

Application No. **86151**

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office APR 27 2016

Returned to applicant for correction _____

Corrected application filed _____ Map filed April 30, 2009 Under 78424

The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company

1726 Cole Blvd, Suite 115

of Lakewood

Street Address or PO Box

City or Town

Colorado 80401

State and ZIP Code

hereby make(s) application for permission to change the

☒ Point of diversion

☒ Place of use

☒ Manner of use

☐ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Permit 57839

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

1. The source of water is underground

Name of stream, lake, underground, spring or other sources.

2. The amount of water to be changed 0.435cfs, 164 afa

Second feet, acre-feet. One second foot equals 448.83 gallons per minute.

3. The water to be used for mining, milling and dewatering

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use

4. The water heretofore used for Irrigation

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

NW 1/4 SE 1/4 of Section 12, T.22N., R.51 1/2 E., MDB&M, or at a point from which the NE corner of Section 1, T.22N., R.51 E., MDB&M bears N.32°43'W., a distance of 3,145 feet (Well GMI-PDT-3). See map filed under Permit 78424.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

SE 1/4 SW 1/4, Section 13, T.23N., R.52 E., MDB&M, or at a point from which the SW corner of said Section 13 bears S68°40'37"W., a distance of 2,140.00 feet. See map filed under Permit 57835.

10-153

86151

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)

See Exhibit A attached hereto. Reference is made to the map supporting Application No. 72695
79911

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

Within the E $\frac{1}{4}$ & E $\frac{1}{4}$ W $\frac{1}{4}$ of Section 24, NE $\frac{1}{4}$ & E $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T.23N., R.52E., MDB&M;
W $\frac{1}{4}$ W $\frac{1}{4}$ of Section 19; W $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T.23N., R.53E., MDB&M. See map filed under Permit 57835.

9. Proposed use will be from January 1 to December 31 of each year.
Month and Day Month and Day

10. Existing use permitted from January 1 to December 31 of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

Drilled and cased well, electrical motor and submersible pump, and pipelines comprising distribution system to mine and mill site.

12. Estimated cost of works \$3,000,000

13. Estimated time required to construct works 5 years

If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use 10 Years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

See Exhibit B attached hereto

16. Miscellaneous remarks:

RECEIVED
APR 27 2016
STATE ENGINEER'S OFFICE

Paul@legaltnt.com

E-mail Address

(775) 882-9900

Phone No.

Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

Paul G. Taggart, Esq.

Paul G. Taggart
Type or print name clearly

Signature, applicant or agent

Taggart & Taggart, Ltd.

Company Name

108 N. Minnesota Street

Street Address or PO Box

Carson City, NV 89703

City, State, ZIP Code

Revised 07/13

\$240 FILING FEE AND SUPPORTING MAP MUST ACCOMPANY APPLICATION

APP595

86151

EXHIBIT "A",
PROPOSED PLACE OF USE

See map filed in support of Application 79911 for proposed Place of Use.

Division	Section	Township	Range	Meridian
W½	2	20N	50E	MDB&M
All	3 - 5	20N	50E	MDB&M
All	1 - 3	21N	50E	MDB&M
All	10 - 15	21N	50E	MDB&M
All	22 - 27	21N	50E	MDB&M
All	34 - 36	21N	50E	MDB&M
S½	32 & 33	21N	50E	MDB&M
All	1 - 36	21N	51E	MDB&M
All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
All	30 & 31	22N	53E	MDB&M
All	34 - 36	23N	51E	MDB&M
All	31	21½N	53E	MDB&M

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STATE ENGINEER'S OFFICE

Exhibit B
Remarks

This application is being filed to be used in conjunction with other applications to change filed simultaneously herewith from Kobeh and Diamond Valleys and those previously filed under Applications 85575, 85577, 85579, 85581, 85582, 85584, 85585, 85586, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, and 85603 in Kobeh Valley. The total combined duty of the Diamond Valley Applications is 1,089.20 acre feet, not to exceed a consumptive duty of 680.75 acre feet. The total combined duty of all the change applications in both valleys will not exceed the consumptive use of 11,678.18 acre feet.

The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly, and submitted to the Bureau of Land Management.

Groundwater will be developed from the Diamond Valley Groundwater Basin, through a series of production wells. Water will be conveyed to a storage reservoir via a booster pumping station. Water from the storage reservoir will be conveyed to the reduction plant or mill, located within the Diamond Valley drainage basin. After the water is placed to a beneficial use within the reduction plant, a portion of the water will be diverted to a recycling pond, with such water returned to the storage reservoir.

The vast majority of water for the project will be supplied by the Kobeh Valley rights and will be carried via the tailings leaving the reduction plant, and will be placed in a tailings pond, located within Kobeh Valley.

The contemplated mine life, as currently best determined, is 44 years, more or less, commencing upon start up or commencement of the mine and works of reduction.

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STATE ENGINEER'S OFFICE

86152

Application No. _____

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

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Corrected application filed _____

Map filed April 30, 2009 Under 78424The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company1726 Cole Blvd, Suite 115of Lakewood

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Colorado 80401

State and ZIP Code

hereby make(s) application for permission to change the

☒ Point of diversion☒ Place of use☒ Manner of use☐ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Permit 57840**RECEIVED****APR 27 2016**1. The source of water is underground

STATE ENGINEER'S OFFICE

Name of stream, lake, underground, spring or other sources.

2. The amount of water to be changed 0.435cfs, 164 afa

Second feet, acre-feet. One second foot equals 448.83 gallons per minute.

3. The water to be used for mining, milling and dewatering

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use

4. The water heretofore used for Irrigation

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

NW¼ SE¼ of unsurveyed Section 1, T.22N., R.51E., MDB&M, or at a point from which the NE corner of said Section 1, MDB&M bears N.44°02'54"E., a distance of 3,737.64 feet (Well MH2). See map filed under Permit 78424.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

SE¼ SW¼, Section 13, T.23N., R.52E., MDB&M, or at a point from which the SW corner of said Section 13 bears S68°40'37"W., a distance of 2,140.00 feet. See map filed under Permit 57835.

10-153
4

APP598

86152

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)
See Exhibit A attached hereto. Reference is made to the map supporting Application No. 72695

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

Within the E $\frac{1}{4}$ & E $\frac{1}{4}$ W $\frac{1}{4}$ of Section 24, NE $\frac{1}{4}$ & E $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T.23N., R.52E., MDB&M;
W $\frac{1}{4}$ W $\frac{1}{4}$ of Section 19, W $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T.23N., R.53E., MDB&M. See map filed under Permit 57835.

9. Proposed use will be from January 1 to December 31 of each year.
Month and Day Month and Day

10. Existing use permitted from January 1 to December 31 of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

Drilled and cased well, electrical motor and submersible pump, and pipelines comprising distribution system to mine and mill site.

12. Estimated cost of works \$3,000,000

13. Estimated time required to construct works 5 years

If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use 10 Years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

See Exhibit B attached hereto

16. Miscellaneous remarks:

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STATE ENGINEER'S OFFICE

Paul@legaltnt.com

E-mail Address

(775) 882-9900

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APPLICATION MUST BE SIGNED
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Paul G. Taggart, Esq.

Paul G. Taggart

Signature, applicant or agent

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Company Name

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EXHIBIT "A",
PROPOSED PLACE OF USE

See map filed in support of Application 79911 for proposed Place of Use.

Division	Section	Township	Range	Meridian
W½	2	20N	50E	MDB&M
All	3 - 5	20N	50E	MDB&M
All	1 - 3	21N	50E	MDB&M
All	10 - 15	21N	50E	MDB&M
All	22 - 27	21N	50E	MDB&M
All	34 - 36	21N	50E	MDB&M
S½	32 & 33	21N	50E	MDB&M
All	1 - 36	21N	51E	MDB&M
All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
All	30 & 31	22N	53E	MDB&M
All	34 - 36	23N	51E	MDB&M
All	31	21½N	53E	MDB&M

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Remarks

This application is being filed to be used in conjunction with other applications to change filed simultaneously herewith from Kobeh and Diamond Valleys and those previously filed under Applications 85575, 85577, 85579, 85581, 85582, 85584, 85585, 85586, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, and 85603 in Kobeh Valley. The total combined duty of the Diamond Valley Applications is 1,089.20 acre feet, not to exceed a consumptive duty of 680.75 acre feet. The total combined duty of all the change applications in both valleys will not exceed the consumptive use of 11,678.18 acre feet.

The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly, and submitted to the Bureau of Land Management.

Groundwater will be developed from the Diamond Valley Groundwater Basin, through a series of production wells. Water will be conveyed to a storage reservoir via a booster pumping station. Water from the storage reservoir will be conveyed to the reduction plant or mill, located within the Diamond Valley drainage basin. After the water is placed to a beneficial use within the reduction plant, a portion of the water will be diverted to a recycling pond, with such water returned to the storage reservoir.

The vast majority of water for the project will be supplied by the Kobeh Valley rights and will be carried via the tailings leaving the reduction plant, and will be placed in a tailings pond, located within Kobeh Valley.

The contemplated mine life, as currently best determined, is 44 years, more or less, commencing upon start up or commencement of the mine and works of reduction.

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The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company

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☒ Point of diversion

☒ Place of use

☒ Manner of use

☐ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Permit 66062

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APR 27 2016

STATE ENGINEER'S OFFICE

1. The source of water is underground

Name of stream, lake, underground, spring or other sources.

2. The amount of water to be changed 1.02 cfs, 303.08 afa

Second feet, acre-feet. One second foot equals 448.83 gallons per minute.

3. The water to be used for mining, milling and dewatering

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use.

4. The water heretofore used for Irrigation

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

Within Mineral Survey 37A of Section 13, T.22N., R.51½E., MDB&M, or at a point from which the W¼ corner of said Section 13, bears N.77°57'47"W., a distance of 2,838.81 feet (Well MH4). See map filed under Permit 78424.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

SE¼ SW¼, Section 13, T.23N., R.52E., MDB&M, or at a point from which the SW corner of said Section 13 bears S68°40'37"W., a distance of 2,140.00 feet. See map filed under Permit 57835.

10-153
APP602

86153

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated)
See Exhibit A attached hereto. Reference is made to the map supporting Application No. 72695

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

~~Within the E $\frac{1}{4}$ & E $\frac{1}{4}$ W $\frac{1}{2}$ of Section 24, NE $\frac{1}{4}$ & E $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T.23N., R.52E., MDB&M;
W $\frac{1}{2}$, W $\frac{1}{2}$ of Section 19; W $\frac{1}{2}$, NW $\frac{1}{4}$ of Section 30, T.23N., R.53E., MDB&M. See map filed under Permit 57835.~~

SEE
EXHIBIT
C
A
5/3/2016

9. Proposed use will be from January 1 to December 31 of each year.
Month and Day Month and Day

10. Existing use permitted from January 1 to December 31 of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

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12. Estimated cost of works \$3,000,000

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15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

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APR 27 2016

16. Miscellaneous remarks:

STATE ENGINEER'S OFFICE

Paul@legaltnt.com

E-mail Address

(775) 882-9900

Phone No.

Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

Paul G. Taggart, Esq.

Type or print name clearly
Paul G. Taggart

Signature, applicant or agent

Taggart & Taggart, Ltd.

Company Name

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Street Address or PO Box

Carson City, NV 89703

City, State, ZIP Code

86153

EXHIBIT "A",
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Division	Section	Township	Range	Meridian
W½	2	20N	50E	MDB&M
All	3 - 5	20N	50E	MDB&M
All	1 - 3	21N	50E	MDB&M
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All	22 - 27	21N	50E	MDB&M
All	34 - 36	21N	50E	MDB&M
S½	32 & 33	21N	50E	MDB&M
All	1 - 36	21N	51E	MDB&M
All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
All	30 & 31	22N	53E	MDB&M
All	34 - 36	23N	51E	MDB&M
All	31	21½N	53E	MDB&M

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Exhibit B
Remarks

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The contemplated mine life, as currently best determined, is 44 years, more or less, commencing upon start up or commencement of the mine and works of reduction.

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

Exhibit C
Existing Place of Use
Permit 66062

S½	SW¼	SEC.	12	T.23N.	R.52E.	MDB&M
NE¼	NW¼	SEC.	13	T.23N.	R.52E.	MDB&M
S½	NW¼	SEC.	13	T.23N.	R.52E.	MDB&M
E½	NW¼	SEC.	24	T.23N.	R.52E.	MDB&M
	NE¼	SEC.	24	T.23N.	R.52E.	MDB&M
E½	SW¼	SEC.	24	T.23N.	R.52E.	MDB&M
	SE¼	SEC.	24	T.23N.	R.52E.	MDB&M
E½	NW¼	SEC.	25	T.23N.	R.52E.	MDB&M
	NE¼	SEC.	25	T.23N.	R.52E.	MDB&M
W½	W½	SEC.	19	T.23N.	R.53E.	MDB&M
W½	NW¼	SEC.	30	T.23N.	R.53E.	MDB&M

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 2016 MAY -8 PM 3:27
 STATE ENGINEERS OFFICE

86157

Application No. _____

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

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Corrected application filed

Map filed June 15, 2010 Under 79911

The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company1726 Cole Blvd, Suite 115of Lakewood

Street Address or PO Box

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hereby make(s) application for permission to change the

☒ Point of diversion☒ Place of use☒ Manner of use☐ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Permit 78272**RECEIVED**

APR 27 2016

STATE ENGINEER (S.E.)

1. The source of water is underground

Name of stream, lake, underground, spring or other sources.

2. The amount of water to be changed 6 cfs, 4,344 afa

Second feet, acre-feet. One second foot equals 448.83 gallons per minute.

3. The water to be used for mining, milling and domestic

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use

4. The water heretofore used for irrigation and domestic

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

SW¼ SE¼, Section 7, T.21N., R.51E., MDB&M, or at a point from which the NW corner of Section 6, T.21N., R.51E., MDB&M bears N.20°01'W., a distance of 10,720 feet. Being Well 222 as shown on the map accompanying Application 79911.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

NW¼ NE¼, Section 23, T.19N., R.47E., MDB&M, or at a point which bears S.71°32'59"E., a distance of 4,147.14 feet from the NW corner of said Section 23. Being Well No. 1 as shown on the map filed under Permit 72580.

Kobeh ✓
10-139
S.V.

APP607

86157

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)

See Exhibit A attached hereto

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

S½ Section 15; S½ N½, a portion of the NW¼ NE¼ (35.19 ac), NE¼ NE¼, N½ S½ Section 21; N½, SW¼ Section 22; N½ Section 23; NW¼ Section 24; all in T.19N., R.47E., MDB&M. See map filed under Permit 72580.

9. Proposed use will be from January 1 to December 31 of each year.
Month and Day Month and Day

10. Existing use permitted from January 1 to December 31 of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

Drilled and cased well, electrical motor and submersible pump, and pipelines comprising distribution system to mine and mill site.

12. Estimated cost of works \$3,000,000

13. Estimated time required to construct works 5 years

If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use 10 Years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

See Exhibit B attached hereto

RECEIVED

APR 27 2016

16. Miscellaneous remarks:

See Exhibit C attached hereto

STATE ENGINEER'S OFFICE

Paul@legaltnt.com

E-mail Address

(775) 882-9900

Phone No.

Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

Paul G. Taggart, Esq.

Paul G. Taggart
Type or print name clearly
Signature, applicant or agent

Taggart & Taggart, Ltd.

Company Name

108 N. Minnesota Street

Street Address or PO Box

Carson City, NV 89703

City, State, ZIP Code

Revised 07/13

\$240 FILING FEE AND SUPPORTING MAP MUST ACCOMPANY APPLICATION

APP608

86157

EXHIBIT "A",
PROPOSED PLACE OF USE

See map filed in support of Application 79911 for proposed Place of Use.

Division	Section	Township	Range	Meridian
W½	2	20N	50E	MDB&M
All	3 - 5	20N	50E	MDB&M
All	1 - 3	21N	50E	MDB&M
All	10 - 15	21N	50E	MDB&M
All	22 - 27	21N	50E	MDB&M
All	34 - 36	21N	50E	MDB&M
S½	32 & 33	21N	50E	MDB&M
All	1 - 36	21N	51E	MDB&M
All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
All	30 & 31	22N	53E	MDB&M
All	34 - 36	23N	51E	MDB&M
All	31	21½N	53E	MDB&M

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APR 27 2016

STATE ENGINEER'S OFFICE

Exhibit B
Remarks

This application is being filed to be used in conjunction with other applications to change filed simultaneously herewith from Kobeh and Diamond Valleys and those previously filed under Applications 85575, 85577, 85579, 85581, 85582, 85584, 85585, 85586, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, and 85603 in Kobeh Valley. The total combined duty of all the change applications will not exceed the consumptive use of 11,678.18 acre feet.

The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly, and submitted to the Bureau of Land Management.

Groundwater will be developed from the Kobeh Valley Groundwater Basin, through a series of production wells. Water will be conveyed to a storage reservoir via a booster pumping station. Water from the storage reservoir will be conveyed to the reduction plant or mill, located within the Diamond Valley drainage basin. After the water is placed to a beneficial use within the reduction plant, a portion of the water will be diverted to a recycling pond, with such water returned to the storage reservoir. The vast majority of water will be carried via the tailings leaving the reduction plant, and will be placed in a tailings pond, located within Kobeh Valley.

Thus, the majority of water consumption will take place in Kobeh Valley, and not Diamond Valley.

The total volume of water to be consumed, being the total combined duty of all applications filed herewith shall not exceed 11,678.18 acre-feet annually. The contemplated mine life, as currently best determined, is 44 years, commencing upon start up or commencement of the mine and works of reduction.

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APR 27 2016

STATE ENGINEER'S OFFICE

Exhibit C
Miscellaneous Remarks

Kobeh Valley Ranch, LLC ("KVR") believes that the correct course of action following the Nevada Supreme Court's September 18, 2015 Order on the appeal from State Engineer Ruling 6127 is for the District Court to remand the case to the State Engineer and for the State Engineer to conduct further hearings on the applications at issue in Ruling 6127. However, the Applications approved in Ruling 6127 are currently denied, which decision is under appeal.

The four change applications changing Permits 78272 through 78275 are being filed to replace the new appropriation for mining use that were approved in Ruling 6127. If the new appropriations under Ruling 6127 are later reinstated, the four change applications may be withdrawn to the base right, or changed by a new change application, to return the water to irrigation use as permitted under Permits 78272 through 78275.

The total combined duty of the four change applications changing Permits 78272 through 78275 is not to exceed 6,337.32 acre feet with a consumptive duty not to exceed 4,277.691 acre feet.

RECEIVED
APR 27 2016
STATE ENGINEER'S OFFICE

86158

Application No. _____

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office

APR 27 2016

Returned to applicant for correction _____

Corrected application filed _____

Map filed June 15, 2010 Under 79911The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company1726 Cole Blvd, Suite 115of Lakewood

Street Address or PO Box

City or Town

Colorado 80401

State and ZIP Code

hereby make(s) application for permission to change the

☒ Point of diversion☒ Place of use☒ Manner of use☐ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Permit 78273**RECEIVED****APR 27 2016**

STATE ENGINEER'S OFFICE

1. The source of water is underground

Name of stream, lake, underground, spring or other sources.

2. The amount of water to be changed 6 cfs, 4,344 afa

Second feet, acre-feet. One second foot equals 448.83 gallons per minute.

3. The water to be used for mining, milling and domestic

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use.

4. The water heretofore used for irrigation and domestic

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

SW¼ NE¼, Section 23, T.21N., R.50E., MDB&M, or at a point from which the NE corner of said Section 23 bears N.34°39'E., a distance of 2,850 feet. Being Well 224 as shown on the map accompanying Application 79911.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

SW¼ NW¼, Section 23, T.19N., R.47E., MDB&M, or at a point which bears S.43°41'48"E., a distance of 1,908.68 feet from the NW corner of said Section 23. Being Well No. 2 as shown on the map filed under Permit 72580.

