's filings regarding this matter in the District Court.

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights. reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
- 8. Applications to Change 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 must be denied because they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127. Applications to Change the Point of Diversion, Manner of Use and Place of Use of a water right can only be filed if the right to be changed is valid. Once a permit is abrogated, it is no longer in force. There are no water rights which can be changed by the current round of Change Applications.
- 9. These Applications should be denied because sustained large-scale pumping in Kobeh Valley will impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. According to the applicant's ground water model, sustained over-pumping in Kobeh Valley will impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley, Pine Valley and other adjacent basins. The owners of these rights contribute to the long-term economic viability of the greater Eureka community and such impacts will prove detrimental to the health and welfare of Eureka County.

³ "Because we reverse and remand on this basis, we do not reach the remaining issues raised in these consolidated appeals." Supreme Court Opinion, p. 16.

- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout, and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
- 12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

Diamond Valley and will remove water from Diamond Valley in conflict with a recent State Engineer Order in Diamond Valley prohibiting any new groundwater appropriations in Diamond Valley. Sustained over pumping in Kobeh Valley is likely to reduce that amount and affect prior existing municipal water rights held by Eureka County and the Devils Gate GID that supply the majority of the population in Diamond Valley. Granting the change applications will cause the basin to be over pumped to the detriment of the basin, adjacent connected basins, and prior existing water rights holders.

There is consensus underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobeh Valley may provide underground flow to Diamond Valley. However, it is USGS's opinion that data are currently insufficient with which to determine the amount of inter-basin flow with any level of certainty. Groundwater modeling by the applicant's consultants suggests pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley and the applicant's model shows drawdown into Diamond Valley from KVR's project pumping, north of Whistler Mountain, suggesting a hydrologic continuum between the two basins. These previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearings in support of the mine's groundwater rights applications concluded that geologic materials comprising the mountains that separate the Kobeh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobeh Valley to Diamond Valley through the mountains was previously characterized as trivial. The locations of some of the points of diversion for these change applications suggest significant secondary permeability exists in the rocks separating Kobeh and Diamond Valleys, otherwise there would be little reason to propose constructing wells at these locations. The most recent iteration of the regional groundwater model developed by the applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Whistler Mountain that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

206T as well as declines in the flow in Nichols Spring.⁴ If Diamond Valley pumping is a possible cause for water level declines in Kobeh Valley, the pumping from eastern Kobeh Valley should be expected to affect water levels in Diamond Valley. Given that Diamond Valley has been designated by the State Engineer as a Critical Management Area, any capture of inter-basin groundwater flow to Diamond Valley or drawdown in Diamond Valley interferes with efforts to manage the groundwater resources there and represents a conflict with existing rights. A recent State Engineer Order in Diamond Valley disallows any new groundwater appropriations and any drawdown in Diamond Valley from Kobeh Valley should also be disallowed.

13. These Applications should be denied because they include no Monitoring, Management and Mitigation (3M) Plan developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants. The Nevada Supreme Court concluded that ". . . allowing the State Engineer to grant applications conditioned upon development of a future 3M Plan when the resulting appropriations would otherwise conflict with existing rights, could potentially violate the protestants' rights to a full and fair hearing on the matter, a rule rooted in due process. (cite omitted)" See Supreme Court Opinion, p. 15.

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- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE SUPREME COURT OF THE STATE OF NEVADA

EUREKA COUNTY,

Case No. ___

Electronically Filed Aug 23 2016 09:11 a.m. Tracie K. Lindeman Clerk of Supreme Court

Petitioner,

VS.

JASON KING, P.E., NEVADA STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,

Respondent,

and

KOBEH VALLEY RANCH, LLC; ETCHEVERRY FAMILY LTD. PARTNERSHIP; DIAMOND CATTLE CO., LLC; and DIAMOND NATURAL RESOURCES PROTECTION & CONSERVATION ASSOCIATION,

Real Parties in Interest.

PETITIONER'S APPENDIX

VOLUME 2

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~and~

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EUREKA COUNTY DISTRICT ATTORNEY

701 South Main Street

P.O. Box 190

Eureka, NV 89316

Telephone: (775) 237-5315

Attorneys for Petitioner, EUREKA COUNTY

CHRONOLOGICAL APPENDIX TO EUREKA COUNTY'S VERIFIED PETITION FOR WRIT OF PROHIBITION OR IN THE ALTERNATIVE, WRIT OF MANDAMUS

DOCUMENT	DATE	VOL	APP NO.
Eureka County's Application No. 83948	06/24/14	1	001-003
Letter from J.J. Goicoechea to Jason King re: Application 83948	06/27/14	1	004-005
Eureka County's Amended Application No. 83948	08/21/14	1	006-008
Kobeh Valley Ranch, LLC's Application Nos. 85573 through 85604, inclusive	10/28/15	1	009-163
Proposed Order Remanding to State Engineer	11/25/15	1	164-170
Eureka County's Protests to Kobeh Valley Ranch, LLC's Application Nos. 85573 through 85592, inclusive	01/15/16	2	171-370
Eureka County's Protests to Kobeh Valley Ranch, LLC's Application Nos. 85593 through 85604, inclusive	01/15/16	3	371-490
Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits	03/02/16	4	491-499
Amended Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits	03/09/16	4	500-509
Letter from Jason King to Kobeh Valley Ranch, LLC re: Applications 85573 through 85604	03/22/16	4	510
Kobeh Valley Ranch, LLC's Motion to Alter or Amend Judgment	03/25/16	4	511-522