10-139
Ev
APP612

86158

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)

See Exhibit A attached hereto

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

S $\frac{1}{2}$ Section 15; S $\frac{1}{2}$ N $\frac{1}{4}$, a portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ (35.19 ac), NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{4}$ S $\frac{1}{2}$ Section 21; N $\frac{1}{4}$, SW $\frac{1}{4}$ Section 22; N $\frac{1}{4}$ Section 23; NW $\frac{1}{4}$ Section 24; all in T.19N., R.47E., MDB&M. See map filed under Permit 72580.

9. Proposed use will be from January 1 to December 31 of each year.
Month and Day Month and Day

10. Existing use permitted from January 1 to December 31 of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

Drilled and cased well, electrical motor and submersible pump, and pipelines comprising distribution system to mine and mill site.

12. Estimated cost of works \$3,000,000

13. Estimated time required to construct works 5 years

If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use 10 Years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

See Exhibit B attached hereto

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

16. Miscellaneous remarks:

See Exhibit C attached hereto

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(775) 882-9900

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Company Name

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City, State, ZIP Code

86158

EXHIBIT "A",
PROPOSED PLACE OF USE

See map filed in support of Application 79911 for proposed Place of Use.

Division	Section	Township	Range	Meridian
W½	2	20N	50E	MDB&M
All	3 - 5	20N	50E	MDB&M
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All	10 - 15	21N	50E	MDB&M
All	22 - 27	21N	50E	MDB&M
All	34 - 36	21N	50E	MDB&M
S½	32 & 33	21N	50E	MDB&M
All	1 - 36	21N	51E	MDB&M
All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
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STATE ENGINEER'S OFFICE

86158

Exhibit B
Remarks

This application is being filed to be used in conjunction with other applications to change filed simultaneously herewith from Kobeh and Diamond Valleys and those previously filed under Applications 85575, 85577, 85579, 85581, 85582, 85584, 85585, 85586, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, and 85603 in Kobeh Valley. The total combined duty of all the change applications will not exceed the consumptive use of 11,678.18 acre feet.

The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly, and submitted to the Bureau of Land Management.

Groundwater will be developed from the Kobeh Valley Groundwater Basin, through a series of production wells. Water will be conveyed to a storage reservoir via a booster pumping station. Water from the storage reservoir will be conveyed to the reduction plant or mill, located within the Diamond Valley drainage basin. After the water is placed to a beneficial use within the reduction plant, a portion of the water will be diverted to a recycling pond, with such water returned to the storage reservoir. The vast majority of water will be carried via the tailings leaving the reduction plant, and will be placed in a tailings pond, located within Kobeh Valley.

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APR 27 2016

STATE ENGINEER'S OFFICE

Exhibit C
Miscellaneous Remarks

Kobeh Valley Ranch, LLC ("KVR") believes that the correct course of action following the Nevada Supreme Court's September 18, 2015 Order on the appeal from State Engineer Ruling 6127 is for the District Court to remand the case to the State Engineer and for the State Engineer to conduct further hearings on the applications at issue in Ruling 6127. However, the Applications approved in Ruling 6127 are currently denied, which decision is under appeal.

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The total combined duty of the four change applications changing Permits 78272 through 78275 is not to exceed 6,337.32 acre feet with a consumptive duty not to exceed 4,277.691 acre feet.

RECEIVED
APR 27 2016
STATE ENGINEER'S OFFICE

Application No. **86159**

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

THIS SPACE FOR OFFICE USE ONLY	
Date of filing in State Engineer's Office	<u>APR 27 2016</u>
Returned to applicant for correction	_____
Corrected application filed	Map filed <u>June 15, 2010 Under 79911</u>

The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company
1726 Cole Blvd, Suite 115 of Lakewood
Street Address or PO Box City or Town
Colorado 80401 hereby make(s) application for permission to change the
State and ZIP Code

☒ Point of diversion ☒ Place of use ☒ Manner of use ☒ of a portion
of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)
Permit 78274

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APR 27 2016

STATE ENGINEER'S OFFICE

1. The source of water is underground
Name of stream, lake, underground, spring or other sources.
2. The amount of water to be changed 4 cfs, 2,896 afa
Second feet, acre-feet. One second foot equals 448.83 gallons per minute.
3. The water to be used for mining, milling and domestic
Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use
4. The water heretofore used for irrigation and domestic
If for stock, state number and kind of animals.
5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)
SE¼ SE¼, Section 32, T.21N., R.50E., MDB&M, or at a point from which the NE corner of Section 24, T.21N., R.50E., MDB&M, bears N.53°58'E., a distance of 26,640 feet. Being Well No. 227 as shown on the map filed under Permit 79911.
6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)
NE¼ SE¼, Section 21, T.19N., R.47E., MDB&M, or at a point which bears S.01°14'21"W., a distance of 3,911.35 feet from the NE corner of said Section 21. Being Well No. 5 as shown on the map filed under Permit 72580.

10-139
42
APP617

86159

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)
See Exhibit A attached hereto

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

S $\frac{1}{2}$ Section 15; S $\frac{1}{2}$ N $\frac{1}{4}$, a portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ (35.19 ac), NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{4}$ S $\frac{1}{2}$ Section 21; N $\frac{1}{4}$ SW $\frac{1}{4}$ Section 22; N $\frac{1}{4}$ Section 23; NW $\frac{1}{4}$ Section 24; all in T.19N., R.47E., MDB&M. See map filed under Permit 72580.

9. Proposed use will be from January 1 to December 31 of each year.
Month and Day Month and Day

10. Existing use permitted from January 1 to December 31 of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

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13. Estimated time required to construct works 5 years

If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use 10 Years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

See Exhibit B attached hereto

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APR 27 2016

16. Miscellaneous remarks:

See Exhibit C attached hereto

STATE ENGINEER'S OFFICE

Paul@legaltmt.com

E-mail Address

(775) 882-9900

Phone No.

Ext.

APPLICATION MUST BE SIGNED
 BY THE APPLICANT OR AGENT

Paul G. Taggart, Esq.

Type or print name clearly

Signature, applicant or agent

Taggart & Taggart, Ltd.

Company Name

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City, State, ZIP Code

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PROPOSED PLACE OF USE

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All	1 - 3	22N	51E	MDB&M
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All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
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APR 27 2016

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APR 27 2016

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Miscellaneous Remarks

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**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office APR 27 2016

Returned to applicant for correction _____

Corrected application filed _____ Map filed June 15, 2010 Under 79911The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company1726 Cole Blvd, Suite 115of Lakewood

Street Address or PO Box

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hereby make(s) application for permission to change the

☒ Point of diversion☒ Place of use☒ Manner of use☒ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Permit 78274**RECEIVED****APR 27 2016****STATE ENGINEER'S OFFICE**1. The source of water is underground

Name of stream, lake, underground, spring or other sources.

2. The amount of water to be changed 2 cfs, 1,448 afa

Second feet, acre-feet. One second foot equals 448.83 gallons per minute.

3. The water to be used for mining, milling and domestic

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use

4. The water heretofore used for irrigation and domestic

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

SE 1/4 SW 1/4, Section 35, T.21N., R.50E., MDB&M, or at a point from which the NE corner of Section 24, T.21N, R50E., MDB&M bears N.28°42'E., a distance of 17,865 feet. Being Well PoO 3 as shown on the map accompanying Application 79911.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

NE 1/4 SE 1/4, Section 21, T.19N., R.47E., MDB&M, or at a point which bears S.01°14'21"W., a distance of 3,911.35 feet from the NE corner of said Section 21. Being Well No. 5 as shown on the map filed under Permit 72580.

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)

See Exhibit A attached hereto

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S $\frac{1}{2}$ Section 15; S $\frac{1}{2}$ N $\frac{1}{2}$, a portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ (35.19 ac), NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ Section 21; N $\frac{1}{2}$, SW $\frac{1}{4}$ Section 22; N $\frac{1}{2}$ Section 23; NW $\frac{1}{4}$ Section 24; all in T.19N., R.47E., MDB&M. See map filed under Permit 72580.

9. Proposed use will be from January 1 to December 31 of each year.
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PROPOSED PLACE OF USE

See map filed in support of Application 79911 for proposed Place of Use.

Division	Section	Township	Range	Meridian
W½	2	20N	50E	MDB&M
All	3 - 5	20N	50E	MDB&M
All	1 - 3	21N	50E	MDB&M
All	10 - 15	21N	50E	MDB&M
All	22 - 27	21N	50E	MDB&M
All	34 - 36	21N	50E	MDB&M
S½	32 & 33	21N	50E	MDB&M
All	1 - 36	21N	51E	MDB&M
All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
All	30 & 31	22N	53E	MDB&M
All	34 - 36	23N	51E	MDB&M
All	31	21½N	53E	MDB&M

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APR 27 2016

STATE ENGINEER'S OFFICE

Exhibit B
Remarks

This application is being filed to be used in conjunction with other applications to change filed simultaneously herewith from Kobeh and Diamond Valleys and those previously filed under Applications 85575, 85577, 85579, 85581, 85582, 85584, 85585, 85586, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, and 85603 in Kobeh Valley. The total combined duty of all the change applications will not exceed the consumptive use of 11,678.18 acre feet.

The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly, and submitted to the Bureau of Land Management.

Groundwater will be developed from the Kobeh Valley Groundwater Basin, through a series of production wells. Water will be conveyed to a storage reservoir via a booster pumping station. Water from the storage reservoir will be conveyed to the reduction plant or mill, located within the Diamond Valley drainage basin. After the water is placed to a beneficial use within the reduction plant, a portion of the water will be diverted to a recycling pond, with such water returned to the storage reservoir. The vast majority of water will be carried via the tailings leaving the reduction plant, and will be placed in a tailings pond, located within Kobeh Valley.

Thus, the majority of water consumption will take place in Kobeh Valley, and not Diamond Valley.

The total volume of water to be consumed, being the total combined duty of all applications filed herewith shall not exceed 11,678.18 acre-feet annually. The contemplated mine life, as currently best determined, is 44 years, commencing upon start up or commencement of the mine and works of reduction.

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

Exhibit C
Miscellaneous Remarks

Kobeh Valley Ranch, LLC ("KVR") believes that the correct course of action following the Nevada Supreme Court's September 18, 2015 Order on the appeal from State Engineer Ruling 6127 is for the District Court to remand the case to the State Engineer and for the State Engineer to conduct further hearings on the applications at issue in Ruling 6127. However, the Applications approved in Ruling 6127 are currently denied, which decision is under appeal.

The four change applications changing Permits 78272 through 78275 are being filed to replace the new appropriation for mining use that were approved in Ruling 6127. If the new appropriations under Ruling 6127 are later reinstated, the four change applications may be withdrawn to the base right, or changed by a new change application, to return the water to irrigation use as permitted under Permits 78272 through 78275.

The total combined duty of the four change applications changing Permits 78272 through 78275 is not to exceed 6,337.32 acre feet with a consumptive duty not to exceed 4,277.691 acre feet.

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APR 27 2016

STATE ENGINEER'S OFFICE

Application No. **86161**

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office APR 27 2016

Returned to applicant for correction _____

Corrected application filed _____ Map filed June 15, 2010 Under 79911

The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company

1726 Cole Blvd, Suite 115

of Lakewood

Street Address or PO Box

City or Town

Colorado 80401

State and ZIP Code

hereby make(s) application for permission to change the

☒ Point of diversion

☒ Place of use

☒ Manner of use

☐ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Permit 78275

1. The source of water is underground

Name of stream, lake, underground, spring or other sources.

2. The amount of water to be changed 6 cfs, 4,344 afa

Second foot, acre-feet. One second foot equals 448.83 gallons per minute.

3. The water to be used for mining, milling and domestic

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use.

4. The water heretofore used for irrigation and domestic

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

SE 1/4 NW 1/4, Section 3, T.21N., R.50E., MDB&M, or at a point from which the NE corner of said Section 3 bears N.54°54'E., a distance of 3,635 feet. Being Well No. 220 as shown on the map accompanying Application 79911.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

SW 1/4 SW 1/4, Section 22, T.19N., R.47E., MDB&M, or at a point which bears S.18°09'28"E., a distance of 4,223.74 feet from the NW corner of said Section 22. Being Well No. 3 as shown on the map filed under Permit 72580.

10-139
APP627

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)

See Exhibit A attached hereto

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

S $\frac{1}{4}$ Section 15; S $\frac{1}{4}$ N $\frac{1}{2}$, a portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ (35.19 ac), NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{4}$ S $\frac{1}{2}$ Section 21; N $\frac{1}{4}$ SW $\frac{1}{4}$ Section 22; N $\frac{1}{4}$ Section 23; NW $\frac{1}{4}$ Section 24; all in T.19N., R.47E., MDB&M. See map filed under Permit 72580.

9. Proposed use will be from January 1 to December 31 of each year.
Month and Day Month and Day

10. Existing use permitted from January 1 to December 31 of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

Drilled and cased well, electrical motor and submersible pump, and pipelines comprising distribution system to mine and mill site.

12. Estimated cost of works \$3,000,000

13. Estimated time required to construct works 5 years

If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use 10 Years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

See Exhibit B attached hereto

16. Miscellaneous remarks:

See Exhibit C attached hereto

Paul@legaltnt.com

E-mail Address

(775) 882-9900

Phone No.

Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

Paul G. Taggart, Esq.

Type or print name clearly

Signature, applicant or agent

Taggart & Taggart, Ltd.

Company Name

108 N. Minnesota Street

Street Address or PO Box

Carson City, NV 89703

City, State, ZIP Code

EXHIBIT "A",
PROPOSED PLACE OF USE

See map filed in support of Application 79911 for proposed Place of Use.

Division	Section	Township	Range	Meridian
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All	1 - 36	21N	51E	MDB&M
All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
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Remarks

This application is being filed to be used in conjunction with other applications to change filed simultaneously herewith from Kobeh and Diamond Valleys and those previously filed under Applications 85575, 85577, 85579, 85581, 85582, 85584, 85585, 85586, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, and 85603 in Kobeh Valley. The total combined duty of all the change applications will not exceed the consumptive use of 11,678.18 acre feet.

The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly, and submitted to the Bureau of Land Management.

Groundwater will be developed from the Kobeh Valley Groundwater Basin, through a series of production wells. Water will be conveyed to a storage reservoir via a booster pumping station. Water from the storage reservoir will be conveyed to the reduction plant or mill, located within the Diamond Valley drainage basin. After the water is placed to a beneficial use within the reduction plant, a portion of the water will be diverted to a recycling pond, with such water returned to the storage reservoir. The vast majority of water will be carried via the tailings leaving the reduction plant, and will be placed in a tailings pond, located within Kobeh Valley.

Thus, the majority of water consumption will take place in Kobeh Valley, and not Diamond Valley.

The total volume of water to be consumed, being the total combined duty of all applications filed herewith shall not exceed 11,678.18 acre-feet annually. The contemplated mine life, as currently best determined, is 44 years, commencing upon start up or commencement of the mine and works of reduction.

RECEIVED
BUREAU OF LAND MANAGEMENT
APR 11 2010
SALT LAKE CITY, UT

Exhibit C
Miscellaneous Remarks

Kobeh Valley Ranch, LLC ("KVR") believes that the correct course of action following the Nevada Supreme Court's September 18, 2015 Order on the appeal from State Engineer Ruling 6127 is for the District Court to remand the case to the State Engineer and for the State Engineer to conduct further hearings on the applications at issue in Ruling 6127. However, the Applications approved in Ruling 6127 are currently denied, which decision is under appeal.

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The total combined duty of the four change applications changing Permits 78272 through 78275 is not to exceed 6,337.32 acre feet with a consumptive duty not to exceed 4,277.691 acre feet.

STATE ENGINEER
Nevada
RULING 6127
SEP 18 2015

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

IN THE MATTER OF APPLICATIONS NUMBERS
85573 through 55604 FILED FOR WATER RIGHTS
IN THE KOBEH VALLEY (139) AND DIAMOND
VALLEY (153) HYDROGRAPHIC BASINS,
LANDER COUNTY AND EUREKA COUNTY,
NEVADA

ANSWER TO PROTESTS

KOBEH VALLEY RANCH, LLC ("KVR"), by and through its attorneys of record, PAUL
G. TAGGART, ESQ. and RACHEL L. WISE, ESQ., of the law firm of TAGGART & TAGGART,
LTD., hereby file this Answer to Protests pursuant to Nevada Administrative Code Section 533.140.

I. BACKGROUND

In 2007, KVR filed change applications on many of its water rights that were granted in
Ruling 6127. Those applications were: Change Applications 79913, 79915, 79917, 79919, 79920,
79921, 79922, 79923, 79924, 79926, 79927, 79929, 79930, 79931, 79932, 79934, 79935, 79936,
79937, 79941 and 79942 ("Original Applications").

On October 28, 2015, KVR filed new applications to appropriate. Those applications are
Applications 85573, 85574, 85576, 85578, 85580, 85587, 85590, 85595, 85600, 85601, and 85602
("2015 Applications to Appropriate"). On October 28, 2015, KVR filed Applications 85575, 85577,
85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85590, 85591, 85592, 85593,
85594, 85596, 85597, 85598, 85599, 85603, and 85604 (the "2015 Change Applications")
(collectively, the "Applications") for permission to change the point of diversion, manner of use and
place of use of the public waters of the State of Nevada with the State Engineer ("State Engineer").
The 2015 Change Applications identify the same base rights as the Original Applications.

1 **A. Fish Creek Change Applications**

2 Permit 9682, Certificate 2780, is for 474 acre feet on 65.54 acres. Application 85585 is
3 seeking to change the manner and place of use of 474 acre feet that is appurtenant to the 65.54 acres
4 identified in Certificate 2780. Applying a consumptive use duty of 2.7 acre feet per acre over the
5 65.54 certificated acres, a total pumping of 176.96 acre feet is requested as the consumptive use for
6 mining, milling, and domestic use under Application 85585.

7 Permit 11072, Certificate 2880, is for 322.5 acre feet to irrigate 132.76 acres. Application
8 85597 seeks to change the manner and place of use of the full 322.5 acre feet appurtenant to the
9 132.76 acres. Since applying a consumptive duty of 2.7 acre feet per acre to the 132.76 acres results
10 in a total duty in excess of the certificated amount, the total 322.5 acre feet is being requested as the
11 consumptive use for mining, milling, and domestic use under amount under Application 85597.

12 The existing rights are to be stripped from a total of 198.3 acres under Permits 9682 and
13 11072.¹ The total consumptive use amount requested for pumping from the change applications
14 regarding the Fish Creek Ranch under Applications 85585 and 85597 is 499.458 acre feet annually.
15 The water from Permits 9682 and 11072 is being changed to proposed Well PoO_3 and Well 206
16 respectively.

17 **B. Damale Ranch Change Applications**

18 The portions of Permit 35866, Certificate 11256 and Permit 64616 owned by KVR are for a
19 total combined duty of 819.24 acre feet on 204.81 acres. Applications 85596 and 85603 are seeking
20 to change the manner and place of use of 819.24 acre feet appurtenant to the 204.81 acres. Applying
21 a consumptive use duty of 2.7 acre feet per acre over the 204.81 acres, a total of 552.99 acre feet is
22 requested as the consumptive use for mining, milling, and domestic use under Applications 85596 and
23 85603. The total consumptive use amount requested for pumping from the change applications
24 regarding Damale Ranch under Applications 85596 and 85603 is 552.99 acre feet.² Application
25

27 ¹ See Exhibits 1 & 2.

28 ² Etchevery claims in protest issue number 20 that KVR incorrectly stated the duties for these applications. In fact, the amount of duty sought by KVR in these applications is consistent with the permit terms in the base rights for these applications.

1 85596 requests the water right to be diverted from proposed well 206. Application 85603 requests the
2 water right to be diverted from proposed Well PoO_3.

3 **C. Atlas Gold Mining, Inc.**

4 KVR owns existing mining, milling and domestic water rights originally appropriated by
5 Atlas Gold Mining, Inc., for a total duty of 1,389.60 acre feet. KVR is seeking to change the point of
6 diversion and place of use only. The total combined duty requested under change Applications
7 85581, 85584, 85586, 85591, 85592, 85593, 85598, and 85599 is 1,389.60 acre feet. The point of
8 diversion for the water from these existing rights is proposed to be pumped from Well PoO_3, Well
9 206, and Well 229.

10 **D. Bobcat Ranch**

11 Permits 72580 through 72588 are permitted for 6,337.32 acre feet to irrigate 1,584.33 acres on
12 the Bobcat Ranch. Permits 72580 through 72588 were the base rights for the following Original
13 Change Applications that were approved in Ruling 6127: Permits 79913, 79915, 79917, 79920,
14 79921, 79926, 79927, 79932, and 79942. The following 2015 Change Applications were filed in
15 2015 and identify the same Bobcat Ranch base rights: Applications 85575, 85577, 85579, 85582,
16 85589, 85594, 85583, 85588, and 85604. Three of these 2015 Change Applications - Applications
17 85583, 85588, and 85604 - were filed on base rights to the base rights. On April 27, 2016, KVR filed
18 amended Application 85583, 85588 and 85604 to properly identify the base rights for these change
19 applications.³ The total combined duty of the 2015 Change Applications at Bobcat Ranch is
20 restricted to the consumptive use portion of 4,277.691 afa. The water in these applications is
21 proposed to be pumped from wells PoO_1, PoO_3, Well 226, Well 227, Well 228, and Well 229.

22 **II. The Protests**

23 On January 15, 2016, the Etcheverry Family Limited Partnership ("Etcheverry") filed its
24 Protest in the matter of KVR's 2015 Applications to Appropriate. On January 21, 2016, Etcheverry
25 filed its Protest in the Matter of KVR'S 2015 Change Applications (collectively, "Etcheverry
26 Protests").

27
28

³ Amended Application 85604 resolves any deficiency claimed by Etcheverry in their protest issue number 21.

1 On January 15, 2016, the Diamond Cattle Co., LLC ("Diamond Cattle") filed its Protest in the
2 matter of KVR's 2015 Applications to Appropriate. On January 21, 2016, Diamond Cattle filed its
3 Protest in the Matter of KVR'S 2015 Change Applications (collectively, "Diamond Cattle Protests").

4 On January 15, 2016, Diamond Natural Resources Protection & Conservation Association
5 ("Diamond Natural") filed its Protest in the matter of KVR's 2015 Applications to Appropriate. On
6 January 21, 2016, Diamond Natural filed its Protest in the Matter of KVR'S 2015 Change
7 Applications (collectively, "Diamond Natural Protests").

8 On January 15, 2016, Eureka County filed its Protest in the matter of KVR's 2015
9 Applications to Appropriate. On January 21, 2016, Diamond Natural filed its Protest in the Matter of
10 KVR'S 2015 Change Applications (collectively, "Eureka County Protests"). Hereinafter Etcheverry,
11 Diamond Cattle, Diamond Natural and Eureka County will be collectively referred to as the
12 "Protestants."

13 **III. PROTEST TOPICS**

14 Eureka County protests on the following grounds, (1) the Applications are identical to those
15 denied by the Nevada Supreme Court, (2) the Applicant's point of diversion has not been reassessed,
16 (3) the Applications will impact undetermined claims of vested rights, (4) an adjudication must occur
17 first, (5) the Applications do not require district court prior to proceeding, (6) the Applications are an
18 attempt to circumvent the direction provided by the Nevada Supreme Court, (7) KVR has refused to
19 change their proposed use and points of diversion, (8) the base rights have been abrogated, (9) large
20 scale pumping will impact ranchers, and the entire community, (10) there will be impacts on
21 Henderson Creek, (11) the Applications will not capture evapotranspiration, (12) existing rights
22 should be protected, (13) KVR's Monitoring, Management, and Mitigation plan is deficient, (14) lack
23 of financial ability, (15) a decision on the Applications should be delayed to allow for further study of
24 the flow system, (16) KVR must know the yield of pumping prior to drilling a well, (17) Eureka
25 County must be involved with KVR's plans, (18) Eureka County has senior applications to
26 appropriate water rights over KVR's Applications to appropriate mining water rights, (19) temporary
27 use must be reflected on the permit for mining applications (20) the proposed place of use is larger
28 than the mine's plan of operations boundary, (21) all future change applications must go through the

1 water rights process, (22) KVR can only change the consumptive duty, (23) all permits being changed
2 should be in good standing, (24) KVR should follow all Nevada laws.

3 Etcheverry and Diamond Cattle protests on similar grounds as Eureka County regarding (1)
4 there is no water available for appropriation, (2) impacts, (4) financial ability, (3) public interest and
5 economic grounds, and (4) increase in evaporative loss. Etcheverry and Diamond Cattle protest on
6 the additional grounds that the Applications (1) violate anti-speculation laws, (2) contain errors or
7 incorrectly reflect the total combined duty calculations, and (3) Application 85604 is deficient.

8 Diamond Natural protests on similar grounds as Eureka County, Etcheverry and Diamond
9 Cattle regarding, (1) impacts to existing water rights, (2) the effect on Diamond Valley flows, (3)
10 Eureka County has applications for appropriation of water that were filed prior to KVR's, (4)
11 financial ability, and (5) existing rights should be limited to consumptive use. Diamond Valley
12 protests on the additional grounds that (1) water appropriated in Kobeh Valley will actually be
13 pumped from Diamond Valley, and (2) the place of use for the water sought for appropriation from
14 Kobeh Valley is in a different hydrographic basin.

15 **IV. ARGUMENT**

16 The State Engineer must approve an application that is submitted in proper form if an applicant
17 provides satisfactory proof of: (1) his intention in good faith to construct any work necessary to apply
18 the water to the intended beneficial use with reasonable diligence, and (2) his financial ability and
19 reasonable expectation to actually construct the work and apply the water to the intended beneficial
20 use with reasonable diligence.⁴

21 **A. Jurisdiction of State Engineer to Consider KVR's Applications**

22 The Nevada Supreme Court issued its decision in *Eureka Cnty v. State Eng'r* on October 29,
23 2015.⁵ In *Eureka*, the Nevada Supreme Court focused substantially on the monitoring, mitigation,
24 and management plan ("3M Plan") as proposed by KVR.⁶ These Applications are not intended to
25 circumvent the Supreme Court decision.

27
28 ⁴ NRS § 533.370(1)&(2).

⁵ 131 Nev. Adv. Op. 84, 359 P.3d 1114, 1117 (2015)

⁶ *Id.*

1 Eureka County alleges in its protest that the Supreme Court decision requires the KVR
2 Applications to be rejected. However, the *Eureka* decision only reflects the requirement by the
3 Nevada Supreme Court to have a comprehensive 3M plan that articulates what mitigation will
4 encompass.⁷ The Nevada Supreme Court's reversal and remand was based on the perceived
5 deficiencies of the 3M plan and the need for further investigation. It was not intended to deny KVR's
6 Applications outright. The Nevada Supreme Court was also concerned the provision of substitute
7 water, which was not addressed in Ruling 6127.⁸ The Nevada Supreme Court reversed the decision
8 of the district court and remanded the case for further proceedings.⁹ The Nevada Supreme Court did
9 not signal an intention to foreclose approval of the currently pending KVR Applications. This is
10 further demonstrated by the Nevada Supreme Court's statement that, there must be an "opportunity to
11 challenge the evidence . . . before the State Engineer grants proposed use or change applications."¹⁰
12 Even though the district court later vacated Ruling 6127, that decision is currently on appeal at the
13 Nevada Supreme Court.

14 In addition, KVR'S Project will be adjusted to address the concerns raised in the *Eureka* case.
15 KVR has made many changes to the Project based on the *Eureka* decision. With respect to the
16 pending Applications, the quantities of pumping per well have been adjusted to allow for pumping
17 regimes that minimize impacts. KVR will produce additional documentation, as requested by the
18 State Engineer regarding these changes to support the Applications. The changes in KVR's Project
19 and Applications are in reaction to and conformance with the Nevada Supreme Court's *Eureka*
20 decision.

21 1. The Applications do not circumvent the Nevada Supreme Court's decision.

22 Eureka County's protest issue claims the new Applications are exactly the same as the Original
23 Applications approved by the State Engineer in Ruling 6127 and then overturned by the Nevada
24 Supreme Court in the *Eureka* decision. However, while the Nevada Supreme Court did overturn
25 Ruling 6127 in the *Eureka* case, it remanded the case to the district court to conduct further

27 ⁷ *Eureka Cnty*, 131 Nev. Adv. Op. at 88, 359 P.3d at 1119 (2015).

28 ⁸ *Id.*

⁹ *Id.*

¹⁰ *Eureka Cnty*, 131 Nev. Adv. Op. at 90 359 P.3d at 1120 (2015) (emphasis in original) (citations omitted).

1 proceedings in the matter. Instead of following this direction, the district court issued a ruling
2 vacating KVR's applications.¹¹ The Nevada Supreme Court's direction was that additional
3 information should be provided to address the concerns regarding KVR's 3M plan and the possible
4 impacts of the applications on existing water rights. Accordingly, KVR's Applications are directly in
5 line with the direction provided by the Nevada Supreme Court. KVR's Applications are filed in
6 conformity with the *Eureka* decision. The Nevada Supreme Court solely remanded on the issue of
7 KVR's 3M plan in its *Eureka* decision.¹² The Nevada Supreme Court did not direct KVR's
8 applications be denied. The Court encouraged KVR to ensure that their Original Applications would
9 not impact or conflict with prior rights, or to mitigate any conflicts.

10 2. The Applications do not require the district court's review prior to
11 proceeding.

12 The legislature has vested the State Engineer with responsibility for administering the State's
13 water, and the water may only be appropriated after obtaining a permit from the State Engineer.¹³
14 NRS 533.024 entrusts the Nevada State Engineer to make all decisions regarding water rights in the
15 State of Nevada. The Nevada State Engineer's office is the proper forum for the review of
16 applications concerning water rights. The State Engineer is responsible for administering the
17 appropriation and management of Nevada's public waters pursuant to the provisions of Nevada
18 Revised Statutes ("NRS") chapters 533 and 534. As part of that responsibility, the State Engineer
19 must approve water right applications that are submitted in proper form if the statutory criteria in the
20 Nevada water law are satisfied.¹⁴

21 Eureka County protests the Applications on the grounds that the district court should have
22 reviewed the Applications prior to the State Engineer sending them for Publication. This contention
23 is flawed. First, the district court's decision to vacate Ruling 6127 after Eureka County filed its
24 protest makes Eureka County protest issue 5 moot. Second, the State Engineer is statutorily required
25

26 ¹¹ The district court's decision to vacate Ruling 6127 after Eureka County filed its protest makes Eureka County protest
27 issue 5 moot.

28 ¹² *Eureka* at "[b]ecause we reverse and remand on this basis, we do not reach the remaining issues raised in these
consolidated appeals."

¹³ NRS 533.325.

¹⁴ NRS 533.370(1) ("the State Engineer shall approve an application... if...").

1 to publish the Applications within thirty (30) days pursuant to NRS 533.360. Third, a district court
2 may not divest the State Engineer of his statutory authority regarding these publications. Only a party
3 aggrieved by an order or decision of the State Engineer is entitled to have the order or decision
4 reviewed, in the nature of an appeal, pursuant to NRS 533.450(1). The court must give effect to the
5 unambiguously expressed intent of the Nevada legislature.¹⁵ The State Engineer is only divested of
6 jurisdiction once an appeal is filed pursuant to NRS 533.450. Accordingly, the State Engineer acted
7 properly in publishing the Applications pursuant to state law.

8 3. Applications 85593 and 85594 underwent notice and publication
9 requirements pursuant to NRS 533.360(1).

10 Etcheverry and Diamond Cattle assert that Applications 85593 and 85594 were not published
11 by the State Engineer pursuant to NRS 533.360. A review of the State Engineer's website reflects the
12 last publication date of Application 85593 was February 11, 2016. The last publication date for
13 Application 85594 was also February 11, 2016. Etcheverry and Diamond Cattle's contention that
14 Applications 85593 and 85594 were not published is, therefore, factually incorrect.

15 4. The State Engineer is not required to adjudicate claims prior to granting
16 Applications.

17 Eureka County contends that the State Engineer must complete an adjudication of the water
18 rights within the basin prior to issuing additional water rights. This is incorrect. A basin-wide
19 adjudication is not a statutory requirement for the State Engineer to grant mining water right
20 Applications. In Nevada, there are three different types of water rights: vested, certificated and
21 permitted.¹⁶ "Vested" rights are those that existed under Nevada's common law and may not be
22 impaired by statutory law. Once adjudicated, such rights may be used as established in the original
23 decree until modified by a later permit.¹⁷ Vested water rights are the water rights that already exist
24 and which may or may not have already been adjudicated. "Permitted" rights refer to rights granted
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27 ¹⁵ *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984).

28 ¹⁶ *Ormsby County v. Kearney*, 37 Nev. 314, 352-53, 142 P. 803, 810 (1914); *Desert Irrigation, Ltd. v. State of Nevada*,
113 Nev. 1049, 1059 n.5, 944 P.2d 835, 841 n.5 (1997); see *Silver Lake Water*, 107 Nev. at 952 n.1, 823 P.2d at 267 n.1;
NRS 533.325-380.

¹⁷ *Ormsby*, 37 Nev. at 352-53, 142 P. at 810; NRS 533.085(1).

1 by the State Engineer after the adoption of Nevada's statutory water law.¹⁸ "Certificated" rights are
2 statutory rights granted after a party perfects his or her permitted water rights.¹⁹ Vested, certificated,
3 and permitted water rights are already recognized by the State Engineer.

4 Any action by the State Engineer regarding KVR's Applications will be made subject to
5 existing vested rights, whether they are adjudicated or not. The purpose of an adjudication is to
6 confirm or deny the existence of a vested water right. When that is completed, KVR's rights will be
7 subject to those decreed rights. Accordingly, no impairment to vested rights can occur from the
8 approval of KVR rights. Also, the publication and notice of the KVR Applications pursuant to NRS
9 533.160 provided notice the general public, including those who hold either vested rights or vested
10 claims. Therefore, it is completely unnecessary to require a full adjudication of all vested claims
11 within a basin before issuing additional permits within that basin.

12 B. The Applications will not impact existing rights.

13 The State Engineer has previously addressed the Protestants' contentions that KVR's original
14 applications would impact or conflict with existing water rights.²⁰ Further, KVR's Project and
15 current Applications are adjusted to not impact existing rights in conformity with the Nevada
16 Supreme Court's *Eureka* decision.²¹

17 1. NRS 533.370(2) does not require denial of the Applications if potential
18 conflicts can be avoided.

19 The Protestants request the State Engineer deny KVR's Applications on the basis of a
20 potential impact to ranchers, Henderson creek, senior appropriations, and existing rights. Nevada
21 water law does not require the State Engineer to deny Applications. NRS 533.370(2) does not
22 prevent the State Engineer from granting applications that may potentially impact an existing right if
23 the existing right can be protected through mitigation that eliminates the conflict. Nevada law allows
24 the State Engineer to grant subsequent applications even if they may impact existing rights so long as
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27 ¹⁹ *Desert Irrigation, Ltd.*, 113 Nev. at 1059, 944 at 841 (1997); *Silver Lake Water*, 107 Nev. at 952, 823 P.2d at 267; NRS
533.325-.380.

28 ²⁰ Ruling 6127 at 17 - 22.

²¹ Diamond Cattles' protest ground number 18 should be rejected because it addresses water quality issues which are
outside to scope of the State Engineer's authority.

1 those existing rights can be made whole through mitigation.²² The Protestants present a flawed and
2 mechanical approach that would foreclose any development of future water rights in the arid Nevada
3 desert. The Protestants' interpretation of the statute amounts to a "no impact rule" that would
4 essentially prevent the State Engineer from allowing the perennial yield of any Nevada basin to be
5 developed and used by new groundwater applicants because any new pumping would necessarily
6 draw down the water table which is almost certain to impact other groundwater users to some degree.
7 The Protestants' approach would create a near impossible standard for the future development of
8 Nevada water resources and would run contrary to legislative intent and public policy.²³ As long as
9 the Applicant can successfully mitigate impacts to senior users, there is no conflict with a senior right.

10 NRS 534.110 requires the State Engineer to allow for a reasonable lowering of the static
11 water table. KVR's model tests indicate that the water table may decline up to 5-10 feet during the
12 life of the mining operation. This has previously been accepted as a reasonable lowering of the static
13 water table by the State Engineer. KVR's models are the best science available regarding this issue,
14 and should properly be considered by the State Engineer.²⁴ NRS 534.110 further provides that the
15 State Engineer is not prevented from granting permits to applicants later in time on the ground that
16 the diversion under the proposed later appropriation may cause the water level to be lowered.²⁵ Also,
17 the State Engineer is not required to conduct a full environmental impact review on par with a federal
18 Environmental Impact Statement.²⁶ Instead, the State Engineer considers "whether the use of the
19 water is sustainable over the long-term without unreasonable impacts to the water resources and the
20 hydrologic-related natural resources that are dependent on those water resources."²⁷ Accordingly,
21 Nevada's statutory scheme indicates a legislative intent to allow a new application for groundwater to
22 cause a drawdown at an existing water right, provided that the drawdown is not unreasonable.

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24 ²² *Id.*

25 ²³ *Desert Valley Water Co. v. Nevada*, 104 Nev. 718, 720, 766 P.2d 886, 887 (1988) (citing *Welfare Div. v.*
Washoe Co. Welfare Dep't, 88 Nev. 635, 503 P.2d 457 (1972)).

26 ²⁴ NRS 533.024(1)(c).

27 ²⁵ *Id.*

28 ²⁶ Legislative History of SB 108 (Feb. 22, 1999) ("Senator James clarified it is not his intention as the proposer of the
amendment to require an EIS for the importer of water but to consider the environmental impact on the basin of origin.").
Having said that, the rights of way for the Groundwater Project travel through federal land; as a consequence, the
Groundwater Project has indeed gone through a full EIS process under NEPA.

²⁷ Nevada State Eng'r Ruling No. 5918 at 30 (Dec. 3, 2008).

2. The State Engineer may condition his approval on a 3M plan and permit terms.

The Ninth Circuit Court of Appeals, interpreting Nevada water law, held that the State Engineer "has the inherent authority to condition his approval of an application to appropriate based on his statutory authority to deny applications if they impair existing water rights."²⁸ In other words, the State Engineer's power to deny applications that impair existing water rights inherently gives him the authority to condition his approval of the applications.²⁹ Although the Nevada Supreme Court declined the opportunity to rule on the State Engineer's power to grant conditional approval, it has ruled that an agency possesses not only the powers expressly granted by statute, but also any powers that are necessary to fulfill its statutory powers.³⁰ The United States Supreme Court stated "[t]he power to approve implies the power to disapprove and the power to disapprove necessarily includes the lesser power to condition an approval."³¹

In an analogous situation, the Court upheld a city's conditional approval of a master plan in the face of a claim that the city violated NRS 278.0282(1), which requires that "before the adoption or amendment of any master plan . . . each governing body . . . shall submit the proposed plan or amendment to the regional planning commission."³² Much like the State Engineer did here, the city conditionally approved the master-plan amendments, stating that the amendments would not "become effective" until the Regional Planning Commission approved the amendments.³³ This Court affirmed the City's actions, holding that the City "complied with the express language" of the code.³⁴

²⁸ *United States v. Alpine Land & Reservoir Co.*, 919 F. Supp. at 1479; *See In re Nevada State Eng'r Ruling No. 5823*, 277 P.3d at 455 (While a federal court's interpretation of a Nevada statute on a matter of state law "does not constitute mandatory precedent, we nonetheless respect such authority as persuasive.") (internal citations omitted) (citing *Carlton v. Manuel*, 64 Nev. 570, 584, 187 P.2d 558, 565 (1947)).