Notice of Appeal of State Engineer of Nevada, Office of the State Engineer,	04/08/16	4	523-540
Division of Water Resources,	77.00		
Department of Conservation and	AC HANGE LEGISLATION AND A STATE OF THE STAT		
Natural Resources, Division of Water	****		
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Case Appeal Statement of State	04/08/16	4	541-549
Engineer of Nevada, Office of the State			
Engineer, Division of Water Resources,	7		
Department of Conservation and	***************************************		
Natural Resources, Division of Water		·	
Resources			
Real Party in Interest Kobeh Valley	04/12/16	4	550-553
Ranch, LLC's Notice of Appeal	***************************************		
Real Party in Interest Kobeh Valley	04/12/16	4	554-561
Ranch, LLC's Case Appeal Statement			
Letter to Jason King from Paul G.	04/27/16	4	562-565
Taggart, Esq. re: Kobeh Valley Ranch	***************************************		
Water Right Applications			
Kobeh Valley Ranch, LLC's Amended	04/27/16	4	566-585
Application Nos. 85576, 85583, 85588,			
85603 and 85604			***************************************
Kobeh Valley Ranch, LLC's	04/27/16	4	586-606
Application Nos. 86149 through 86153,	**************************************		
inclusive			
Kobeh Valley Ranch, LLC's	04/27/16	4	607-631
Application Nos. 86157 through 86161,			
inclusive			
Answer to Protests of Kobeh Valley	05/20/16	4	632-653
Ranch, LLC			
Order Denying Kobeh Valley Ranch,	06/03/16	4	654-666
LLC's Motion to Alter or Amend	00,00,10	•	
Judgment	***************************************		
Eureka County's Amended Protests to	07/01/16	4	667-716
Kobeh Valley Ranch, LLC's Amended		•	
Application Nos. 85576, 85583, 85588,			
85603 and 85604			
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Eureka County's Protests to Kobeh Valley Ranch, LLC's Application Nos. 86149 through 86153, inclusive	07/01/16	5	717-770
Eureka County's Protests to Kobeh Valley Ranch, LLC's Application Nos. 86157 through 86161, inclusive	07/08/16	5	771-830
Letter from Jason King to Kobeh Valley Ranch, LLC re: Amended Applications 85576, 85583, 85588, 85603 and 85604	07/07/16	5	831
Letter from Jason King to Kobeh Valley Ranch, LLC re: Applications 86149, 86150 and 86151	07/07/16	5	832
Letter from Jason King to Kobeh Valley Ranch, LLC re: Applications 86152, 86153, 86157 through 86161	07/12/16	5	833
State Engineer's Notice of Pre-Hearing Conference	07/26/16	5	834-835
Supreme Court's Order Reinstating Briefing and Granting in Part Motion to Expedite Appeal	07/28/16	5	836-837
Appellant State of Nevada, Department of Conservation and Natural Resources, State Engineer's Opening Brief, Case No. 70157	08/18/16	5	838-872
Opening Brief of Kobeh Valley Ranch, LLC, Case No. 70157	08/18/16	5	873-915
Hydrographic Area Summary of Kobeh Valley Hydrographic Basin	08/19/16	5	916
Hydrographic Basin Summary by Application Status of Kobeh Valley Hydrographic Basin	08/19/16	5	917
Hydrographic Basin Summary by Manner of Use of Kobeh Valley Hydrographic Basin	08/19/16	5	918
Hydrographic Abstract of Kobeh Valley Hydrographic Basin	08/19/16	5	919-939

ALPHABETICAL APPENDIX TO EUREKA COUNTY'S VERIFIED PETITION FOR WRIT OF PROHIBITION OR IN THE ALTERNATIVE, WRIT OF MANDAMUS

DOCUMENT	DATE	VOL	JA NO.
Amended Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits	03/09/16	4	500-509
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Appellant State of Nevada, Department of Conservation and Natural Resources, State Engineer's Opening Brief, Case No. 70157	08/18/16	5	838-872
Case Appeal Statement of State Engineer of Nevada, Office of the State Engineer, Division of Water Resources, Department of Conservation and Natural Resources, Division of Water Resources	04/08/16	4	541-549
Eureka County's Amended Application No. 83948	08/21/14	1	006-008
Eureka County's Amended Protests to Kobeh Valley Ranch, LLC's Amended Application Nos. 85576, 85583, 85588, 85603 and 85604	07/01/16	4	667-716
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Eureka County's Protests to Kobeh Valley Ranch, LLC's Application Nos. 85593 through 85604, inclusive	01/15/16	3	371-490

Eureka County's Protests to Kobeh	07/01/16	5	717-770
Valley Ranch, LLC's Application Nos.	07/01/10		/1/-//0
86149 through 86153, inclusive			
Eureka County's Protests to Kobeh	07/08/16	5	771-830
Valley Ranch, LLC's Application Nos.	0 77 0 07 1 0		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
86157 through 86161, inclusive			
Hydrographic Abstract of Kobeh	08/19/16	5	919-939
Valley Hydrographic Basin	00/19/10		
Hydrographic Area Summary of	08/19/16	5	916
Kobeh Valley Hydrographic Basin			
Hydrographic Basin Summary by	08/19/16	5	917
Application Status of Kobeh Valley			
Hydrographic Basin		***************************************	
Hydrographic Basin Summary by	08/19/16	5	918
Manner of Use of Kobeh Valley			
Hydrographic Basin			***************************************
Kobeh Valley Ranch, LLC's	10/28/15	1	009-163
Application Nos. 85573 through			
85604, inclusive			
Kobeh Valley Ranch, LLC's Amended	04/27/16	4	566-585
Application Nos. 85576, 85583, 85588,			
85603 and 85604			
Kobeh Valley Ranch, LLC's	04/27/16	4	586-606
Application Nos. 86149 through			A A A A A A A A A A A A A A A A A A A
86153, inclusive			***************************************
Kobeh Valley Ranch, LLC's	04/27/16	4	607-631
Application Nos. 86157 through			
86161, inclusive			
Kobeh Valley Ranch, LLC's Motion to	03/25/16	4	511-522
Alter or Amend Judgment			
Letter from J.J. Goicoechea to Jason	06/27/14	1	004-005
King re: Application 83948		***************************************	
Letter from Jason King to Kobeh	03/22/16	4	510
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85573 through 85604			
Letter to Jason King from Paul G.	04/27/16	4	562-565
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Department of Conservation and Natural Resources, Division of Water Resources Opening Brief of Kobeh Valley Ranch, LLC, Case No. 70157 Order Denying Kobeh Valley Ranch, LLC's Motion to Alter or Amend Judgment Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits Proposed Order Remanding to State Engineer Real Party in Interest Kobeh Valley Ranch, LLC's Case Appeal Statement Real Party in Interest Kobeh Valley Ranch, LLC's Notice of Appeal State Engineer's Notice of Pre-Hearing Conference Supreme Court's Order Reinstating Briefing and Granting in Part Motion	Nevada, Office of the State Engineer,	0-9-9-9-9-9-9-9-9-9-9-9-9-9-9-9-9-9-9-9	***************************************	
Natural Resources, Division of Water Resources Opening Brief of Kobeh Valley Ranch, LLC, Case No. 70157 Order Denying Kobeh Valley Ranch, LLC's Motion to Alter or Amend Judgment Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits Proposed Order Remanding to State Engineer Real Party in Interest Kobeh Valley Ranch, LLC's Case Appeal Statement Real Party in Interest Kobeh Valley Ranch, LLC's Notice of Appeal State Engineer's Notice of Pre-Hearing Conference Supreme Court's Order Reinstating Briefing and Granting in Part Motion Sylvator O8/18/16 5 873-915 873-915	1	100 100 100 100 100 100 100 100 100 100		
Resources Opening Brief of Kobeh Valley Ranch, LLC, Case No. 70157 Order Denying Kobeh Valley Ranch, LLC's Motion to Alter or Amend Judgment Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits Proposed Order Remanding to State Engineer Real Party in Interest Kobeh Valley Ranch, LLC's Case Appeal Statement Real Party in Interest Kobeh Valley Ranch, LLC's Notice of Appeal State Engineer's Notice of Pre-Hearing Conference Supreme Court's Order Reinstating Briefing and Granting in Part Motion O6/03/16 4 654-666 4 491-499 03/02/16 4 491-499 04/12/16 4 554-561 1 164-170 5 834-835 836-837	Department of Conservation and			
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LLC's Motion to Alter or Amend Judgment Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits Proposed Order Remanding to State Engineer Real Party in Interest Kobeh Valley Ranch, LLC's Case Appeal Statement Real Party in Interest Kobeh Valley O4/12/16 Ranch, LLC's Notice of Appeal State Engineer's Notice of Pre-Hearing Conference Supreme Court's Order Reinstating Briefing and Granting in Part Motion O3/02/16 4 491-499 491-49	LLC, Case No. 70157			
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Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits Proposed Order Remanding to State Engineer Real Party in Interest Kobeh Valley Ranch, LLC's Case Appeal Statement Real Party in Interest Kobeh Valley Ranch, LLC's Notice of Appeal State Engineer's Notice of Pre-Hearing Conference Supreme Court's Order Reinstating Briefing and Granting in Part Motion O3/02/16 4 491-499 491-499 491-499 491-499 491-499 491-499 491-499 554-561 5 54-561 6 5 834-835 7/26/16 5 834-835	LLC's Motion to Alter or Amend			
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CERTIFICATE OF APPENDIX - NRAP 30(g)(1)

In compliance with NRAP 30(g)(1), I hereby certify that this Petitioner's Appendix consists of true and correct copies of the papers in the Nevada State Engineer's file.

DATED this 22nd day of August, 2016.

ALLISON MacKENZIE, LTD.

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

By: /s/ Karen A. Peterson

KAREN A. PETERSON, NSB 366 kpeterson@allisonmackenzie.com KYLE A. WINTER, NSB 13282 kwinter@allisonmackenzie.com

~and~

THEODORE BEUTEL, NSB 5222
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EUREKA COUNTY DISTRICT
ATTORNEY
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P.O. Box 190
Eureka, NV 89316
(775) 237-5315
Attorneys for Petitioner,
EUREKA COUNTY

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER	85573		
FILED BY Kobeh Valley Ranch LLC (c/o General Mo	oly, Inc.)	DROTTET	
ON October 28	, 20 15	PROTEST	
Comes now EUREKA COUNTY			
and a state of the		ed or typed name of protestant	Dv4+54 v4#644 pp>>++
whose post office address is POST OFFICE BOX 694,	EUREKA	, NEVADA 89316 or PO Box, City, State and ZIP Code	***3**************
whose occupation is POLITICAL SUBDIVISION		or PO Box, City, State and ZIP Code and protests the gr	anting
of Application Number 85573	, filed	on OCTOBER 28	20 15
by KOBEH VALLEY RANCH LLC (c/o General Mo	ly, Inc.)	or by half and the professional designation of the profession of t	for the
waters of UNDERGROUND an underground source or name of stream, lake,	verame parameter telepholographic course	situated in EUREKA	aaberd Shirvander eeg
County, State of Nevada, for the following reasons and o			
PLEASE SEE EXHIBIT "A" ATTACHED HERETO.			
		.±	
THEREFORE the Protestant requests that the ap	polication b	DENIED.	
	•	Denied, issued subject to prior rights, etc., as the case may be	**************
and that an order be entered for such relief as the State Er	ngineer dee	ems just and proper.	
	Signed	4/(//)	
	orgilea	Agent or protestant —	<u></u>
	J.	(J.J. GOICOECHEA, CHAIRMAN 🚊 🤇	
		Printed or typed name, if agent	(V-1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,
State of Nevada	Address	POST OFFICE BOX 694 Street No. or PO Box	<pre><pre><pre></pre></pre></pre>
County of EUREKA		EUREKA, NV 89316 City, State and ZIP Code	****-4*********
Subscribed and sworn to before me on JAN. 2015	_	(775) 237-5262	verledeblevis v ess
by J.J. GOICOECHEA	-	Phone Number jjgoicoechea@eurekanv.org	
		E-mail	
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		Notary Public - State of Navada	
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Signature of Notary Public Required	-	Notary Stamp or Seal Required	

+ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

- 1. These Applications should be denied because they are practically identical to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
- 5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order...." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied. As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.
- 6. These Applications should be denied because they do not include any attempt to resolve the issues identified by the Supreme Court Opinion or the outstanding issues the Supreme Court did not address but nevertheless chose to reference in its Opinion, which highlights

¹ Many applications at issue under these protests were sent back for correction and/or have hand written corrections on them which highlights that perhaps changes are being put forward that do not exactly match some of the previous applications.