²⁹ *Id.* (citing *City of Albuquerque v. Reynolds*, 379 P.2d 73, 81 (N.M. 1962)).

³⁰ *City of Henderson v. Kilgore*, 122 Nev. 331, 334, 131 P.3d 11, 13 (2006) ("Although the powers of an administrative agency are limited to those powers specifically set forth by statute, certain powers may be implied even though they were not expressly granted by statute, when those powers are necessary to the agency's performance of its enumerated duties." (quotation marks and alterations omitted)); *Stockmeier v. State Ed. of Parole Comm'rs*, 127 Nev. __, __, 255 P.3d 209, 212 (2011).

³¹ *S. Pac. Co. v. Olympian Dredging Co.*, 260 U.S. 205, 208, 43 S. Ct. 26, 27 (1922); *see also City of Appleton v. Transp. Comm'n of Wisconsin*, 342 N.W.2d 68, 71 (Wis. Ct. App. 1983) (the city challenged the Transportation Commission's ability to condition approval of a new sewer line, but the court held that an agency's "power to approve necessarily implies the power to grant conditional approval").

³² *City of Reno v. Citizens for Cold Springs*, 126 Nev. __, __, 236 P.3d 10, 16 (2010).

³³ *Id.* at 13.

³⁴ *Id.* at 17.

1 NRS 533.370(2) gives the State Engineer the inherent authority to grant new water rights
2 "subject to existing rights" conditioned on a requirement that the applicant must mitigate any impacts
3 that would otherwise cause a conflict with existing rights. The State Engineer's statutory
4 interpretation is reasonable, within his field of expertise, and is entitled to deference. Protestants'
5 claim that any impact constitutes a conflict, and mitigation is not available, is not consistent with a
6 plain reading of the statute scheme, and would be unreasonable, unworkable, and inconsistent with
7 public policy.

8 Here, KVR will submit a compliant 3M plan as part of a hearing on the pending Applications.
9 That 3M plan will fully comply with the Supreme Court's ruling in *Eureka*. Further, pursuant to NRS
10 533.353, the State Engineer should "allow the [Eureka C]ounty to participate in an advisory capacity
11 in the development and implementation of the plan." The 3M plan will be based on an analysis of the
12 best available science, will identify specific and attainable mitigation actions and substitute waters,
13 and will identify specific financial vehicles for mitigation.

14 As such, the Protestants' contention that KVR is required to reassess its points of diversion is
15 incorrect. The preeminent public policy behind Nevada water rights is beneficial use. KVR's
16 Applications are consistent with the purpose of Nevada law – to place all available water to
17 appropriation. KVR model results support the current Applications. KVR has made multiple changes
18 to their current Applications that were not a part of the original Applications. In addition to filing
19 applications for new water rights, the quantities per well have been adjusted to minimize any potential
20 impacts. Also, mitigation plans are common when issuing water rights for mining, as demonstrated
21 by the State Engineer's prior approvals of mining water applications.

22 3. There is minimal impact to Diamond Valley.

23 The Protestants further argue that the applications represent an interbasin transfer of water that
24 has the potential to impact water resources in Diamond Valley. Similar protest grounds were fully
25 addressed by the State Engineer in Ruling 6127. Just as this was not an issue with the original KVR
26 Applications, it is still not an issue for KVR's 2015 Applications. The science and reasoning that the
27 State Engineer relied on in Ruling 6127 is still applicable and sound, and was not questioned by the
28 Supreme Court. In Ruling 6127, the State Engineer fully analyzed the issue of potential conflicts with

1 existing rights or domestic wells from KVR's use of water in Kobeh Valley. The alleged potential
2 impacts were previously addressed by KVR in both its testimony before the State Engineer, and the
3 groundwater flow model. The State Engineer further reviewed all reconnaissance reports and
4 bulletins regarding Kobeh and Diamond Valleys prior to issuing his decision.

5 In Reconnaissance Series Report No. 6, Eakin suggests minimal subsurface flow from Kobeh
6 to Diamond Valley through the narrow alluvium-filled gap at Devil's Gate. Harrill suggests 40 afa
7 through the same gap. Rush and Everett concur on the minimal flow through Devil's Gate, and go on
8 to state that flow from Kobeh to Diamond Valley through the carbonate bedrock is possible, but
9 found no evidence to suggest such flow occurs. Tumbusch and Plume did not provide a revised
10 estimate of subsurface flow from Kobeh to Diamond Valley, but did pointedly recognize the potential
11 for flow in the carbonate bedrock as evidenced by fault structures with solution cavities in carbonate
12 outcrops at Devil's Gate.

13 The State Engineer previously recognized that because the groundwater flow model is only an
14 approximation of a complex and partially understood flow system, the estimates of interbasin flow
15 and drawdown cannot be considered as absolute values. However, the modeling evidence does
16 strongly suggest that the proposed mine pumping under these applications will not measurably
17 decrease subsurface groundwater flow from Kobeh to Diamond Valley and will not cause significant
18 water level decline (less than 2 feet over entire mine life) at the points of diversion under existing
19 water rights in Diamond Valley. The State Engineer found that the previous Applications would not
20 conflict with existing rights in Diamond Valley by reducing the subsurface interbasin flow into the
21 Diamond Valley hydrographic basin. Groundwater drawdown in Diamond Valley is not
22 unreasonable at the locations of existing water rights and domestic wells, and meets the statutory
23 requirements of NRS 534.110. The State Engineer found that the prior applications would not
24 conflict with existing rights or the protectable interest in domestic wells in Diamond Valley.

25 This same analysis still applies to the current applications. The State Engineer has already
26 considered impacts to Diamond Valley and already held that the prior Applications and place of use
27 will not conflict with water rights in either the Diamond or Pine Valleys.³⁵ Accordingly, the KVR
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³⁵ Ruling 6127 at 17-19.

1 Applications will not conflict with water rights in Diamond Valley and will not interfere with
2 groundwater management in Diamond Valley or affect the critical management area designation in
3 that valley.

4 **4. There is no impact to Henderson Creek.**

5 Eureka County's protest that KVR's Applications will adversely affect Henderson Creek is
6 illusory. KVR has developed models and is prepared to address any claim of impact to surface water
7 sources. KVR has already submitted testimony that the water levels in wells adjacent to certain
8 creeks demonstrate no hydrologic connection between the creeks and the well. KVR's expert has
9 previously presented data that Henderson Creek's streamflow is simply runoff from precipitation and
10 draining of saturated soil. KVR has already presented factual evidence that Henderson Creek is not
11 connected to the groundwater aquifer from which KVR proposes pumping.³⁶ The only way
12 groundwater pumping could affect streamflow would be if the water table was in direct contact with
13 the stream bed.³⁷ The State Engineer has previously held that there will be no impact to Henderson
14 Creek from groundwater pumping.³⁸ That same logic applies to the current Applications.

15 **C. The Applications have been submitted in proper form.**

16 The Protestants allege that the applications should be denied because they fail to adequately
17 describe the proposed points of diversion and place of use. NRS § 533.370(1) states that an
18 application must be submitted in proper form. The application form used by the Division of Water
19 Resources (Division) requires a description of the proposed point of diversion by survey description
20 and the description must match the illustrated point of diversion on the supporting map. If and when a
21 well is drilled, it must be within 300 feet and within the same quarter-quarter section described in the
22 application or an additional change application will be required. Prior to an application being
23 published, the State Engineer has adopted a practice of reviewing incoming applications and maps to
24 ensure statutory compliance.³⁹ Any application or map that does not meet the requirements for
25 acceptance, and which cannot be corrected during the review process, is rejected and returned for
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27 ³⁶ Ruling 6127 at 20.

28 ³⁷ *Id.*

³⁸ *Id.* at 21.

³⁹ Ruling 6127 at 12-13.

1 correction with time limits for the applicant to re-submit. Accordingly, the State Engineer's
2 acceptance and publication of KVR's Applications indicates that KVR has met the requirements for
3 describing the points of diversion and place of use on the application forms and supporting maps.

4 **D. Financial ability and reasonable diligence pursuant to NRS 533.370(1).**

5 The Protestants contention that KVR does not have the financial ability to complete or operate
6 the mine is false. Nevada water law requires the State Engineer to consider whether the Applicant has
7 an intention in good faith to construct the works necessary to place any approved water to beneficial
8 use. The Applicant also must show that it has the financial ability and reasonable expectation to
9 construct the works necessary to apply the water to its beneficial use.⁴⁰

10 **1. Expenditure of funds on KVR Project.**

11 The chief financial officer of General Moly, Inc., parent of KVR, stated that the total
12 expenditure of funds required for the project is \$1,154,000,000.⁴¹ At the time of the prior hearing, the
13 Applicant had expended about \$163,000,000 on such things as buying equipment, hydrology, drilling,
14 engineering, permitting, land and water rights.⁴² Now, over \$300,000,000 has been spent. General
15 Moly, Inc. will provide 80% of the funding and its partner, POS-Minerals Company, a division of
16 POSCO, a Korean large steel producer, will provide the remaining 20%.⁴³ General Moly Inc. has
17 completed an equity private placement agreement with Amer International Group, based in Shenzhen,
18 China, utilizing a three-tranche investment strategy for the purchase of 40 million shares for \$20.0 million,
19 and warrants to purchase 80.0 million shares of the Company's common stock, upon the availability of an
20 approximately \$700.0 million senior secured loan ("Bank Loan") to construct and begin operations at the Mt.
21 Hope mine project. The first tranche closed in November 2015 and closure of the second and third tranches is
22 related to defined improvement in the molybdenum price and reinstatement of the water rights for the Mt.
23 Hope project. Further details of its financial ability are present in General Moly's financial statements to
24 the Securities and Exchange Commission and will be provided at a hearing on the KVR
25 Applications.

27 ⁴⁰ NRS 533.370(1)(c).

28 ⁴¹ See Ruling 6127 at 12-13

⁴² Id.

⁴³ Id.

1 In addition, the issues of financial ability, beneficial use, and reasonable diligence pursuant to
2 NRS 533.370(1) have already been resolved in Ruling 6127. None of the findings of the State
3 Engineer regarding these issues were raised in the various appeals of that Ruling. Accordingly, those
4 findings are res judicata and govern the review of the instant applications.

5 **2. Anti-speculation arguments do not apply.**

6 The Protestants argue that KVR's Applications violate Nevada anti-speculation laws. This is
7 false. NRS 533.370(6)(d), commonly known as the anti-speculation doctrine, requires all water to be
8 placed to immediate use rather than held until some unknown time in the future.⁴⁴ "Speculation" is
9 defined by the State Engineer as "an assumption of unusual business risk in hopes of obtaining
10 commensurate gain, buying or selling with the expectation of profiting by a rise and fall in price."⁴⁵
11 The Nevada Supreme Court adopted what is referred to as the "anti-speculation doctrine" in *Bacher*
12 *v. State Engineer*, where it stated that the doctrine comports with the language and goals of NRS
13 533.370(1)(C).⁴⁶ Relying on NRS 533.370(1)(c), the court held in *Bacher* that protecting against
14 speculation:

15 requires the applicant to show both financial ability and a reasonable
16 expectation with respect not only to constructing any work needed to
17 apply the water, but also to apply the water to the intended beneficial
18 use with reasonable diligence.⁴⁷

17 The court stated further that "[p]recluding applications by persons who would only speculate on need
18 ensures satisfaction of the beneficial use requirement that is so fundamental to our State's water law."⁴⁸

19 None of these concepts apply in the current Applications. Eureka County concedes that KVR
20 intends to place all the water immediately to beneficial use for their mine. KVR has consistently
21 demonstrated their desire to build a mine and to put at least four hundred (400) Eureka County
22 residents to work. KVR has engaged in lengthy litigation, long-term planning, and third-party
23 contracts that discredit any accusation of speculative development. In short, KVR has both the
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26 ⁴⁴ See also NRS 534.090.

27 ⁴⁵ State Engineer Ruling No. 5782, dated September 17, 2007, at 29 (citing Webster's Collegiate Dictionary 1133 (9th ed. 1978), and Black's Law Dictionary 1255 (5th ed. 1979).

28 ⁴⁶ *Id.*, 122 Nev. __, 146 P.3d 793 (2007).

⁴⁷ *Bacher*, 122 Nev. at 146 P.3d at 799 (quoting Hearing on S.B. 98 Before the Assembly Government Affairs Comm., 68th Leg. (Nev., April 11, 1995).

⁴⁸ *Id.*

resources and the intention to place the appropriated water to beneficial use in the manner described in the Applications.

E. Unappropriated Water - Perennial Yield

The Protestants' contention that there is either no unappropriated water or that Eureka County should receive senior water rights is incorrect. The Nevada Legislature has determined that "all water may be appropriated for beneficial use as provided in this chapter and not otherwise."⁴⁹ Nevada water law favors those parties who demonstrate maximum actual and beneficial use of their water resources.⁵⁰ Nevada's common law and the legislative codification of the appropriation system are based on this principle.⁵¹ Under the doctrine of prior appropriation, if unappropriated water is available, the scope of a right to use water is solely limited by the concept of beneficial use.⁵² The Nevada Legislature codified its intent that the water made available for appropriation be used under NRS 533.035.

The State Engineer has already previously decided the issue regarding unappropriated water in Kobeh Valley.⁵³ The State Engineer's decision regarding unappropriated water and the perennial yield of the basin was not appealed. The State Engineer does not need to wait for a new USGS report. Historically, the State Engineer can set the perennial yield based on estimated discharge of the particular basin. Discharge is generally considered the amount of water that is naturally taken out of the system by plants or which evaporates directly into the atmosphere. Groundwater ET is the measure of how much groundwater is used by plants or is evaporated. Groundwater ET is important because it can be measured with a high degree of accuracy.⁵⁴ The Nevada legislature and

⁴⁹ NRS 533.030(1).

⁵⁰ NRS 534.090; *Bacher v. Office of State Eng'r of State of Nevada*, 122 Nev. at 1119, 146 P.3d at 798-99 (2006); *Advan Mgmt., Inc. v. Mountain Falls Acquisition Corp.*, 124 Nev. 770, 775-76, 191 P.3d 1189, 1193 (2008); *Colorado Supreme Court in Colorado River Water Conservation v. Vidler Tunnel*, 197 Colo. 413, 594 P.2d 566 (1979), *superseded in part and affirmed in part by statute*, 1979 Colo. Sess. Laws 1366, 1368-69; *as recognized in Matter of Bd. Of Cty. Com'rs*, 891 P.2d 952, 959-61 (Colo. 1995); *See also City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1, 37 (Colo. 1996) ("[a]lthough *Vidler* has most often been cited as defining the anti-speculation doctrine, we did not articulate a new legal requirement in that case, but rather merely applied longstanding principles of Colorado water law.").

⁵¹ *Id.* *United States v. State Engineer*, 117 Nev. at 591, 27 P.3d at 55 (2001).

⁵² *Montana v. Wyoming*, 131 S. Ct. 1765, 1772 (2011); 1 C. Kinney, *Law of Irrigation and Water Rights* § 586, pp. 1007-1008 (2d ed.1912).

⁵³ Ruling 6127 at 13 - 17.

⁵⁴ *Id.* at 1-51.

longstanding Nevada case law require the State Engineer to rely on substantial evidence when he makes a ruling or regulation pertaining to the appropriation of water.⁵⁵

The State Engineer is further required to rely on the "best available science," pursuant to NRS 533.024(1)(c). In Ruling 6127, the State Engineer stated that the established perennial yield of the six basins in the Diamond Valley Flow System are:⁵⁶

<u>Basin</u>	<u>Perennial Yield (acre-feet)</u>	
	<u>Previous</u>	<u>Revised</u>
Monitor Valley, Southern Part - Basin 140B:	10,000	9,000
Monitor Valley, Northern Part - Basin 140A:	8,000	2,000
Kobeh Valley, Basin 139:	16,000	15,000
Antelope Valley, Basin 151:	4,000	4,000
Stevens Basin, Basin 152:	100	100
Diamond Valley, Basin 153:	30,000	30,000

Prior to the administrative hearing that lead to Ruling 6127, KVR acquired all existing groundwater rights in the Kobeh Valley Hydrographic Basin, with the exception of approximately 1,100 afa.⁵⁷ KVR's new applications and change applications seek a total combined duty of approximately 11,300 afa from Kobeh Valley. If the subject applications were to be approved, the total committed groundwater resources in Kobeh Valley would be approximately 12,400 afa, which is less than the revised perennial yield of 15,000 afa. Accordingly, there is sufficient water within the perennial yield of Kobeh Valley to satisfy the water appropriation requirements of the project. Furthermore, KVR's new applications and change applications are seeking a limited appropriation of the water sources in Kobeh Valley.

The Protestants claim KVR's 2015 Applications to Appropriate cannot be considered before Eureka County's groundwater application. However, the State Engineer may grant KVR's 2015 Applications to Appropriate before considering Eureka County's application. First, the State Engineer

⁵⁵ *State Eng'r v. Morris*, 107 Nev. at 701, 703, 819 P.2d at 205 (1991); *Revert v. Ray*, 95 at, 603 P.2d at 264 (1979); *Bacher v. State Eng'r*, 122 Nev. at 1121, 146 P.3d at 800 (2006) (quoting *State, Employee Sec. Dep't v. Hilton Hotels Corp.*, 606 Nev. 608, 729 P.2d 497, 498 (1986); *T-Mobile S. LLC v. City of Roswell, Ga.*, 135 S. Ct. 808, 815 (2015).

⁵⁶ *Griffin v. Westergard*, 96 Nev. 627, 631, 615 P.2d 235, 237 (1980).

⁵⁷ Ruling 6127 at 15.

⁵⁸ Ruling 6127 at 17.

1 can grant KVR's 2015 Applications to Appropriate as temporary mining rights pursuant to NRS
2 533.371. If approved under this authority, the 2015 Applications to Appropriate would not be a
3 permanent long-term commitment of the perennial yield of Kobeh Valley, and would not conflict with
4 Eureka County's application. Second, the State Engineer can designate preferred uses in Kobeh
5 Valley pursuant to NRS 534.120 and prefer mining uses over all other uses.

6 Finally, Protestants argue that KVR is required to prove it will capture evapotranspiration. The
7 complete capture of evapotranspiration is not a requirement of Nevada water law for the issuance of
8 permits for the use of water for mining. Therefore, an analysis of evapotranspiration capture, as
9 requested by Protestants, is irrelevant.

10 F. Public Interest

11 The Protestants' contention that approval of the use of water for the mine is contrary to public
12 interest is false. Eureka County has conceded that the mine will create at least 400 jobs.⁵⁹ The
13 Nevada Supreme Court has already held that no threat to the public interest exists from alleged over-
14 pumping if the applicant was only permitted to pump unappropriated perennial yield.⁵⁹ In addition,
15 the public interest issue has already been resolved in Ruling 6127. None of the findings of the State
16 Engineer regarding public interest were raised in the various appeals of that Ruling. Accordingly,
17 those findings are res judicata and govern the review of the instant applications.

18 Further, prohibiting the use of unappropriated water does not serve the public interest.
19 According to the United States Supreme Court "[t]here must be no waste [of water] in arid lands of
20 the 'treasure' of [water resources]."⁶⁰ The Court held that the "essence of the doctrine of prior
21 appropriation is beneficial use, not a stale or barren claim."⁶¹ Much like the Kobeh Valley, the Walla
22 Walla Basin in Oregon has a semiarid climate with warm dry summers and cold wet winters.⁶² Upon
23 review of whether to restrict the waters as they flow from Washington to Oregon, the United States
24 Supreme Court held, "to limit the long established use in Oregon would materially injure Oregon
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26

27 ⁵⁹ *Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. ___, ___, 245 P.3d 1145, 1149 (2010).