² See Eureka County's filings regarding this matter in the District Court.

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
- 8. Applications to Change 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 must be denied because they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127. Applications to Change the Point of Diversion, Manner of Use and Place of Use of a water right can only be filed if the right to be changed is valid. Once a permit is abrogated, it is no longer in force. There are no water rights which can be changed by the current round of Change Applications.
- 9. These Applications should be denied because sustained large-scale pumping in Kobeh Valley will impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. According to the applicant's ground water model, sustained over-pumping in Kobeh Valley will impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley, Pine Valley and other adjacent basins. The owners of these rights contribute to the long-term economic viability of the greater Eureka community and such impacts will prove detrimental to the health and welfare of Eureka County.

³ "Because we reverse and remand on this basis, we do not reach the remaining issues raised in these consolidated appeals." Supreme Court Opinion, p. 16.

- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout, and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic The valley floor phreatophytic vegetation will continue to occur discharge. notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
- 12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

Diamond Valley and will remove water from Diamond Valley in conflict with a recent State Engineer Order in Diamond Valley prohibiting any new groundwater appropriations in Diamond Valley. Sustained over pumping in Kobeh Valley is likely to reduce that amount and affect prior existing municipal water rights held by Eureka County and the Devils Gate GID that supply the majority of the population in Diamond Valley. Granting the change applications will cause the basin to be over pumped to the detriment of the basin, adjacent connected basins, and prior existing water rights holders.

There is consensus underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobeh Valley may provide underground flow to Diamond Valley. However, it is USGS's opinion that data are currently insufficient with which to determine the amount of inter-basin flow with any level of certainty. Groundwater modeling by the applicant's consultants suggests pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley and the applicant's model shows drawdown into Diamond Valley from KVR's project pumping, north of Whistler Mountain, suggesting a hydrologic continuum between the two basins. These previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearings in support of the mine's groundwater rights applications concluded that geologic materials comprising the mountains that separate the Kobeh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobeh Valley to Diamond Valley through the mountains was previously characterized as trivial. The locations of some of the points of diversion for these change applications suggest significant secondary permeability exists in the rocks separating Kobeh and Diamond Valleys, otherwise there would be little reason to propose constructing wells at these locations. The most recent iteration of the regional groundwater model developed by the applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Whistler Mountain that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

206T as well as declines in the flow in Nichols Spring.⁴ If Diamond Valley pumping is a possible cause for water level declines in Kobeh Valley, the pumping from eastern Kobeh Valley should be expected to affect water levels in Diamond Valley. Given that Diamond Valley has been designated by the State Engineer as a Critical Management Area, any capture of inter-basin groundwater flow to Diamond Valley or drawdown in Diamond Valley interferes with efforts to manage the groundwater resources there and represents a conflict with existing rights. A recent State Engineer Order in Diamond Valley disallows any new groundwater appropriations and any drawdown in Diamond Valley from Kobeh Valley should also be disallowed.

13. These Applications should be denied because they include no Monitoring, Management and Mitigation (3M) Plan developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants. The Nevada Supreme Court concluded that ". . . allowing the State Engineer to grant applications conditioned upon development of a future 3M Plan when the resulting appropriations would otherwise conflict with existing rights, could potentially violate the protestants' rights to a full and fair hearing on the matter, a rule rooted in due process. (cite omitted)" *See* Supreme Court Opinion, p. 15.

The Supreme Court determined the record before the State Engineer shows conflicts with existing rights will occur as a consequence of KVR's Applications. Consistent with the Supreme Court's Opinion interpreting NRS 533.370(2) at this time, Eureka County insists that a Monitoring, Management and Mitigation (3M) Plan be developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants, before any action be taken on the Applications. Because groundwater modeling by the applicant shows drawdown and resulting impacts will persist for decades after the mining project concludes, the 3M Plan must provide a vehicle to ensure mitigation will be funded in perpetuity, or until there is no longer any potential for future impacts.

Any proposed management, monitoring and mitigation plan to address known and potential impacts from the applicant's proposed pumping must be developed with supporting analytical data prior to any approval of the Applications, consistent with the Supreme Court Opinion. A plan for monitoring and mitigation of potential impacts to water rights holders and threatened species must include specific, attainable, realistic, relevant, and time-fixed measures and acceptable substitute water sources to mitigate these conflicts and adverse impacts. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect.

14. These Applications should be denied because KVR cannot show it has the intention in good faith or financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence as required by NRS 533.370(1)(c). The works

⁴ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over \$12.00 per share. Today, it is worth about \$0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was \$5.30/lb. General Moly's latest presentation on its website⁵ highlights that "General Moly's 80% ownership NPV breakeven price is \$10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is \$9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

- lost millions of dollars in stock value,
- needed to tap into funds reserved for equipment purchases,
- laid off personnel,
- closed its office in Eureka,
- deferred construction of the water-supply wells, pipelines and other infrastructure needed to divert the water, and
- postponed the purchase of equipment essential to putting the water to beneficial use.

Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

⁵ http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

Eureka County no extensions would be granted. This failure to simply resume irrigation of established fields at the Bobcat Ranch is yet another symptom of KVR's underlying lack of intent and financial problems showing a lack of intent or financial ability to put the water to beneficial use.