28 ⁶⁰ *State of Washington v. State of Oregon*, 56 S. Ct. 540, 544 (1936) (citations omitted).

⁶¹ *Id.* (citations omitted).

⁶² *Id.*

1 users without a compensating benefit to Washington users.”⁶³ The United States Supreme Court
2 further held that to restrain diversion of the water to Oregon would serve no other or better purpose
3 than to vindicate a barren right.⁶⁴ Ultimately, the Court held that restraint of irrigation in Oregon,
4 regardless of the diversion structure in Washington would be “the *summum jus* of power” which
5 would materially injure the Oregon users through bringing distress and economic ruin without any
6 compensating benefit to Washington users and cause the water to be wasted rather than being placed
7 to beneficial use.⁶⁵

8 Similar to the State of Washington, Protestants in this case are asking that KVR be denied the
9 right to divert water to a beneficial use in order to protect what are essentially barren rights. KVR’s
10 development of the Mount Hope Molybdenum Mine Project will bring substantial economic benefits
11 to Eureka County and the State of Nevada. It is, therefore, wholly within the public interest to allow
12 for the appropriation of available water resources to support the project.

13 **G. Interbasin Transfer**

14 Protestants allege the KVR Applications should be denied based on the interbasin transfer
15 statutes. The interbasin transfer issues have already been resolved in Ruling 6127. None of the
16 findings of the State Engineer regarding these issues were reversed in the various appeals of that
17 Ruling. Accordingly, those findings are res judicata and govern the review of the instant applications.

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27 ⁶³ *Id.* at 543.

28 ⁶⁴ *Id.*

⁶⁵ *Id.* at 543; citing *Mut. Life Ins. Co. of New York v. Johnson*, 55 S.Ct. 154, 156 (1934) (stating “[t]he *summum jus* of power, whatever it will be, will be subordinate at times to a benign and prudent comity”).

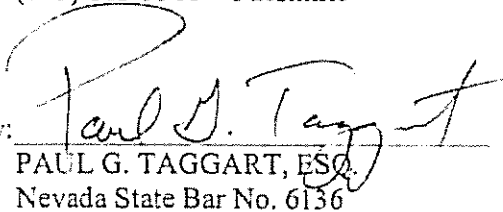
1 **III. CONCLUSION.**

2 For these reasons, KVR respectfully requests that the State Engineer reject the Protests to the
3 Applications and grant the Applications in full.

4
5 DATED this 20th day of May, 2016.

6 TAGGART & TAGGART, LTD.
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8 Carson City, Nevada 89703
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11 By:

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108 North Minnesota Street
Carson City, Nevada 89701
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that I served, or caused to be served, a true and correct copy of the foregoing, as follows:

[X] By U.S. POSTAL SERVICE: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, on May 18th, 2016, addressed as follows:

Debbie Leonard, Esq.
McDonald Carano Wilson LLP
100 W. Liberty St., 10th Floor
PO Box 2670
Reno, NV 89501
Attorney for Diamond Natural Resources Protection & Conservation Association

Therese A. Ure, Esq.
Schroeder Law Offices, P.C.
440 Marsh Ave.
Reno, Nevada 89509
Attorney for Diamond Cattle Co., LLC and Etcheverry Family Limited Partnership

Karen A. Peterson, Esq.
Allison, Mackenzie, Pavlakis,
Wright & Fagan, Ltd.
402 N. Division Street
Carson City, Nevada 89703-4168
Attorney for Eureka County

DATED this 20th day of May 2016.



Employee of TAGGART & TAGGART, LTD.

CLERK OF DISTRICT COURT
GARY D. FAIRMAN
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



Case Nos. CV 1108-155
CV-1108-156
CV-1108-157
CV-1112-164
CV-1112-165
CV-1202-170
CV-1207-178

Dept No. 2

NO. FILED

JUN 03 2016

Eureka County Clerk

By [Signature]

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

EUREKA COUNTY, a political subdivision
of the State of Nevada,
Petitioner,

v.

STATE OF NEVADA, EX. REL., STATE
ENGINEER, DIVISION OF WATER
RESOURCES,

Respondent.

CONLEY LAND & LIVESTOCK, LLC, a
Nevada limited liability company, LLOYD
MORRISON, an individual,

Petitioners,

v.

OFFICE OF THE STATE ENGINEER OF THE
STATE OF NEVADA, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES, JASON KING, State Engineer,
KOBEL VALLEY RANCH, LLC, Real Party in
Interest,

Respondents.

ORDER DENYING KOBEL VALLEY
RANCH, LLC'S MOTION TO ALTER OR
AMEND JUDGMENT

RECEIVED

JUN 03 2016

Eureka County
Clerk of Court



1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL and MARGARET ANN
5 ETCHEVERRY FAMILY, LP, a Nevada
6 registered foreign limited partnership,

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9 Petitioners,

10 v.

11 STATE ENGINEER OF NEVADA, OFFICE OF
12 THE STATE ENGINEER, DIVISION OF
13 WATER RESOURCES DEPARTMENT OF
14 CONSERVATION AND NATURAL
15 RESOURCES,

16 Respondent.

17 EUREKA COUNTY, a political subdivision of
18 the State of Nevada,

19 Petitioner,

20 v.

21 STATE OF NEVADA, EX. REL., STATE
22 ENGINEER, DIVISION OF WATER
23 RESOURCES,

24 Respondent.

25 KENNETH F. BENSON, an individual,
26 DIAMOND CATTLE COMPANY, LLC, a
Nevada limited liability company, and
MICHEL and MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
registered foreign limited partnership,

Petitioners,

v.

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

Respondent.



1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL AND MARGARET ANN
5 ETCHEVERRY FAMILY, LP, a Nevada
6 registered foreign limited partnership,

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8
9 Petitioners,

10 v.

11 STATE ENGINEER OF NEVADA, OFFICE OF
12 THE STATE ENGINEER, DIVISION OF
13 WATER RESOURCES DEPARTMENT OF
14 CONSERVATION AND NATURAL
15 RESOURCES,

16
17 Respondent.

18
19 MICHEL AND MARGARET ANN
20 ETCHEVERRY FAMILY, LP, a Nevada
21 Registered Foreign Limited Partnership,
22 DIAMOND CATTLE COMPANY, LLC, a
23 Nevada Limited Liability Company, and
24 KENNETH F. BENSON, an individual,

25
26 Petitioners,

27 vs.

28 STATE ENGINEER OF NEVADA,
29 OFFICE OF THE STATE ENGINEER,
30 DIVISION OF WATER RESOURCES,
31 DEPARTMENT OF CONSERVATION
32 AND NATURAL RESOURCES,

33
34 Respondents.

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36 KOBEH VALLEY RANCH, LLC, a
37 Nevada limited liability corporation,

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39 Intervenor-Respondents.

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On March 2, 2016, this Court entered an order granting objection to proposed



1 order remanding to state engineer; order granting petitions for judicial review; order
2 vacating permits ("order"); on March 9, 2016, this Court entered an amended order
3 granting objection to proposed order remanding to state engineer; order granting petitions
4 for judicial review; order vacating permits ("amended order"); on March 28, 2016, Kobeh
5 Valley Ranch, LLC, filed a motion to alter or amend judgment ("motion"); Eureka County
6 filed an opposition to Kobeh Valley Ranch, LLC's motion to alter or amend judgment
7 ("opposition") on April 11, 2016; on April 11, 2016, Michel and Margaret Ann Etcheverry
8 Family, LP, and Diamond Cattle Company, LLC ("Etcheverry and Diamond Cattle") filed
9 their response in opposition to Kobeh Valley Ranch, LLC's motion to alter or amend
10 judgment ("response in opposition"); on April 21, 2016, Kobeh Valley Ranch, LLC, filed its
11 reply in support of its motion to alter or amend judgment. The court has reviewed the
12 pleadings and does not require any further briefing or oral argument.

13 DISCUSSION

14 Kobeh Valley Ranch, LLC's ("KVR") motion filed pursuant to NRCP 59(e)
15 argues that the court's amended order entered March 9, 2016, was issued in error and is
16 manifestly unjust because it "fails to allow KVR an adequate opportunity to amend the 3M
17 plan to render it compliant with the newly anticipated and wholly unprecedented standards
18 adopted by the Nevada Supreme Court."¹ Eureka County and Etcheverry and Diamond
19 Cattle oppose KVR's motion on the basis that (1) KVR is precluded from re-litigating old
20 matters under NRCP 59(e); (2) the court's amended order was not issued in error; and (3)
21 the court's vacation of the KVR permits is not manifestly unjust.²

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25 ¹Motion at 6.

26 ²Opposition at 6-7; response in opposition at 6-10.



Rule 59(e)

A motion to alter or amend a judgment is an extraordinary remedy which cannot be used to re-litigate old matters or to raise arguments or present evidence that could have been raised prior to the entry of judgment.³ A 59(e) motion to have a court reconsider its decision is appropriate if a court (1) is presented with newly discovered or previously unavailable evidence, (2) committed a clear error of law or fact upon which the judgment rests, (3) the initial decision was manifestly unjust, and (4) if there is an intervening change in controlling law.⁴

KVR's reply to joint objection to proposed orders of Kobeh Valley Ranch, LLC, filed December 16, 2015, argued that a court order failing to remand this case to the State Engineer for further consideration would effectively deny KVR's water rights applications, cause it to lose priority, require KVR to initiate a new applications process, increase the difficulty to KVR in the applications process, waste resources, incur more financial debt, and be time consuming.⁵ KVR's instant motion and reply cite the same arguments.⁶ KVR's current motion seeks to re-litigate the same issues it previously raised to this Court. Rule 59(e) precludes re-litigation of these issues. KVR's motion must be denied unless this Court committed error or its decision was manifestly unjust.

**THIS COURT'S AMENDED ORDER
WAS NOT ISSUED IN ERROR**

In its order this Court stated, "The Nevada Supreme Court did not remand the cases to the State Engineer for further proceedings consistent with its opinion which it could have done if the court concluded additional administrative review and findings

³*Stevo Design, Inc. v. SBR Marketing Ltd.*, 919 F. Supp.3d 1112, 1117 (D. Nev. 2014).

⁴*Id.*

⁵Reply at 4, 7, 8.

⁶Motion at 4-10, reply at 3-11.



1 were necessary."⁷ This Court is aware that the Nevada Supreme Court remands
2 administrative appeals to the district court with instructions to further remand to the
3 administrative agency. To be clear this Court by the language used in the amended order
4 did not intend to convey that the Supreme Court used a procedure directly remanding
5 administrative appeals from the Supreme Court to the administrative agency, bypassing
6 the district court. To the extent KVR was unclear or mislead by this Court's choice of
7 words, this Order serves to clarify the court's amended order concerning the remand
8 process.

9 KVR argues that when the Supreme Court remanded to this Court that it did
10 so for the purpose of having this Court conduct or order a "proceeding consistent with this
11 Order."⁸ KVR states the effect of the Supreme Court's "remand to the district court is
12 effectively an order requiring the district court to further remand the issue to the State
13 Engineer for additional fact-finding"⁹ and this Court did not read in the proper context the
14 Supreme Court's decision when it held "the State Engineer's decision to grant KVR's
15 applications cannot stand."¹⁰ The court has again reviewed the Supreme Court's opinion
16 and disagrees.

17 Had the Supreme court found that further proceedings were necessary
18 before the State Engineer, its procedural history of remanding cases to the State Engineer
19 strongly suggests its opinion would have included language "remanding to the district court
20 with instructions to the district court to remand for further proceedings by the State
21 Engineer."

22 ⁷Amended order at 5.

23 ⁸Motion at 7; Eureka County v. State Engineer, 131 Nev. Adv. Op. 84 at 16, 359 P.3d
24 1114, 1121 (2015).

25 ⁹Motion at 7.

26 ¹⁰*Id.*



1 KVR cites a number of Nevada cases for the proposition that the Supreme
2 Court is not empowered to remand issues directly to the State Engineer.¹¹ The cases
3 demonstrate a direct remand from the Supreme Court to the State Engineer has not been
4 followed by the Supreme Court, however, each of the cases contain specific instructions
5 from the Supreme Court to the district court to remand the issue back to the State Engineer
6 for further proceedings when the Supreme Court believed such action was necessary.¹²
7 No specific instruction from the Supreme Court to this Court to refer or remand the matter
8 to the State Engineer appears in its opinion.

9 With the instructional clarity the Supreme Court has historically provided to
10 district courts for remand to the State Engineer to conduct further proceedings when a
11 case posture so required, this Court does not read and cannot infer such was the intent
12 from the language in this Supreme Court opinion. The Supreme Court made distinct
13 findings (1) that there was not substantial evidence to support the State Engineer's finding
14 that KVR would be able to "adequately and fully" mitigate the fact that its ground water
15 appropriations will cause Kobeh Valley springs that sources rights to cease to flow,¹³ (2)
16 that the State Engineer's decision to grant KVR's applications when the result of such
17 appropriations would conflict with existing rights and based upon unsupported findings that
18 mitigation would be sufficient to rectify the conflict violates the Legislature's direction that
19 the State Engineer must deny use or change applications when the use or change would
20

21 ¹¹*Id.*

22 ¹²In *Town of Eureka v. Office of the State Engineer*, 108 Nev. 163, 169, 826 P.2d 948,
23 952 (1992), the Supreme Court clearly stated "we reverse and remand to the district
24 court for referral to the State Engineer. In *Revert v. Ray*, 95 Nev. 782, 788, 603 P.2d
25 262, 265 (1979), the Court stated "the judgment of the district court must, therefore, be
26 reversed and the instant case remanded to the State Engineer for a full and fair
determination . . .". In *Great Basin Water Network v. State Eng'r*, 126 Nev. 187, 199,
234 P.3d 912, 920, the Court stated "we reverse the district court's order denying
petition for judicial review and remand the matter to the district court with instructions in
turn, remand the matter to the State Engineer for further proceedings consistent with
this opinion."

¹³Eureka County at 1121.



1 conflict with existing rights,¹⁴ and that (3) "KVR's pumping would not merely impact existing
2 water rights; the very evidence upon which the State Engineer relied demonstrates that
3 KVR's appropriation would cause the complete depletion of the source of existing water
4 rights." These findings lead the Supreme Court to hold that the State Engineer's decision
5 to grant KVR's applications was incorrect and could not stand.¹⁵ The Supreme Court's
6 holding on the issues mandates that this Court grant the petitions for judicial review.

7 This Court has read the Supreme Court's opinion in proper context. The
8 opinion does not require or suggest further proceedings by the State Engineer. Without
9 direction in its opinion to remand the case to the State Engineer for further consideration
10 or proceedings and without indicating what it expected the scope of the proceedings to
11 include, this Court properly granted the petitions for judicial review and vacated permits.

12 KVR also argues that this Court's amended order was manifestly unjust
13 because of KVR's perceived lack of standards for approval of a 3M plan prior to the
14 Supreme Court's opinion and that it relied upon the State Engineer's direction in
15 developing its 3M plan which now it should be allowed to amend to conform with the
16 Supreme Court's opinion.¹⁶ Based on "new and unprecedented standards," KVR asserts
17 it should again return to the State Engineer and be allowed to present evidence for another
18 3M plan establishing that no conflicts will occur with existing water rights.¹⁷ Nothing in the
19 Supreme Court's opinion suggests that it adopted unprecedented new standards which
20 KVR should be allowed to comply with in further proceedings on remand to the State
21 Engineer. Rather, the opinion clearly states that "The State Engineer's decision to grant
22 KVR's applications, when the result of appropriations would conflict with existing rights,
23 and based upon unsupported findings that mitigation would be sufficient to rectify the

24 ¹⁴*Id* at 1118.

25 ¹⁵*Id*.

26 ¹⁶Motion at 9; reply at 4,5,9-11.

¹⁷*Id*.



1 conflict, violates the Legislature's directive that the State Engineer must deny use or
2 change applications when the use or change would conflict with existing rights. NRS
3 533.370(2)."¹⁸

4 KVR is not being punished for the State Engineer's failure to follow a
5 statutory duty as KVR suggests when relying upon *Great Basin Water Network v. State*
6 *Engineer*.¹⁹ In KVR's case, the Supreme Court held there was not substantial evidence
7 to support the State Engineer's findings. The Supreme Court's opinion may be a harsh
8 result for KVR, however, based upon the Court's history of clearly remanding cases to the
9 district court for referral or remand to the State Engineer when the Supreme Court believed
10 such action was necessary, the language in the Supreme Court's opinion in this case does
11 not support action being taken by this Court to remand this case to the State Engineer for
12 further proceedings.

13 Good cause appearing,

14 IT IS HEREBY ORDERED that KVR's motion to alter or amend judgment is
15 DENIED.

16 DATED this 5th / day of June, 2016.

17 
18 DISTRICT JUDGE

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21 ¹⁸Eureka County at pg. 16, 359 P.3d at 1131.

22 ¹⁹126 Nev. at 191-199, 234 P.3d at 920 (2015). In *Great Basin Water Network*, the
23 State Engineer failed to take action on applications within one year after the close of
24 the protest period. Over 830 protests were filed after publication of a statutory notice in
25 1990 against 146 applications. Fifteen years later in 2005, at a pre-hearing conference
26 many of the attendees requested the applications be re-noticed and the protest period
re-opened. The State Engineer denied this request, and after a petition for judicial
review was denied, the State Engineer violated his statutory duty by ruling on
applications beyond the one year statutory limitation for review. Upon the suggestion
of the parties, after considering the inequities that would be suffered by the parties, the
Supreme Court held that a timely filed protest and/or the appeal of the State Engineer's
untimely ruling, the appropriate and most equitable remedy was to re-notice the
applications and re-open the protest period.



Case Nos. CV 1108-155
CV-1108-156
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CV-1112-164
CV-1112-165
CV-1202-170
CV-1207-178

Dept No. 2

NO.
FILED

JUN 03 2015

Eureka County Clerk
By [Signature]

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

* * * * *

EUREKA COUNTY, a political subdivision
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v.

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v.

OFFICE OF THE STATE ENGINEER OF
THE STATE OF NEVADA, DIVISION OF
WATER RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES, JASON KING, State
Engineer, KOBEH VALLEY RANCH, LLC,
Real Party in Interest,
Respondents.

CERTIFICATE OF SERVICE



1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL and MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
registered foreign limited partnership,

5 Petitioners,

6 v.

7 STATE ENGINEER OF NEVADA, OFFICE
8 OF THE STATE ENGINEER, DIVISION OF
9 WATER RESOURCES DEPARTMENT OF
10 CONSERVATION AND NATURAL
RESOURCES,

Respondent.

11 EUREKA COUNTY, a political subdivision
12 of the State of Nevada,

13 Petitioner,

14 v.

15 STATE OF NEVADA, EX. REL., STATE
16 ENGINEER, DIVISION OF WATER
RESOURCES,

Respondent.

17 KENNETH F. BENSON, an individual,
18 DIAMOND CATTLE COMPANY, LLC, a
19 Nevada limited liability company, and
20 MICHEL and MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
21 registered foreign limited partnership,

22 Petitioners,

23 v.

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

Respondent.



1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL AND MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
registered foreign limited partnership,

5 Petitioners,

6 v.

7 STATE ENGINEER OF NEVADA, OFFICE
8 OF THE STATE ENGINEER, DIVISION OF
9 WATER RESOURCES DEPARTMENT OF
10 CONSERVATION AND NATURAL
11 RESOURCES,

12 Respondent.

13 MICHEL AND MARGARET ANN
14 ETCHEVERRY FAMILY, LP, a Nevada
15 Registered Foreign Limited
16 Partnership, DIAMOND CATTLE
17 COMPANY, LLC, a Nevada Limited
18 Liability Company, and KENNETH F.
19 BENSON, an individual,

20 Petitioners,

21 vs.