General Moly has recently received a small infusion of capital from investors, amounting to a minor fraction of the cost to put the water to beneficial use. This small investment is coupled to promises to fund the project if worldwide economic conditions change. Clearly, funding of the project is based on speculation in the molybdenum market and funding will not be secured anytime soon based on moly demand and the world economy. How long is the State Engineer and other potential appropriators of the water resource supposed to wait for such a speculative venture to bear fruit? In the meantime, there is no unappropriated water in Kobeh Valley that might be put to use by others.

- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATT	ER OF APPLICATION NUMBER	85574					
FILED BY K	obeh Valley Ranch LLC (c/o General l	Moly, Inc.)	>	PROTEST			
ON	October 28	, 20 15	(demokracegy)	PROTEST			
Comes	now EUREKA COUNTY						
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County, State of	Nevada, for the following reasons and	on the follo	wing grounds, to wit:				
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- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
- 12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

Diamond Valley and will remove water from Diamond Valley in conflict with a recent State Engineer Order in Diamond Valley prohibiting any new groundwater appropriations in Diamond Valley. Sustained over pumping in Kobeh Valley is likely to reduce that amount and affect prior existing municipal water rights held by Eureka County and the Devils Gate GID that supply the majority of the population in Diamond Valley. Granting the change applications will cause the basin to be over pumped to the detriment of the basin, adjacent connected basins, and prior existing water rights holders.

There is consensus underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobeh Valley may provide underground flow to Diamond Valley. However, it is USGS's opinion that data are currently insufficient with which to determine the amount of inter-basin flow with any level of certainty. Groundwater modeling by the applicant's consultants suggests pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley and the applicant's model shows drawdown into Diamond Valley from KVR's project pumping, north of Whistler Mountain, suggesting a hydrologic continuum between the two basins. These previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearings in support of the mine's groundwater rights applications concluded that geologic materials comprising the mountains that separate the Kobeh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobeh Valley to Diamond Valley through the mountains was previously characterized as trivial. The locations of some of the points of diversion for these change applications suggest significant secondary permeability exists in the rocks separating Kobeh and Diamond Valleys, otherwise there would be little reason to propose constructing wells at these locations. The most recent iteration of the regional groundwater model developed by the applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Whistler Mountain that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

206T as well as declines in the flow in Nichols Spring.⁴ If Diamond Valley pumping is a possible cause for water level declines in Kobeh Valley, the pumping from eastern Kobeh Valley should be expected to affect water levels in Diamond Valley. Given that Diamond Valley has been designated by the State Engineer as a Critical Management Area, any capture of inter-basin groundwater flow to Diamond Valley or drawdown in Diamond Valley interferes with efforts to manage the groundwater resources there and represents a conflict with existing rights. A recent State Engineer Order in Diamond Valley disallows any new groundwater appropriations and any drawdown in Diamond Valley from Kobeh Valley should also be disallowed.

13. These Applications should be denied because they include no Monitoring, Management and Mitigation (3M) Plan developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants. The Nevada Supreme Court concluded that ". . . allowing the State Engineer to grant applications conditioned upon development of a future 3M Plan when the resulting appropriations would otherwise conflict with existing rights, could potentially violate the protestants' rights to a full and fair hearing on the matter, a rule rooted in due process. (cite omitted)" *See* Supreme Court Opinion, p. 15.

The Supreme Court determined the record before the State Engineer shows conflicts with existing rights will occur as a consequence of KVR's Applications. Consistent with the Supreme Court's Opinion interpreting NRS 533.370(2) at this time, Eureka County insists that a Monitoring, Management and Mitigation (3M) Plan be developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants, before any action be taken on the Applications. Because groundwater modeling by the applicant shows drawdown and resulting impacts will persist for decades after the mining project concludes, the 3M Plan must provide a vehicle to ensure mitigation will be funded in perpetuity, or until there is no longer any potential for future impacts.

Any proposed management, monitoring and mitigation plan to address known and potential impacts from the applicant's proposed pumping must be developed with supporting analytical data prior to any approval of the Applications, consistent with the Supreme Court Opinion. A plan for monitoring and mitigation of potential impacts to water rights holders and threatened species must include specific, attainable, realistic, relevant, and time-fixed measures and acceptable substitute water sources to mitigate these conflicts and adverse impacts. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect.

14. These Applications should be denied because KVR cannot show it has the intention in good faith or financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence as required by NRS 533.370(1)(c). The works

⁴ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over \$12.00 per share. Today, it is worth about \$0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was \$5.30/lb. General Moly's latest presentation on its website⁵ highlights that "General Moly's 80% ownership NPV breakeven price is \$10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is \$9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

- lost millions of dollars in stock value,
- needed to tap into funds reserved for equipment purchases,
- laid off personnel,
- closed its office in Eureka,
- deferred construction of the water-supply wells, pipelines and other infrastructure needed to divert the water, and
- postponed the purchase of equipment essential to putting the water to beneficial use

Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

⁵ http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

Eureka County no extensions would be granted. This failure to simply resume irrigation of established fields at the Bobcat Ranch is yet another symptom of KVR's underlying lack of intent and financial problems showing a lack of intent or financial ability to put the water to beneficial use.

General Moly has recently received a small infusion of capital from investors, amounting to a minor fraction of the cost to put the water to beneficial use. This small investment is coupled to promises to fund the project if worldwide economic conditions change. Clearly, funding of the project is based on speculation in the molybdenum market and funding will not be secured anytime soon based on moly demand and the world economy. How long is the State Engineer and other potential appropriators of the water resource supposed to wait for such a speculative venture to bear fruit? In the meantime, there is no unappropriated water in Kobeh Valley that might be put to use by others.

- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MA	ATTER OF APPLICATION NUMBER	85575		
FILED BY	Kobeh Valley Ranch LLC (c/o General M	foly, Inc.)	PROTEST	
ON	October 28	, 20 15	INOTEST	
Co	mes now EUREKA COUNTY			
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whose occur	pation is POLITICAL SUBDIVISION	Street No.	or PO Box, City, State and ZIP Code	
whose occup	Dallion 13	**************************************		and protests the granting
of Application	on Number 85575	, filed	on OCTOBER 28	, 20 15
by KOBE	H VALLEY RANCH LLC (c/o General Mo	oly, Inc.)	**************************************	for the
waters of	UNDERGROUND	ężpiaano-wynęm-pajn-pp120	situated in EUREKA	
	an underground source or name of stream, lake	, spring or othe	r source	entermente de la constitue de l
County, Stat	e of Nevada, for the following reasons and	on the follo	ving grounds, to wit:	
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and that an o	rder be entered for such relief as the State E	Engineer dee	ms just and proper.	
		Signed	11 m 1	
		1	Agent or protestar J.J. GOICOECHEA, CHAIRMAN	ıı
			Printed or typed name, i	ifagent
State of Nevad	da	Address	POST OFFICE BOX 694	\$
County of E	UREKA		Street No. or PO B EUREKA, NV 89316	***************************************
Subscribed and	d sworn to before me on JAN. (+ , 2015		City, State and ZIP C (775) 237-5262	ode .
by J.J. GOIC	COECHEA		Phone Number jjgoicoechea@eurekanv.org	
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- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
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Diamond Valley and will remove water from Diamond Valley in conflict with a recent State Engineer Order in Diamond Valley prohibiting any new groundwater appropriations in Diamond Valley. Sustained over pumping in Kobeh Valley is likely to reduce that amount and affect prior existing municipal water rights held by Eureka County and the Devils Gate GID that supply the majority of the population in Diamond Valley. Granting the change applications will cause the basin to be over pumped to the detriment of the basin, adjacent connected basins, and prior existing water rights holders.

There is consensus underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobeh Valley may provide underground flow to Diamond Valley. However, it is USGS's opinion that data are currently insufficient with which to determine the amount of inter-basin flow with any level of certainty. Groundwater modeling by the applicant's consultants suggests pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley and the applicant's model shows drawdown into Diamond Valley from KVR's project pumping, north of Whistler Mountain, suggesting a hydrologic continuum between the two basins. These previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearings in support of the mine's groundwater rights applications concluded that geologic materials comprising the mountains that separate the Kobeh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobeh Valley to Diamond Valley through the mountains was previously characterized as trivial. The locations of some of the points of diversion for these change applications suggest significant secondary permeability exists in the rocks separating Kobeh and Diamond Valleys, otherwise there would be little reason to propose constructing wells at these locations. The most recent iteration of the regional groundwater model developed by the applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Whistler Mountain that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

206T as well as declines in the flow in Nichols Spring.⁴ If Diamond Valley pumping is a possible cause for water level declines in Kobeh Valley, the pumping from eastern Kobeh Valley should be expected to affect water levels in Diamond Valley. Given that Diamond Valley has been designated by the State Engineer as a Critical Management Area, any capture of inter-basin groundwater flow to Diamond Valley or drawdown in Diamond Valley interferes with efforts to manage the groundwater resources there and represents a conflict with existing rights. A recent State Engineer Order in Diamond Valley disallows any new groundwater appropriations and any drawdown in Diamond Valley from Kobeh Valley should also be disallowed.

13. These Applications should be denied because they include no Monitoring, Management and Mitigation (3M) Plan developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants. The Nevada Supreme Court concluded that ". . . allowing the State Engineer to grant applications conditioned upon development of a future 3M Plan when the resulting appropriations would otherwise conflict with existing rights, could potentially violate the protestants' rights to a full and fair hearing on the matter, a rule rooted in due process. (cite omitted)" *See* Supreme Court Opinion, p. 15.

The Supreme Court determined the record before the State Engineer shows conflicts with existing rights will occur as a consequence of KVR's Applications. Consistent with the Supreme Court's Opinion interpreting NRS 533.370(2) at this time, Eureka County insists that a Monitoring, Management and Mitigation (3M) Plan be developed to the satisfaction of all potentially affected parties, including all undetermined vested water rights claimants, before any action be taken on the Applications. Because groundwater modeling by the applicant shows drawdown and resulting impacts will persist for decades after the mining project concludes, the 3M Plan must provide a vehicle to ensure mitigation will be funded in perpetuity, or until there is no longer any potential for future impacts.

Any proposed management, monitoring and mitigation plan to address known and potential impacts from the applicant's proposed pumping must be developed with supporting analytical data prior to any approval of the Applications, consistent with the Supreme Court Opinion. A plan for monitoring and mitigation of potential impacts to water rights holders and threatened species must include specific, attainable, realistic, relevant, and time-fixed measures and acceptable substitute water sources to mitigate these conflicts and adverse impacts. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect.

14. These Applications should be denied because KVR cannot show it has the intention in good faith or financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence as required by NRS 533.370(1)(c). The works

⁴ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over \$12.00 per share. Today, it is worth about \$0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was \$5.30/lb. General Moly's latest presentation on its website⁵ highlights that "General Moly's 80% ownership NPV breakeven price is \$10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is \$9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

- lost millions of dollars in stock value,
- needed to tap into funds reserved for equipment purchases,
- laid off personnel,
- closed its office in Eureka,
- deferred construction of the water-supply wells, pipelines and other infrastructure needed to divert the water, and
- postponed the purchase of equipment essential to putting the water to beneficial use.

Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

Eureka County expressed concern the project was speculative as far back as 2006 when it protested KVR's initial applications for the Mt. Hope project. General Moly's primary backer at that time has since been convicted of operating a criminal conspiracy, found guilty of murder and executed. The project has languished for seven years since General Moly's stock value started its dramatic decline in value. Additionally, KVR applied for and was granted water rights to irrigate the Bobcat Ranch after the existing irrigation water rights there were abrogated by the changes in Place of Use, Point of Diversion, and Manner of Use that were the subject of Ruling 6127. These rights were applied for and granted despite testimony by KVR that they are "... not in the farming business." KVR has since proven it was incapable of putting its irrigation rights to beneficial use this year even though all the wells and pumping equipment at the Bobcat Ranch are in place. KVR requested and was granted extensions of time despite the State Engineer's assurances to

http://investor.generalmoly.com/phoenix.zhtml?c=181598&p=irol-irhome, last accessed 1/13/2016

Eureka County no extensions would be granted. This failure to simply resume irrigation of established fields at the Bobcat Ranch is yet another symptom of KVR's underlying lack of intent and financial problems showing a lack of intent or financial ability to put the water to beneficial use.

General Moly has recently received a small infusion of capital from investors, amounting to a minor fraction of the cost to put the water to beneficial use. This small investment is coupled to promises to fund the project if worldwide economic conditions change. Clearly, funding of the project is based on speculation in the molybdenum market and funding will not be secured anytime soon based on moly demand and the world economy. How long is the State Engineer and other potential appropriators of the water resource supposed to wait for such a speculative venture to bear fruit? In the meantime, there is no unappropriated water in Kobeh Valley that might be put to use by others.

- 15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
- 16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.
- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTE	ER OF APPLICATION NUMBER	85576	DEMANDER			
FILED BY Ko	beh Valley Ranch LLC (c/o General	Moly, Inc.)	PROTEST			
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		9	J.J. GOICOECHEA, CHAIRMAN			
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State of Nevada		Address	POST OFFICE BOX 694			
County of EURE	KA		Street No. or PO B EUREKA, NV 89316	N. 491-1-123-2		
City, State and ZIP Code Subscribed and sworn to before me on JAN. 1 3, 2015 (775) 237-5262				Pode		
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Exhibit "A"

- 1. These Applications should be denied because they are practically identical to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
- 5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order...." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied. As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.
- 6. These Applications should be denied because they do not include any attempt to resolve the issues identified by the Supreme Court Opinion or the outstanding issues the Supreme Court did not address but nevertheless chose to reference in its Opinion, which highlights

¹ Many applications at issue under these profests were sent back for correction and/or have hand written corrections on them which highlights that perhaps changes are being put forward that do not exactly match some of the previous applications.

² See Eureka County's filings regarding this matter in the District Court.

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights. reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
- 8. Applications to Change 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 must be denied because they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127. Applications to Change the Point of Diversion, Manner of Use and Place of Use of a water right can only be filed if the right to be changed is valid. Once a permit is abrogated, it is no longer in force. There are no water rights which can be changed by the current round of Change Applications.
- 9. These Applications should be denied because sustained large-scale pumping in Kobeh Valley will impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. According to the applicant's ground water model, sustained over-pumping in Kobeh Valley will impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley, Pine Valley and other adjacent basins. The owners of these rights contribute to the long-term economic viability of the greater Eureka community and such impacts will prove detrimental to the health and welfare of Eureka County.

³ "Because we reverse and remand on this basis, we do not reach the remaining issues raised in these consolidated appeals." Supreme Court Opinion, p. 16.

- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout. and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
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- lost millions of dollars in stock value,
- needed to tap into funds reserved for equipment purchases,
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- deferred construction of the water-supply wells, pipelines and other infrastructure needed to divert the water, and
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Furthermore, General Moly has repeatedly, for multiple years, requested important and required monitoring under the 3M Plan referred to in Ruling 6127 be deferred because KVR does not have sufficient funds to do the prescribed monitoring, much less put the water to beneficial use. The company's ability to finance the project and use the water is hampered by an unrealistic contract price for their product at a time when worldwide moly prices are low and they are speculating the price will rise to the point that some entity will fund the project.

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- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER	85577	orius,		
FILED BY Kobeh Valley Ranch LLC (c/o General)	****************	PROTEST		
ON October 28	, 20 15			
Comes now EUREKA COUNTY				
DOST OFFICE DOV. (0		ed or typed name of protestant	omagna wassawa dada aga asa ka kagusa kasa waa waa ga e	
whose post office address is POST OFFICE BOX 69		NEVADA 89316 or PO Box, City, State and ZIP Code	ha namej projekt planing en sje skip namej krij 1944 for 1944 for	
whose occupation is POLITICAL SUBDIVISION	Ducet 110	and protests the granting		
of Application Number 85577	, filed	ON OCTOBER 28	, 20 15	
by KOBEH VALLEY RANCH LLC (c/o General M		naskenskakeetakeetakeetakeen maan assa assa assa ka	for the	
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an underground source or name of stream, lak			900-04 4-0 1 1 1 1 1 1 1 1 1	
County, State of Nevada, for the following reasons and	on the follor	ving grounds, to wit:		
PLEASE SEE EXHIBIT "A" ATTACHED HERETO.				
		SER CT :	0 3 3 3	
THEREFORE the Protestant requests that the	application b	e DENIED	encoders and the first of a standard constant of a special (Ca)	
and that an order be entered for such relief as the State	Engineer dee	Denied, issued subject to prior rights, etc., as the c	ase may be	
	Signed	112		
)	Agent or protestant J.J. GOIĆOECHEA, CHAIRMAN		
State of Nevada	Address	Printed or typed name, if agent POST OFFICE BOX 694	The relative state of the state	
County of EUREKA		Street No. or PO Box EUREKA, NV 89316		
City, State and ZIP Code subscribed and sworn to before me on A				
DJ. GOICOECHEA	nile .	Phone Number jjgoicoechea@eurekanv.org		
Signature of Notary Public Required		E-mail TO M. WAIGHT Notery Public - State of Neveda Agreement State of Neveda Agreement States Dear or O. 200 Notery Stamp or Seal Required		

+ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE. ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

- 1. These Applications should be denied because they are practically identical¹ to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).
- 2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.
- 3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.
- 4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
- 5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order...." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied. As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.
- 6. These Applications should be denied because they do not include any attempt to resolve the issues identified by the Supreme Court Opinion or the outstanding issues the Supreme Court did not address but nevertheless chose to reference in its Opinion, which highlights

¹ Many applications at issue under these protests were sent back for correction and/or have hand written corrections on them which highlights that perhaps changes are being put forward that do not exactly match some of the previous applications.