22 STATE ENGINEER OF NEVADA,
23 OFFICE OF THE STATE ENGINEER,
24 DIVISION OF WATER RESOURCES,
25 DEPARTMENT OF CONSERVATION
26 AND NATURAL RESOURCES,

Respondents.

KOBEH VALLEY RANCH, LLC, a
Nevada limited liability corporation,

Intervenor-Respondents.



The undersigned being an employee of the Eureka County Clerk's Office,
hereby certifies that on the 3rd day of June, 2016, I personally delivered a true and
correct file-stamped copy of the following:

*Order Denying Kobeh Valley Ranch, LLC's Motion To Alter Or Amend
Judgment*

addressed to:

Karen A. Peterson, Esq.
Allison, Mackenzie, Pavlakis, Wright &
Fagan Ltd.
P.O. Box 646
Carson City, Nevada 89701

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Woodburn and Wedge
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P.O. Box 190
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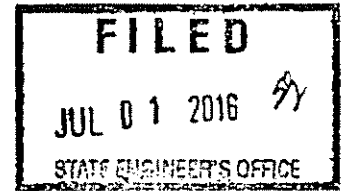
In the following manner:

- | | | | |
|-------------------------------------|---|--------------------------|---------------------------|
| <input checked="" type="checkbox"/> | regular U.S. mail | <input type="checkbox"/> | overnight UPS |
| <input type="checkbox"/> | certified U.S. mail | <input type="checkbox"/> | overnight Federal Express |
| <input type="checkbox"/> | priority U.S. mail | <input type="checkbox"/> | Fax to # _____ |
| <input type="checkbox"/> | hand delivery - | | |
| <input type="checkbox"/> | copy placed in agency box located in the Eureka County Clerk's Office | | |

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

IN THE MATTER OF APPLICATION NUMBER 85576
FILED BY KOBEH VALLEY RANCH, LLC
ON OCTOBER 28, 2015

AMENDED
PROTEST



Comes now EUREKA COUNTY

Printed or typed name of protestant

whose post office address is POST OFFICE BOX 694, EUREKA, NEVADA 89316

Street No. or PO Box, City, State and ZIP Code

whose occupation is POLITICAL SUBDIVISION

and protests the granting

of Application Number 85576, filed on OCTOBER 28, 2015

by KOBEH VALLEY RANCH, LLC, a Nevada limited liability company for the

waters of UNDERGROUND

situated in EUREKA

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

PLEASE SEE EXHIBIT "A" ATTACHED HERETO.

THEREFORE the Protestant requests that the application be

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 Engineer deems just and proper.

Signed

Agent or protestant

J.J. GOICOECHEA, CHAIRMAN

Printed or typed name, if agent

Address POST OFFICE BOX 694

Street No. or PO Box

EUREKA, NV 89316

City, State and ZIP Code

State of Nevada

County of EUREKA

Subscribed and sworn to before me on June 27, 2016

(775) 237-5262

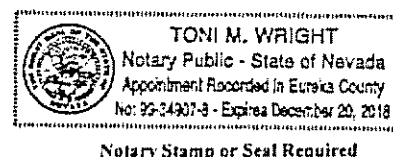
Phone Number

by J.J. GOICOECHEA

jjgoicoechea@eurekanv.org

E-mail

Signature of Notary Public Required



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

Exhibit "A"

Eureka County Protest to Application Numbers 86149, 86150, 86151, 85576, 85583, 85588, 85603, and 85604 Filed by Kobeh Valley Ranch, LLC

Applications 86149, 86150, 86151 (and 86152 and 86153) propose to change the Points of Diversion, Place of Use and Manner of Use of 680.75 acre-feet per year (af/yr), the consumptive-use portion of 1,089.20 af/yr of groundwater rights from Diamond Valley, previously appropriated under Permits 57835, 57836, 57839, 57840 and 66062, respectively. The proposed place of use includes more than 90,000 acres occupying portions of the Kobeh Valley and Diamond Valley Hydrographic Areas.

Application 85576 is for a new appropriation of water up to 2,000 acre-feet and Applications 85583, 85588, 85603, and 85604 request changes in the Points of Diversion, Place of Use and Manner of Use for permits 72583, 72584, 64616, and 72585 which water was used for irrigation at the Bobcat Ranch. These Applications purportedly represent corrections or amendments to previous applications filed by Kobeh Valley Ranch, LLC ("KVR") in 2015.

1. The State Engineer is without authority to consider these applications and any action by the State Engineer on these applications is *ultra vires* pending the State Engineer's and KVR's appeal before the Nevada Supreme Court in Case No. 70157, entitled Nevada State Engineer vs. Eureka County. In that appeal, the State Engineer and KVR contend that the District Court erred by dismissing KVR's applications and permits previously granted by the State Engineer in Ruling 6127 instead of remanding the applications to the State Engineer. The subject applications seek water for the same Mt. Hope Mine Project as the applications in Ruling 6127 that the State Engineer contends should be remanded to the State Engineer. The State Engineer is without authority to act on two sets of applications for the same water by the same applicant for the same project. Because any action taken by the State Engineer on these applications is *ultra vires* pending the outcome of the State Engineer's appeal, time and resources will be wasted if any action is taken on the subject applications.
2. Applications 85576, 85583, 85588, 85603 and 85604 have not been properly noticed and must be properly noticed before the State Engineer can proceed on the applications. The published notice for these applications which appeared in the *Eureka Sentinel* from May 12-June 2, 2016 indicates that the applications were filed October 28, 2015. The published notice is not of the applications filed October 28, 2015 but of the "corrected" or "amended" applications filed April 27, 2016. In some instances the base right sought to be changed and the point of diversion in the April 27, 2016 "amended" applications are totally different than the base right and point of diversion stated in the original applications. The original applications have long ago been published and the protest period over. The State Engineer cannot accept material amendments to the original applications and publish the amendments as if they were the original applications. The published notice does not comply with NRS 533.360. Further, NRS 533.355 allows for corrected applications that do not lose their priority if properly corrected prior to publication. There is no statutory authority for "corrected" or "amended" applications after the application has been published and the protest period has run.

3. All prior protest points made by Eureka County in 2015 on Applications 85576, 85583, 85588, 85603 and 85604 are incorporated by reference.
4. Applications to Change 85583, 85588, 85603 and 85604 must be denied if they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127 and there are no water rights that can be changed under the base permit. 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. If there are no water rights which can be changed by the current round of Change Applications, they must be denied.
5. Applications 86149, 86150, and 86151 should be denied because the State Engineer has previously recognized in proceedings involving water applications for the Mt. Hope Mine Project that "A situation could exist where water from an over-allocated basin [Diamond Valley] could be exported to a basin that is under-allocated [Kobeh Valley]. . . [and] this would be contrary to the proper management of the Diamond Valley Hydrographic Basin's groundwater resource."¹
6. Applications 86149, 86150, and 86151 should be denied because the Applicant provided incomplete or incorrect information in support of the applications. Applicant's Exhibit B states "Groundwater will be developed from the Diamond Valley Groundwater Basin, through a series of production wells." The proposed well sites under Applications 86149 through 18153 (Diamond Valley) are generally located in the mountain block near the Mt Hope Mine's proposed open pit. A review of the Hydrogeology and Numerical Modeling Report dated April 2010, prepared by Eureka Moly and referenced in Applicant's Exhibit B clearly shows that the geologic materials in this area of the mountain block are too impermeable to yield the quantities of groundwater to wells as requested by the Applicant. Contrary to Exhibit B, the modeling report states that groundwater in the vicinity of the pit will be developed from sumps fed by water flowing into the pit, not from wells. The Applicant must be required to provide a complete and accurate description of the means by which groundwater will be exploited under the change applications. Applications must be filed to reflect the true nature of the means of diverting the water.

Applicant's Exhibit B further states "The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly . . ." Review of the report shows that this statement is incorrect or misleading. The referenced model did not incorporate pumping from wells at the proposed points of diversion for Applications 86149 through 18151. More correctly and consistent with how the pit will be dewatered, modeled groundwater extractions in this area of the model are tied to the excavation of the open pit, not wells at the proposed locations of the points of diversion for Applications 86149 through 18151. As set forth in a memo from Montgomery and Associates to Pat Rogers entitled Revised: Explanation of the use of drain cells in the local model, Mt. Hope Project, Eureka County, Nevada, dated March 23, 2010 "Drain cells are used to simulate groundwater discharge into the open pit during the 33-year excavation period. The drain cells

¹ Ruling 6127, p. 24

are specified to match the pit excavation over time as defined by a progression of mine-plan pit shells provided in electronic format by Independent Mining Consultants, Inc. Groundwater discharge to the drains is representative of groundwater flow into the open pit which will be removed via sump pumping. Dewatering wells are not planned for the pit excavation."

Furthermore, the applicant is requesting 11,678.18 acre-feet rather than the 11,300 acre-feet modeled. And the amount of pumping under each well in the model does not match the amounts applied for under the Applications.

7. Applications 86149, 86150, 86151 seek to change the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre and Applications 85583, 85588, 85603, and 85604 seek to change the manner of use from irrigation at a consumptive use duty of 2.7 acre feet/acre. The limitation of the consumptive use duty should be maintained for the Change Applications with a base irrigation right and only on the amount of water actually put to beneficial use, not on the "paper water."
8. The 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 N.R.S. 533.370(2).
9. The Applications should be denied because, as configured, the proposed wells will lead to groundwater drawdown that will impair undetermined claims of pre-statutory vested rights.
10. 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 in Kobeh, Pine, and Diamond Valleys and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
11. These Applications, as part of KVR's overall program to exploit water resources in Kobeh Valley and Diamond Valley, 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 the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.²
12. 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.

² "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.

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. These Applications along with all the related applications submitted by KVR should be denied because the applicant, 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.

13. 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. 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 Kobeh Valley, 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.
14. 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.

15. 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.

16. 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 and in Diamond Valley as proposed 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.³ 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.

17. 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 3M Plan must be developed with Eureka County as an active participant under the provisions of NRS 533.353. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect and have the consensus of the impacted water rights holders.

18. 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 necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,678.17 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

³ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

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 \$0.36 per share; a reduction in value of 97%. As of June 28, 2016, the molybdenum oxide price was \$7.71/lb. General Moly's presentation on its website 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 monitoring required under the Bureau of Land Management's Record of Decision 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 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?

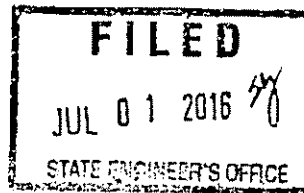
19. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
20. Propagation of the cones of depression from each of the proposed points 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.
21. 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."
22. These Applications should be denied because they are part of KVR's larger water-resource exploitation strategy which will affect water rights with a filing/priority date senior to KVR's Applications, and result in the Kobeh Valley Hydrographic Area becoming over appropriated. In addition to denying applications that conflict with existing rights, the NSE must 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. 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.
23. 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.

24. The proposed points of diversion for the Applications lie both in Basin 139 (Kobeh Valley) and in Basin 153 (Diamond Valley) while the proposed place of use includes portions of Basin 153, Basin 139 (Kobeh 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.
25. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary under the Record of Decision with the BLM.
26. 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.
27. 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.
28. 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.
29. 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 85583
FILED BY KOBEH VALLEY RANCH, LLC
ON OCTOBER 28, 2015

AMENDED
PROTEST



Comes now EUREKA COUNTY

Printed or typed name of protestant

whose post office address is POST OFFICE BOX 694, EUREKA, NEVADA 89316

Street No. or PO Box, City, State and ZIP Code

whose occupation is POLITICAL SUBDIVISION

and protests the granting

of Application Number 85583, filed on OCTOBER 28, 2015

by KOBEH VALLEY RANCH, LLC, a Nevada limited liability company for the

waters of UNDERGROUND situated in EUREKA

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

PLEASE SEE EXHIBIT "A" ATTACHED HERETO.

THEREFORE the Protestant requests that the application be

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 Engineer deems just and proper.

Signed

Agent or protestant

J.J. GOICOECHEA, CHAIRMAN

Printed or typed name, if agent

Address

POST OFFICE BOX 694

Street No. or PO Box

State of Nevada

County of EUREKA

EUREKA, NV 89316

City, State and ZIP Code

Subscribed and sworn to before me on June 27, 2016

(775) 237-5262

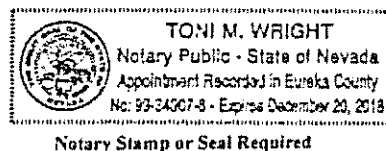
Phone Number

by J.J. GOICOECHEA

jjgoicoechea@eurekanv.org

E-mail

Signature of Notary Public Required



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

APP677

Exhibit "A"

Eureka County Protest to Application Numbers 86149, 86150, 86151, 85576, 85583, 85588, 85603, and 85604 Filed by Kobeh Valley Ranch, LLC

Applications 86149, 86150, 86151 (and 86152 and 86153) propose to change the Points of Diversion, Place of Use and Manner of Use of 680.75 acre-feet per year (af/yr), the consumptive-use portion of 1,089.20 af/yr of groundwater rights from Diamond Valley, previously appropriated under Permits 57835, 57836, 57839, 57840 and 66062, respectively. The proposed place of use includes more than 90,000 acres occupying portions of the Kobeh Valley and Diamond Valley Hydrographic Areas.

Application 85576 is for a new appropriation of water up to 2,000 acre-feet and Applications 85583, 85588, 85603, and 85604 request changes in the Points of Diversion, Place of Use and Manner of Use for permits 72583, 72584, 64616, and 72585 which water was used for irrigation at the Bobcat Ranch. These Applications purportedly represent corrections or amendments to previous applications filed by Kobeh Valley Ranch, LLC ("KVR") in 2015.

1. The State Engineer is without authority to consider these applications and any action by the State Engineer on these applications is *ultra vires* pending the State Engineer's and KVR's appeal before the Nevada Supreme Court in Case No. 70157, entitled Nevada State Engineer vs. Eureka County. In that appeal, the State Engineer and KVR contend that the District Court erred by dismissing KVR's applications and permits previously granted by the State Engineer in Ruling 6127 instead of remanding the applications to the State Engineer. The subject applications seek water for the same Mt. Hope Mine Project as the applications in Ruling 6127 that the State Engineer contends should be remanded to the State Engineer. The State Engineer is without authority to act on two sets of applications for the same water by the same applicant for the same project. Because any action taken by the State Engineer on these applications is *ultra vires* pending the outcome of the State Engineer's appeal, time and resources will be wasted if any action is taken on the subject applications.
2. Applications 85576, 85583, 85588, 85603 and 85604 have not been properly noticed and must be properly noticed before the State Engineer can proceed on the applications. The published notice for these applications which appeared in the *Eureka Sentinel* from May 12-June 2, 2016 indicates that the applications were filed October 28, 2015. The published notice is not of the applications filed October 28, 2015 but of the "corrected" or "amended" applications filed April 27, 2016. In some instances the base right sought to be changed and the point of diversion in the April 27, 2016 "amended" applications are totally different than the base right and point of diversion stated in the original applications. The original applications have long ago been published and the protest period over. The State Engineer cannot accept material amendments to the original applications and publish the amendments as if they were the original applications. The published notice does not comply with NRS 533.360. Further, NRS 533.355 allows for corrected applications that do not lose their priority if properly corrected prior to publication. There is no statutory authority for "corrected" or "amended" applications after the application has been published and the protest period has run.

3. All prior protest points made by Eureka County in 2015 on Applications 85576, 85583, 85588, 85603 and 85604 are incorporated by reference.
4. Applications to Change 85583, 85588, 85603 and 85604 must be denied if they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127 and there are no water rights that can be changed under the base permit. 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. If there are no water rights which can be changed by the current round of Change Applications, they must be denied.
5. Applications 86149, 86150, and 86151 should be denied because the State Engineer has previously recognized in proceedings involving water applications for the Mt. Hope Mine Project that "A situation could exist where water from an over-allocated basin [Diamond Valley] could be exported to a basin that is under-allocated [Kobeh Valley]. . . [and] this would be contrary to the proper management of the Diamond Valley Hydrographic Basin's groundwater resource."¹
6. Applications 86149, 86150, and 86151 should be denied because the Applicant provided incomplete or incorrect information in support of the applications. Applicant's Exhibit B states "Groundwater will be developed from the Diamond Valley Groundwater Basin, through a series of production wells." The proposed well sites under Applications 86149 through 18153 (Diamond Valley) are generally located in the mountain block near the Mt Hope Mine's proposed open pit. A review of the Hydrogeology and Numerical Modeling Report dated April 2010, prepared by Eureka Moly and referenced in Applicant's Exhibit B clearly shows that the geologic materials in this area of the mountain block are too impermeable to yield the quantities of groundwater to wells as requested by the Applicant. Contrary to Exhibit B, the modeling report states that groundwater in the vicinity of the pit will be developed from sumps fed by water flowing into the pit, not from wells. The Applicant must be required to provide a complete and accurate description of the means by which groundwater will be exploited under the change applications. Applications must be filed to reflect the true nature of the means of diverting the water.

Applicant's Exhibit B further states "The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly . . ." Review of the report shows that this statement is incorrect or misleading. The referenced model did not incorporate pumping from wells at the proposed points of diversion for Applications 86149 through 18151. More correctly and consistent with how the pit will be dewatered, modeled groundwater extractions in this area of the model are tied to the excavation of the open pit, not wells at the proposed locations of the points of diversion for Applications 86149 through 18151. As set forth in a memo from Montgomery and Associates to Pat Rogers entitled Revised: Explanation of the use of drain cells in the local model, Mt. Hope Project, Eureka County, Nevada, dated March 23, 2010 "Drain cells are used to simulate groundwater discharge into the open pit during the 33-year excavation period. The drain cells

¹ Ruling 6127, p. 24

are specified to match the pit excavation over time as defined by a progression of mine-plan pit shells provided in electronic format by Independent Mining Consultants, Inc. Groundwater discharge to the drains is representative of groundwater flow into the open pit which will be removed via sump pumping. Dewatering wells are not planned for the pit excavation."

Furthermore, the applicant is requesting 11,678.18 acre-feet rather than the 11,300 acre-feet modeled. And the amount of pumping under each well in the model does not match the amounts applied for under the Applications.

7. Applications 86149, 86150, 86151 seek to change the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre and Applications 85583, 85588, 85603, and 85604 seek to change the manner of use from irrigation at a consumptive use duty of 2.7 acre feet/acre. The limitation of the consumptive use duty should be maintained for the Change Applications with a base irrigation right and only on the amount of water actually put to beneficial use, not on the "paper water."
8. The 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 N.R.S. 533.370(2).
9. The Applications should be denied because, as configured, the proposed wells will lead to groundwater drawdown that will impair undetermined claims of pre-statutory vested rights.
10. 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 in Kobeh, Pine, and Diamond Valleys and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
11. These Applications, as part of KVR's overall program to exploit water resources in Kobeh Valley and Diamond Valley, 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 the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.²
12. 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.

² "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.

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. These Applications along with all the related applications submitted by KVR should be denied because the applicant, 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.

13. 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. 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 Kobeh Valley, 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.
14. 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.

15. 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 Kobreh 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.
16. There is consensus underflow from Kobreh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobreh 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 Kobreh 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 Kobreh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobreh 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 Kobreh 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 and in Diamond Valley as proposed 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 Kobreh 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 Kobreh 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.³ 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.

17. 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 3M Plan must be developed with Eureka County as an active participant under the provisions of NRS 533.353. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect and have the consensus of the impacted water rights holders.

18. 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 necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,678.17 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

³ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

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 \$0.36 per share; a reduction in value of 97%. As of June 28, 2016, the molybdenum oxide price was \$7.71/lb. General Moly's presentation on its website 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 monitoring required under the Bureau of Land Management's Record of Decision 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 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?