² See Eureka County's filings regarding this matter in the District Court.

the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.³

- 7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support; reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.
- 8. Applications to Change 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 must be denied because they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127. Applications to Change the Point of Diversion, Manner of Use and Place of Use of a water right can only be filed if the right to be changed is valid. Once a permit is abrogated, it is no longer in force. There are no water rights which can be changed by the current round of Change Applications.
- 9. These Applications should be denied because sustained large-scale pumping in Kobeh Valley will impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. According to the applicant's ground water model, sustained over-pumping in Kobeh Valley will impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley, Pine Valley and other adjacent basins. The owners of these rights contribute to the long-term economic viability of the greater Eureka community and such impacts will prove detrimental to the health and welfare of Eureka County.

³ "Because we reverse and remand on this basis, we do not reach the remaining issues raised in these consolidated appeals." Supreme Court Opinion, p. 16.

- 10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout, and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate all stream waters tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not prove that pumping will not impact any of the sources contributing to these creeks.
- 11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.
- 12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

Diamond Valley and will remove water from Diamond Valley in conflict with a recent State Engineer Order in Diamond Valley prohibiting any new groundwater appropriations in Diamond Valley. Sustained over pumping in Kobeh Valley is likely to reduce that amount and affect prior existing municipal water rights held by Eureka County and the Devils Gate GID that supply the majority of the population in Diamond Valley. Granting the change applications will cause the basin to be over pumped to the detriment of the basin, adjacent connected basins, and prior existing water rights holders.

There is consensus underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobeh Valley may provide underground flow to Diamond Valley. However, it is USGS's opinion that data are currently insufficient with which to determine the amount of inter-basin flow with any level of certainty. Groundwater modeling by the applicant's consultants suggests pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley and the applicant's model shows drawdown into Diamond Valley from KVR's project pumping. north of Whistler Mountain, suggesting a hydrologic continuum between the two basins. These previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearings in support of the mine's groundwater rights applications concluded that geologic materials comprising the mountains that separate the Kobeh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobeh Valley to Diamond Valley through the mountains was previously characterized as trivial. The locations of some of the points of diversion for these change applications suggest significant secondary permeability exists in the rocks separating Kobeh and Diamond Valleys, otherwise there would be little reason to propose constructing wells at these locations. The most recent iteration of the regional groundwater model developed by the applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Whistler Mountain that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

In light of the applicant's most recent groundwater model, there are regions of suspected high hydraulic conductivity in the mountains between Diamond Valley and Kobeh Valley that provide potential conduits for groundwater flow between the basins. Despite all the posturing by KVR and its consultants during the hearing process for the applications considered in Ruling 6127 that inter-basin groundwater flow between Kobeh Valley and Diamond Valley is trivial, the applicant's consultants subsequently posited that groundwater pumping in Diamond Valley is a likely cause of water level declines in Well

206T as well as declines in the flow in Nichols Spring.⁴ If Diamond Valley pumping is a possible cause for water level declines in Kobeh Valley, the pumping from eastern Kobeh Valley should be expected to affect water levels in Diamond Valley. Given that Diamond Valley has been designated by the State Engineer as a Critical Management Area, any capture of inter-basin groundwater flow to Diamond Valley or drawdown in Diamond Valley interferes with efforts to manage the groundwater resources there and represents a conflict with existing rights. A recent State Engineer Order in Diamond Valley disallows any new groundwater appropriations and any drawdown in Diamond Valley from Kobeh Valley should also be disallowed.

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- 17. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requires the ability to continue to review all hydrologic data offered in support of the Applications. The applicant has acknowledged Eureka County should be involved in the review of all hydrologic data offered in support of its project and Eureka County should be involved in the development of an effective monitoring, management and mitigation plan. Section 6.1.3 of Eureka County's Master Plan states "implementation of this Plan requires that . . . the Board of Eureka County Commissioners stay involved with analysis and evaluation through all stages of federal, state and local planning efforts ... [through] review of data for scientific and factual soundness, plan development, implementation, monitoring, and evaluation of plan implementation." Section 6.2.6, the mining section of the Master Plan, states the County will "[d]evelop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data" Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development."
- 18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

KVR's Applications, and granting these KVR Applications will result in the Kobeh Valley Hydrographic Area becoming over appropriated. The NSE should deny any applications in excess of the basin's perennial yield. There are also many claims of vested water rights that have been filed with the State Engineer subsequent to the information available in front of the State Engineer for Ruling 6127. These include claims of vested water rights for Mud Spring and Nichols Springs. There are also many claims for vested water rights in the impact area that have not been filed because the State Engineer has never called for taking of proofs of these claims. The undetermined claims for vested water rights with a priority senior to these KVR Applications could result in the Kobeh Valley Hydrographic Area becoming over appropriated.

- 19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.
- 20. The proposed points of diversion for the Applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.
- 21. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined and any identified impacts and conflicts removed prior to granting the applications in light of the pit dewatering in Diamond Valley.
- 22. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary.
- 23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.
- 24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

- 25. Some of the Change Applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained for the Change Applications with a base irrigation right. Any KVR Change Application seeking a change in the manner of use from irrigation to mining should only be changed at the consumptive use duty.
- 26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.
- 27. Eureka County recognizes that the custom and culture of mining is part of its history and appreciates the role mining plays in its local and regional economy. Eureka County welcomes new opportunity for mining in its communities as long as mine development is not detrimental to existing economic or cultural activity or the environment. This protest is aimed at ensuring that any development of water resources in Kobeh Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. Eureka County welcomes dialogue with the applicant that addresses and resolves Eureka County's protest points.
- 28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.