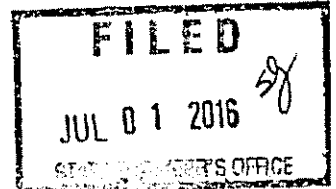
19. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
20. Propagation of the cones of depression from each of the proposed points 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.
21. 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."
22. These Applications should be denied because they are part of KVR's larger water-resource exploitation strategy which will affect water rights with a filing/priority date senior to KVR's Applications, and result in the Kobeh Valley Hydrographic Area becoming over appropriated. In addition to denying applications that conflict with existing rights, the NSE must 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. 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.
23. 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.

24. The proposed points of diversion for the Applications lie both in Basin 139 (Kobeh Valley) and in Basin 153 (Diamond Valley) while the proposed place of use includes portions of Basin 153, Basin 139 (Kobeh 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.
25. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary under the Record of Decision with the BLM.
26. 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.
27. 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.
28. 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.
29. 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 85588
FILED BY KOBEH VALLEY RANCH, LLC
ON OCTOBER 28, 2015

AMENDED
PROTEST



Comes now EUREKA COUNTY

Printed or typed name of protestant

whose post office address is POST OFFICE BOX 694, EUREKA, NEVADA 89316

Street No. or PO Box, City, State and ZIP Code

whose occupation is POLITICAL SUBDIVISION

and protests the granting

of Application Number 85588, filed on OCTOBER 28, 2015

by KOBEH VALLEY RANCH, LLC, a Nevada limited liability company for the

waters of UNDERGROUND

situated in EUREKA

an underground source or name of stream, lake, spring or other source

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Signed

Agent of protestant

J.J. GOICOECHEA, CHAIRMAN

Printed or typed name, if agent

Address

POST OFFICE BOX 694

Street No. or PO Box

EUREKA, NV 89316

City, State and ZIP Code

State of Nevada

County of EUREKA

Subscribed and sworn to before me on

(775) 237-5262

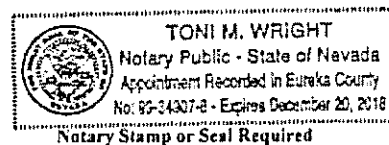
Phone Number

by J.J. GOICOECHEA

jjgoicoechea@eurekanv.org

E-mail

Signature of Notary Public Required



† \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

APP687

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Applicant's Exhibit B further states "The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly . . ." Review of the report shows that this statement is incorrect or misleading. The referenced model did not incorporate pumping from wells at the proposed points of diversion for Applications 86149 through 18151. More correctly and consistent with how the pit will be dewatered, modeled groundwater extractions in this area of the model are tied to the excavation of the open pit, not wells at the proposed locations of the points of diversion for Applications 86149 through 18151. As set forth in a memo from Montgomery and Associates to Pat Rogers entitled Revised: Explanation of the use of drain cells in the local model, Mt. Hope Project, Eureka County, Nevada, dated March 23, 2010 "Drain cells are used to simulate groundwater discharge into the open pit during the 33-year excavation period. The drain cells

¹ Ruling 6127, p. 24

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Furthermore, the applicant is requesting 11,678.18 acre-feet rather than the 11,300 acre-feet modeled. And the amount of pumping under each well in the model does not match the amounts applied for under the Applications.

7. Applications 86149, 86150, 86151 seek to change the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre and Applications 85583, 85588, 85603, and 85604 seek to change the manner of use from irrigation at a consumptive use duty of 2.7 acre feet/acre. The limitation of the consumptive use duty should be maintained for the Change Applications with a base irrigation right and only on the amount of water actually put to beneficial use, not on the "paper water."
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11. These Applications, as part of KVR's overall program to exploit water resources in Kobeh Valley and Diamond Valley, 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 the necessity of addressing all issues during KVR's subsequent effort to secure water rights for its project.²
12. 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.

² "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.

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. These Applications along with all the related applications submitted by KVR should be denied because the applicant, 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.

13. 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. 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 Kobeh Valley, 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.
14. 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.

15. 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 Kobreh 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.

16. There is consensus underflow from Kobreh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. USGS reports suggest that Kobreh 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 Kobreh 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 Kobreh Valley and Diamond Valley basins are characterized as relatively impermeable. Consequently, the groundwater flow from Kobreh 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 Kobreh 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 and in Diamond Valley as proposed 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 Kobreh 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 Kobreh 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.³ 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.

17. 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 3M Plan must be developed with Eureka County as an active participant under the provisions of NRS 533.353. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect and have the consensus of the impacted water rights holders.

18. 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 necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,678.17 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

³ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

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 \$0.36 per share; a reduction in value of 97%. As of June 28, 2016, the molybdenum oxide price was \$7.71/lb. General Moly's presentation on its website 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 monitoring required under the Bureau of Land Management's Record of Decision 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 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?

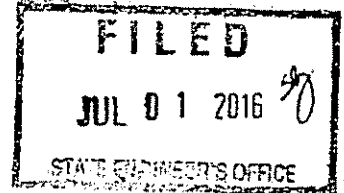
19. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
20. Propagation of the cones of depression from each of the proposed points 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.
21. 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."
22. These Applications should be denied because they are part of KVR's larger water-resource exploitation strategy which will affect water rights with a filing/priority date senior to KVR's Applications, and result in the Kobeh Valley Hydrographic Area becoming over appropriated. In addition to denying applications that conflict with existing rights, the NSE must 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. 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.
23. 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.

24. The proposed points of diversion for the Applications lie both in Basin 139 (Kobeh Valley) and in Basin 153 (Diamond Valley) while the proposed place of use includes portions of Basin 153, Basin 139 (Kobeh 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.
25. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary under the Record of Decision with the BLM.
26. 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.
27. 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.
28. 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.
29. 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 85603
FILED BY KOBEH VALLEY RANCH, LLC
ON OCTOBER 28, 2015

AMENDED
PROTEST



Comes now EUREKA COUNTY

Printed or typed name of protestant

whose post office address is POST OFFICE BOX 694, EUREKA, NEVADA 89316

Street No. or PO Box, City, State and ZIP Code

whose occupation is POLITICAL SUBDIVISION

and protests the granting

of Application Number 85603, filed on OCTOBER 28, 2015

by KOBEH VALLEY RANCH, LLC, a Nevada limited liability company for the

waters of UNDERGROUND

situated in EUREKA

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

PLEASE SEE EXHIBIT "A" ATTACHED HERETO.

THEREFORE the Protestant requests that the application be

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 Engineer deems just and proper.

Signed

Agent or protestant

J.J. GOICOECHEA, CHAIRMAN

Printed or typed name, if agent

Address

POST OFFICE BOX 694

Street No. or PO Box

EUREKA, NV 89316

City, State and ZIP Code

State of Nevada

County of EUREKA

Subscribed and sworn to before me on

(775) 237-5262

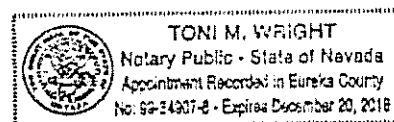
Phone Number

by J.J. GOICOECHEA

jgoicoechea@eurekanv.org

E-mail

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 ORIGINAL SIGNATURE.

APP697

Exhibit "A"

Eureka County Protest to Application Numbers 86149, 86150, 86151, 85576, 85583, 85588, 85603, and 85604 Filed by Kobeh Valley Ranch, LLC

Applications 86149, 86150, 86151 (and 86152 and 86153) propose to change the Points of Diversion, Place of Use and Manner of Use of 680.75 acre-feet per year (af/yr), the consumptive-use portion of 1,089.20 af/yr of groundwater rights from Diamond Valley, previously appropriated under Permits 57835, 57836, 57839, 57840 and 66062, respectively. The proposed place of use includes more than 90,000 acres occupying portions of the Kobeh Valley and Diamond Valley Hydrographic Areas.

Application 85576 is for a new appropriation of water up to 2,000 acre-feet and Applications 85583, 85588, 85603, and 85604 request changes in the Points of Diversion, Place of Use and Manner of Use for permits 72583, 72584, 64616, and 72585 which water was used for irrigation at the Bobcat Ranch. These Applications purportedly represent corrections or amendments to previous applications filed by Kobeh Valley Ranch, LLC ("KVR") in 2015.

1. The State Engineer is without authority to consider these applications and any action by the State Engineer on these applications is *ultra vires* pending the State Engineer's and KVR's appeal before the Nevada Supreme Court in Case No. 70157, entitled Nevada State Engineer vs. Eureka County. In that appeal, the State Engineer and KVR contend that the District Court erred by dismissing KVR's applications and permits previously granted by the State Engineer in Ruling 6127 instead of remanding the applications to the State Engineer. The subject applications seek water for the same Mt. Hope Mine Project as the applications in Ruling 6127 that the State Engineer contends should be remanded to the State Engineer. The State Engineer is without authority to act on two sets of applications for the same water by the same applicant for the same project. Because any action taken by the State Engineer on these applications is *ultra vires* pending the outcome of the State Engineer's appeal, time and resources will be wasted if any action is taken on the subject applications.
2. Applications 85576, 85583, 85588, 85603 and 85604 have not been properly noticed and must be properly noticed before the State Engineer can proceed on the applications. The published notice for these applications which appeared in the *Eureka Sentinel* from May 12-June 2, 2016 indicates that the applications were filed October 28, 2015. The published notice is not of the applications filed October 28, 2015 but of the "corrected" or "amended" applications filed April 27, 2016. In some instances the base right sought to be changed and the point of diversion in the April 27, 2016 "amended" applications are totally different than the base right and point of diversion stated in the original applications. The original applications have long ago been published and the protest period over. The State Engineer cannot accept material amendments to the original applications and publish the amendments as if they were the original applications. The published notice does not comply with NRS 533.360. Further, NRS 533.355 allows for corrected applications that do not lose their priority if properly corrected prior to publication. There is no statutory authority for "corrected" or "amended" applications after the application has been published and the protest period has run.

3. All prior protest points made by Eureka County in 2015 on Applications 85576, 85583, 85588, 85603 and 85604 are incorporated by reference.
4. Applications to Change 85583, 85588, 85603 and 85604 must be denied if they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127 and there are no water rights that can be changed under the base permit. 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. If there are no water rights which can be changed by the current round of Change Applications, they must be denied.
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Applicant's Exhibit B further states "The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly . . ." Review of the report shows that this statement is incorrect or misleading. The referenced model did not incorporate pumping from wells at the proposed points of diversion for Applications 86149 through 18151. More correctly and consistent with how the pit will be dewatered, modeled groundwater extractions in this area of the model are tied to the excavation of the open pit, not wells at the proposed locations of the points of diversion for Applications 86149 through 18151. As set forth in a memo from Montgomery and Associates to Pat Rogers entitled Revised: Explanation of the use of drain cells in the local model, Mt. Hope Project, Eureka County, Nevada, dated March 23, 2010 "Drain cells are used to simulate groundwater discharge into the open pit during the 33-year excavation period. The drain cells

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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. These Applications along with all the related applications submitted by KVR should be denied because the applicant, 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.

13. 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. 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 Kobeh Valley, 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.
14. 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.

15. 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.
16. 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 and in Diamond Valley as proposed 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.³ 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.

17. 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 3M Plan must be developed with Eureka County as an active participant under the provisions of NRS 533.353. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect and have the consensus of the impacted water rights holders.

18. 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 necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,678.17 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

³ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

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 \$0.36 per share; a reduction in value of 97%. As of June 28, 2016, the molybdenum oxide price was \$7.71/lb. General Moly's presentation on its website 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 monitoring required under the Bureau of Land Management's Record of Decision 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 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?

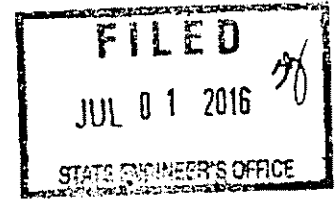
19. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.
20. Propagation of the cones of depression from each of the proposed points 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.
21. 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."
22. These Applications should be denied because they are part of KVR's larger water-resource exploitation strategy which will affect water rights with a filing/priority date senior to KVR's Applications, and result in the Kobeh Valley Hydrographic Area becoming over appropriated. In addition to denying applications that conflict with existing rights, the NSE must 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. 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.
23. 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.

24. The proposed points of diversion for the Applications lie both in Basin 139 (Kobeh Valley) and in Basin 153 (Diamond Valley) while the proposed place of use includes portions of Basin 153, Basin 139 (Kobeh 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.
25. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary under the Record of Decision with the BLM.
26. 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.
27. 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.
28. 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.
29. 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 85604
FILED BY KOBEH VALLEY RANCH, LLC
ON OCTOBER 28, 20 15

AMENDED
PROTEST



Comes now EUREKA COUNTY

Printed or typed name of protestant

whose post office address is POST OFFICE BOX 694, EUREKA, NEVADA 89316

Street No. or PO Box, City, State and ZIP Code

whose occupation is POLITICAL SUBDIVISION

and protests the granting

of Application Number 85604, filed on OCTOBER 28, 20 15

by KOBEH VALLEY RANCH, LLC, a Nevada limited liability company for the

waters of UNDERGROUND

situated in EUREKA

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

PLEASE SEE EXHIBIT "A" ATTACHED HERETO.

THEREFORE the Protester requests that the application be

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 Engineer deems just and proper.

Signed

Agent or protestant

J.J. GOICOECHEA, CHAIRMAN

Printed or typed name, if agent

Address

POST OFFICE BOX 694

Street No. or PO Box

State of Nevada

County of EUREKA

EUREKA, NV 89316

City, State and ZIP Code

Subscribed and sworn to before me on June 27, 2016

(775) 237-5262

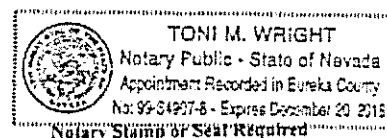
Phone Number

by J.J. GOICOECHEA

jgoicoechea@eurekanv.org

E-mail

Toni M. Wright
Signature of Notary Public Required



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

APP707

Exhibit "A"

Eureka County Protest to Application Numbers 86149, 86150, 86151, 85576, 85583, 85588, 85603, and 85604 Filed by Kobeh Valley Ranch, LLC

Applications 86149, 86150, 86151 (and 86152 and 86153) propose to change the Points of Diversion, Place of Use and Manner of Use of 680.75 acre-feet per year (af/yr), the consumptive-use portion of 1,089.20 af/yr of groundwater rights from Diamond Valley, previously appropriated under Permits 57835, 57836, 57839, 57840 and 66062, respectively. The proposed place of use includes more than 90,000 acres occupying portions of the Kobeh Valley and Diamond Valley Hydrographic Areas.

Application 85576 is for a new appropriation of water up to 2,000 acre-feet and Applications 85583, 85588, 85603, and 85604 request changes in the Points of Diversion, Place of Use and Manner of Use for permits 72583, 72584, 64616, and 72585 which water was used for irrigation at the Bobcat Ranch. These Applications purportedly represent corrections or amendments to previous applications filed by Kobeh Valley Ranch, LLC ("KVR") in 2015.

1. The State Engineer is without authority to consider these applications and any action by the State Engineer on these applications is *ultra vires* pending the State Engineer's and KVR's appeal before the Nevada Supreme Court in Case No. 70157, entitled Nevada State Engineer vs. Eureka County. In that appeal, the State Engineer and KVR contend that the District Court erred by dismissing KVR's applications and permits previously granted by the State Engineer in Ruling 6127 instead of remanding the applications to the State Engineer. The subject applications seek water for the same Mt. Hope Mine Project as the applications in Ruling 6127 that the State Engineer contends should be remanded to the State Engineer. The State Engineer is without authority to act on two sets of applications for the same water by the same applicant for the same project. Because any action taken by the State Engineer on these applications is *ultra vires* pending the outcome of the State Engineer's appeal, time and resources will be wasted if any action is taken on the subject applications.
2. Applications 85576, 85583, 85588, 85603 and 85604 have not been properly noticed and must be properly noticed before the State Engineer can proceed on the applications. The published notice for these applications which appeared in the *Eureka Sentinel* from May 12-June 2, 2016 indicates that the applications were filed October 28, 2015. The published notice is not of the applications filed October 28, 2015 but of the "corrected" or "amended" applications filed April 27, 2016. In some instances the base right sought to be changed and the point of diversion in the April 27, 2016 "amended" applications are totally different than the base right and point of diversion stated in the original applications. The original applications have long ago been published and the protest period over. The State Engineer cannot accept material amendments to the original applications and publish the amendments as if they were the original applications. The published notice does not comply with NRS 533.360. Further, NRS 533.355 allows for corrected applications that do not lose their priority if properly corrected prior to publication. There is no statutory authority for "corrected" or "amended" applications after the application has been published and the protest period has run.

3. All prior protest points made by Eureka County in 2015 on Applications 85576, 85583, 85588, 85603 and 85604 are incorporated by reference.
4. Applications to Change 85583, 85588, 85603 and 85604 must be denied if they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127 and there are no water rights that can be changed under the base permit. 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. If there are no water rights which can be changed by the current round of Change Applications, they must be denied.
5. Applications 86149, 86150, and 86151 should be denied because the State Engineer has previously recognized in proceedings involving water applications for the Mt. Hope Mine Project that "A situation could exist where water from an over-allocated basin [Diamond Valley] could be exported to a basin that is under-allocated [Kobeh Valley]. . . [and] this would be contrary to the proper management of the Diamond Valley Hydrographic Basin's groundwater resource."¹
6. Applications 86149, 86150, and 86151 should be denied because the Applicant provided incomplete or incorrect information in support of the applications. Applicant's Exhibit B states "Groundwater will be developed from the Diamond Valley Groundwater Basin, through a series of production wells." The proposed well sites under Applications 86149 through 18153 (Diamond Valley) are generally located in the mountain block near the Mt Hope Mine's proposed open pit. A review of the Hydrogeology and Numerical Modeling Report dated April 2010, prepared by Eureka Moly and referenced in Applicant's Exhibit B clearly shows that the geologic materials in this area of the mountain block are too impermeable to yield the quantities of groundwater to wells as requested by the Applicant. Contrary to Exhibit B, the modeling report states that groundwater in the vicinity of the pit will be developed from sumps fed by water flowing into the pit, not from wells. The Applicant must be required to provide a complete and accurate description of the means by which groundwater will be exploited under the change applications. Applications must be filed to reflect the true nature of the means of diverting the water.

Applicant's Exhibit B further states "The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly . . ." Review of the report shows that this statement is incorrect or misleading. The referenced model did not incorporate pumping from wells at the proposed points of diversion for Applications 86149 through 18151. More correctly and consistent with how the pit will be dewatered, modeled groundwater extractions in this area of the model are tied to the excavation of the open pit, not wells at the proposed locations of the points of diversion for Applications 86149 through 18151. As set forth in a memo from Montgomery and Associates to Pat Rogers entitled Revised: Explanation of the use of drain cells in the local model, Mt. Hope Project, Eureka County, Nevada, dated March 23, 2010 "Drain cells are used to simulate groundwater discharge into the open pit during the 33-year excavation period. The drain cells

¹ Ruling 6127, p. 24

are specified to match the pit excavation over time as defined by a progression of mine-plan pit shells provided in electronic format by Independent Mining Consultants, Inc. Groundwater discharge to the drains is representative of groundwater flow into the open pit which will be removed via sump pumping. Dewatering wells are not planned for the pit excavation.”

Furthermore, the applicant is requesting 11,678.18 acre-feet rather than the 11,300 acre-feet modeled. And the amount of pumping under each well in the model does not match the amounts applied for under the Applications.

7. Applications 86149, 86150, 86151 seek to change the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre and Applications 85583, 85588, 85603, and 85604 seek to change the manner of use from irrigation at a consumptive use duty of 2.7 acre feet/acre. The limitation of the consumptive use duty should be maintained for the Change Applications with a base irrigation right and only on the amount of water actually put to beneficial use, not on the “paper water.”
8. The 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 N.R.S. 533.370(2).
9. The Applications should be denied because, as configured, the proposed wells will lead to groundwater drawdown that will impair undetermined claims of pre-statutory vested rights.
10. 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 in Kobreh, Pine, and Diamond Valleys and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.
11. These Applications, as part of KVR’s overall program to exploit water resources in Kobreh Valley and Diamond Valley, 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 the necessity of addressing all issues during KVR’s subsequent effort to secure water rights for its project.²
12. 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.

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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. These Applications along with all the related applications submitted by KVR should be denied because the applicant, 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.

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14. 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.

15. 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.
16. 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 and in Diamond Valley as proposed 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.³ 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.

17. 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 3M Plan must be developed with Eureka County as an active participant under the provisions of NRS 533.353. The proposed mitigation measures must be clearly defined and demonstrated to have the desired effect and have the consensus of the impacted water rights holders.

18. 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 necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,678.17 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

³ Technical memorandum prepared by Interflow Hydrology, April 24, 2012.

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 \$0.36 per share; a reduction in value of 97%. As of June 28, 2016, the molybdenum oxide price was \$7.71/lb. General Moly's presentation on its website 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 monitoring required under the Bureau of Land Management's Record of Decision 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 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?

19. 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.
20. 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.
21. 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."
22. These Applications should be denied because they are part of KVR's larger water-resource exploitation strategy which will affect water rights with a filing/priority date senior to KVR's Applications, and result in the Kobeh Valley Hydrographic Area becoming over appropriated. In addition to denying applications that conflict with existing rights, the NSE must 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. 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.
23. 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.

24. The proposed points of diversion for the Applications lie both in Basin 139 (Kobeh Valley) and in Basin 153 (Diamond Valley) while the proposed place of use includes portions of Basin 153, Basin 139 (Kobeh 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.
25. The proposed place of use described in the Applications is much larger than the mine's Plan of Operations project boundary under the Record of Decision with the BLM.
26. 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.
27. 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.
28. 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.
29. 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,

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.

Electronically Filed
Aug 23 2016 09:12 a.m.
Tracie K. Lindeman
Case No. ~~Clerk of Supreme Court~~

PETITIONER'S APPENDIX

VOLUME 4

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**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, Division of Water Resources, Department of Conservation and Natural Resources, Division of Water Resources	04/08/16	4	523-540
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
Real Party in Interest Kobeh Valley Ranch, LLC's Notice of Appeal	04/12/16	4	550-553
Real Party in Interest Kobeh Valley Ranch, LLC's Case Appeal Statement	04/12/16	4	554-561
Letter to Jason King from Paul G. Taggart, Esq. re: Kobeh Valley Ranch Water Right Applications	04/27/16	4	562-565
Kobeh Valley Ranch, LLC's Amended Application Nos. 85576, 85583, 85588, 85603 and 85604	04/27/16	4	566-585
Kobeh Valley Ranch, LLC's Application Nos. 86149 through 86153, inclusive	04/27/16	4	586-606
Kobeh Valley Ranch, LLC's Application Nos. 86157 through 86161, inclusive	04/27/16	4	607-631
Answer to Protests of Kobeh Valley Ranch, LLC	05/20/16	4	632-653
Order Denying Kobeh Valley Ranch, LLC's Motion to Alter or Amend Judgment	06/03/16	4	654-666
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

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
Eureka County's Application No. 83948	06/24/14	1	001-003
Eureka County's Protests to Kobeh Valley Ranch, LLC's Application Nos. 85573 through 85592, inclusive	01/15/16	2	171-370
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Eureka County's Protests to Kobeh Valley Ranch, LLC's Application Nos. 86157 through 86161, inclusive	07/08/16	5	771-830
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Real Party in Interest Kobeh Valley Ranch, LLC's Case Appeal Statement	04/12/16	4	554-561
Real Party in Interest Kobeh Valley Ranch, LLC's Notice of Appeal	04/12/16	4	550-553
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

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.

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NO. _____
FILED

MAR 02 2016

Eureka County Clerk
By: Conley Land & Livestock

Case Nos. CV 1108-155
CV-1108-156
CV-1108-157
CV-1112-164
CV-1112-165
CV-1202-170

Dept No. 2

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

EUREKA COUNTY, a political subdivision
of the State of Nevada,
Petitioner,

v.

STATE OF NEVADA, EX. REL., STATE
ENGINEER, DIVISION OF WATER
RESOURCES,

Respondent.

CONLEY LAND & LIVESTOCK, LLC, a
Nevada limited liability company, LLOYD
MORRISON, an individual,

Petitioners,

v.

OFFICE OF THE STATE ENGINEER OF THE
STATE OF NEVADA, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES, JASON KING, State Engineer,
KOBEL VALLEY RANCH, LLC, Real Party in
Interest,

Respondents.

ORDER GRANTING OBJECTION TO
PROPOSED ORDER REMANDING
TO STATE ENGINEER; ORDER
GRANTING PETITIONS FOR JUDICIAL
REVIEW; ORDER VACATING PERMITS





1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL and MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
registered foreign limited partnership,

5 Petitioners,

6 v.

7 STATE ENGINEER OF NEVADA, OFFICE OF
8 THE STATE ENGINEER, DIVISION OF
9 WATER RESOURCES DEPARTMENT OF
10 CONSERVATION AND NATURAL
11 RESOURCES,

12 Respondent.

13 EUREKA COUNTY, a political subdivision of
14 the State of Nevada,

15 Petitioner,

16 v.

17 STATE OF NEVADA, EX. REL., STATE
18 ENGINEER, DIVISION OF WATER
19 RESOURCES,

20 Respondent.

21 KENNETH F. BENSON, an individual,
22 DIAMOND CATTLE COMPANY, LLC, a
23 Nevada limited liability company, and
24 MICHEL and MARGARET ANN
25 ETCHEVERRY FAMILY, LP, a Nevada
26 registered foreign limited partnership,

Petitioners,

v.

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

Respondent.



1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL AND MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
registered foreign limited partnership,

Petitioners,

v.

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

Respondent.

10
11 On May 20, 2013, petitioners MICHEL AND MARGARET ANN ETCHEVERRY
12 FAMILY, LP, DIAMOND CATTLE COMPANY, LLC and KENNETH F. BENSON appealed
13 this Court's findings of fact, conclusions of law, and order denying petitions for judicial
14 review, entered May 17, 2013 (Nevada Supreme Court case no. 63258). The appeal was
15 consolidated with the appeal in Nevada Supreme Court case no. 61324 for appellate
16 purposes. The court reversed and remanded the case for proceedings consistent with the
17 opinion.¹ The remittitur was issued on November 23, 2015.

18 On November 25, 2015, Kobeh Valley Ranch, LLC ("KVR") via email, submitted to
19 the court a proposed order remanding to State Engineer; on December 3, 2015, Eureka
20 County, Kenneth F. Benson, Diamond Cattle Company LLC and Michel and Margaret Ann
21 Etcheverry Family, L.P. filed a joint objection to proposed orders of Kobeh Valley Ranch,
22 LLC; on December 7, 2015, Michel and Margaret Ann Etcheverry Family, L.P., Diamond
23 Cattle Company, LLC and Kenneth Benson ("petitioners") filed an objection to proposed
24 orders of Kobeh Valley Ranch, LLC; on December 16, 2015, KVR filed its reply to joint
25

26 ¹Eureka County v. State Engineer, 131 Nev. Adv. Opn. 84 (2015).



1 objection to proposed orders of Kobeh Valley Ranch LLC; on December 15, 2015,
2 respondent Jason King, P.E., the State Engineer, filed his joinder to Kobeh Valley Ranch,
3 LLC's reply to joint objection to proposed orders; on January 8 and 12, 2016, petitioners
4 filed a request for review of objection to proposed orders of Kobeh Valley Ranch, LLC; the
5 court has reviewed the pleadings and finds that no further briefing or hearing is
6 necessary.²

7 The court has reviewed the Nevada Supreme Court's opinion issued October 29,
8 2015. The Nevada Supreme Court held that "substantial evidence does not support the
9 State Engineer's finding that KVR would be able to "adequately and fully" mitigate the fact
10 that its ground water appropriations will cause Kobeh Valley springs that sources existing
11 rights to cease to flow."³ The court further held that "The State Engineer's decision to
12 grant KVR's applications when the result of appropriations would conflict with existing
13 rights and based upon unsupported findings that mitigation would be sufficient to rectify
14 the conflict violates the Legislature's directive that the State Engineer must deny use or
15 change applications when the use or change would conflict with existing rights."⁴ Having
16 found petitioners had met their burden to show the State Engineer's decision was
17 incorrect, the court held "the State Engineer's decision to grant KVR's applications cannot
18 stand."⁵ The court reversed and remanded these cases to the district court for further
19 proceedings consistent with this opinion.⁶

20 The Nevada Supreme Court did not remand the cases to the State Engineer for
21

22 ²7JDCR 11.

23 ³Eureka County v. State Engineer at 16.

24 ⁴*Id.*

25 ⁵*Id.*

26 ⁶*Id.*



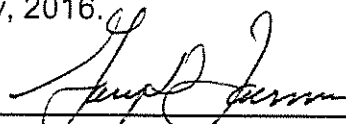
1 further proceedings consistent with its opinion which it could have done if the court
2 concluded additional administrative review and findings were necessary. Based upon the
3 Supreme Court's reversal of this Court's order denying petitions for judicial review and the
4 State Engineer's decision to grant KVR's applications, this Court finds that the petitions
5 for judicial review filed by the petitioners must be granted.

6 Good cause appearing,

7 IT IS HEREBY ORDERED that the petitions for judicial review filed by petitioners
8 in the above-captioned proceedings are **GRANTED**. The approval of the monitoring,
9 management, and mitigation plan, issued by respondent, STATE ENGINEER OF NEVADA
10 is **VACATED** and applications nos. 72695, 72696, 72697, 72698, 73545, 73546, 73547,
11 73548, 73549, 73550, 73551, 73552, 74587, 75988, 75989, 75990, 75991, 75992, 75993,
12 75994, 75995, 75996, 75997, 75998, 75999, 76000, 76001, 76002, 76003, 76004, 76005,
13 76006, 76007, 76008, 76009, 76745, 76746, 76802, 76803, 76804, 76805, 76989, 76990,
14 77171, 77525, 77526, 77527, 77553, 78424, 79911, 79912, 79913, 79914, 79915, 79916,
15 79917, 79918, 79919, 79920, 79921, 79922, 79923, 79924, 79925, 79926, 79927, 79928,
16 79929, 79930, 79931, 79932, 79933, 79934, 79935, 79936, 79937, 79938, 79939, 79940,
17 79941 and 79942 are hereby **DENIED** pursuant to NRS 533.371(2) in accordance with the
18 holding of the Supreme Court's opinion in 131 Nev. Adv. Opn. 84 issued October 29, 2015.

19 IT IS HEREBY FURTHER ORDERED that the permits issued by the State Engineer
20 for the above applications are **VACATED**.

21 DATED this 29th day of February, 2016.

22 
23 DISTRICT JUDGE

NO. _____
FILED

MAR 02 2016

Eureka County Clerk
By Sharon R. Rocco

Case Nos. CV 1108-155
CV-1108-156
CV-1108-157
CV-1112-164
CV-1112-165
CV-1202-170

Dept No. 2

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

* * * * *

EUREKA COUNTY, a political subdivision
of the State of Nevada,
Petitioner,

v.

STATE OF NEVADA, EX. REL., STATE
ENGINEER, DIVISION OF WATER
RESOURCES,

Respondent.

CONLEY LAND & LIVESTOCK, LLC, a
Nevada limited liability company, LLOYD
MORRISON, an individual,

Petitioners,

v.

OFFICE OF THE STATE ENGINEER OF
THE STATE OF NEVADA, DIVISION OF
WATER RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES, JASON KING, State
Engineer, KOBEH VALLEY RANCH, LLC,
Real Party in Interest,

Respondents.

CERTIFICATE OF SERVICE

SEVENTH JUDICIAL DISTRICT COURT
GARY D. FAIRMAN
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA





1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL and MARGARET ANN
5 ETCHEVERRY FAMILY, LP, a Nevada
6 registered foreign limited partnership,

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Petitioners,

v.

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

Respondent.

EUREKA COUNTY, a political subdivision
of the State of Nevada,

Petitioner,

v.

STATE OF NEVADA, EX. REL., STATE
ENGINEER, DIVISION OF WATER
RESOURCES,

Respondent.

KENNETH F. BENSON, an individual,
DIAMOND CATTLE COMPANY, LLC, a
Nevada limited liability company, and
MICHEL and MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
registered foreign limited partnership,

Petitioners,

v.

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

Respondent.



1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL AND MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
registered foreign limited partnership,

5 Petitioners,

6 v.

7 STATE ENGINEER OF NEVADA, OFFICE
8 OF THE STATE ENGINEER, DIVISION OF
9 WATER RESOURCES DEPARTMENT OF
10 CONSERVATION AND NATURAL
11 RESOURCES,

12 Respondent.

13 The undersigned being an employee of the Eureka County Clerk's Office,
14 hereby certifies that on the 2nd day of ~~February~~ ^{March}, 2016, I personally delivered a true
and correct copy of the following:

15 ***Order Granting Objection to Proposed Order Remanding to State Engineer;***
16 ***Order Granting Petitions For Judicial Review; Order Vacating Permits***

17 addressed to:

18 Karen A. Peterson, Esq.
19 Allison, Mackenzie, Pavlakis, Wright &
20 Fagan Ltd.
21 P.O. Box 646
Carson City, Nevada 89701

Dale E. Ferguson, Esq.
Gordon H. DePaoli, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511

22 Theodore Beutel, Esq.
23 Eureka County District Attorney
24 P.O. Box 190
Eureka, Nevada 89316

Micheline Fairbank, Esq.
Nevada Attorney General's Office
100 North Carson Street
Carson City, Nevada 89701

25 Ross E. De Lipkau, Esq.
26 John R. Zimmerman, Esq.
Parson, Behle & Latimer
50 West Liberty Street, Suite 750
Reno, Nevada 89501

Laura A. Schroeder, Esq.
Therese A. Ure, Esq.
Schroeder Law Offices, P.C.
440 Marsh Avenue
Reno, Nevada 89509



In the following manner:

- | | | | |
|-------------------------------------|---|--------------------------|---------------------------|
| <input checked="" type="checkbox"/> | regular U.S. mail | <input type="checkbox"/> | overnight UPS |
| <input type="checkbox"/> | certified U.S. mail | <input type="checkbox"/> | overnight Federal Express |
| <input type="checkbox"/> | priority U.S. mail | <input type="checkbox"/> | Fax to # _____ |
| <input type="checkbox"/> | hand delivery - | | |
| <input type="checkbox"/> | copy placed in agency box located in the Eureka County Clerk's Office | | |

Camanda Pearce

SEVENTH JUDICIAL DISTRICT COURT
GARY D. FAIRMAN
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



NO. _____
FILED

MAR 09 2015

Eureka County Clerk

By Alene

Case Nos. CV 1108-155
CV-1108-156
CV-1108-157
CV-1112-164
CV-1112-165
CV-1202-170
CV-1207-178

Dept No. 2

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

EUREKA COUNTY, a political subdivision
of the State of Nevada,
Petitioner,

v.

STATE OF NEVADA, EX. REL., STATE
ENGINEER, DIVISION OF WATER
RESOURCES,

Respondent.

CONLEY LAND & LIVESTOCK, LLC, a
Nevada limited liability company, LLOYD
MORRISON, an individual,

Petitioners,

v.

OFFICE OF THE STATE ENGINEER OF THE
STATE OF NEVADA, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES, JASON KING, State Engineer,
KOBEN VALLEY RANCH, LLC, Real Party in
Interest,

Respondents.

**AMENDED ORDER
GRANTING OBJECTION TO
PROPOSED ORDER REMANDING
TO STATE ENGINEER; ORDER
GRANTING PETITIONS FOR JUDICIAL
REVIEW; ORDER VACATING PERMITS**



1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL and MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
registered foreign limited partnership,

5 Petitioners,

6 v.

7 STATE ENGINEER OF NEVADA, OFFICE OF
8 THE STATE ENGINEER, DIVISION OF
9 WATER RESOURCES DEPARTMENT OF
10 CONSERVATION AND NATURAL
11 RESOURCES,

12 Respondent.

13 EUREKA COUNTY, a political subdivision of
14 the State of Nevada,

15 Petitioner,

16 v.

17 STATE OF NEVADA, EX. REL., STATE
18 ENGINEER, DIVISION OF WATER
19 RESOURCES,

20 Respondent.

21 KENNETH F. BENSON, an individual,
22 DIAMOND CATTLE COMPANY, LLC, a
23 Nevada limited liability company, and
24 MICHEL and MARGARET ANN
25 ETCHEVERRY FAMILY, LP, a Nevada
26 registered foreign limited partnership,

Petitioners,

v.

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

Respondent.



1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL AND MARGARET ANN
5 ETCHEVERRY FAMILY, LP, a Nevada
6 registered foreign limited partnership,

7
8
9 Petitioners,

10 v.

11 STATE ENGINEER OF NEVADA, OFFICE OF
12 THE STATE ENGINEER, DIVISION OF
13 WATER RESOURCES DEPARTMENT OF
14 CONSERVATION AND NATURAL
15 RESOURCES,

16
17 Respondent.

18
19 MICHEL AND MARGARET ANN
20 ETCHEVERRY FAMILY, LP, a Nevada
21 Registered Foreign Limited Partnership
22 DIAMOND CATTLE COMPANY, LLC, a
23 Nevada Limited Liability Company, and
24 KENNETH F. BENSON, an individual,

25
26 Petitioners,

vs.

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

Respondents.

KOBEH VALLEY RANCH, LLC, a
Nevada limited liability corporation,

Intervenor-Respondents.

On May 20, 2013, petitioners MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP, DIAMOND CATTLE COMPANY, LLC and KENNETH F. BENSON appealed this Court's findings of fact, conclusions of law, and order denying petitions for judicial



1 review, entered May 17, 2013 (Nevada Supreme Court case no. 63258). The appeal was
2 consolidated with the appeal in Nevada Supreme Court case no. 61324 for appellate
3 purposes. The court reversed and remanded the case for proceedings consistent with the
4 opinion.¹ The remittitur was issued on November 23, 2015.

5 On November 25, 2015, Kobeh Valley Ranch, LLC ("KVR") via email, submitted to
6 the court a proposed order remanding to State Engineer; on December 3, 2015, Eureka
7 County, Kenneth F. Benson, Diamond Cattle Company LLC and Michel and Margaret Ann
8 Etcheverry Family, L.P. filed a joint objection to proposed orders of Kobeh Valley Ranch,
9 LLC; on December 7, 2015, Michel and Margaret Ann Etcheverry Family, L.P., Diamond
10 Cattle Company, LLC and Kenneth Benson ("petitioners") filed an objection to proposed
11 orders of Kobeh Valley Ranch, LLC; on December 16, 2015, KVR filed its reply to joint
12 objection to proposed orders of Kobeh Valley Ranch LLC; on December 15, 2015,
13 respondent Jason King, P.E., the State Engineer, filed his joinder to Kobeh Valley Ranch,
14 LLC's reply to joint objection to proposed orders; on January 8 and 12, 2016, petitioners
15 filed a request for review of objection to proposed orders of Kobeh Valley Ranch, LLC; the
16 court has reviewed the pleadings and finds that no further briefing or hearing is
17 necessary.²

18 The court has reviewed the Nevada Supreme Court's opinion issued October 29,
19 2015. The Nevada Supreme Court held that "substantial evidence does not support the
20 State Engineer's finding that KVR would be able to "adequately and fully" mitigate the fact
21 that its ground water appropriations will cause Kobeh Valley springs that sources existing
22 rights to cease to flow."³ The court further held that "The State Engineer's decision to

23
24 ¹Eureka County v. State Engineer, 131 Nev. Adv. Opn. 84 (2015).

25 ²7JDCR 11.

26 ³Eureka County v. State Engineer at 16.



1 grant KVR's applications when the result of appropriations would conflict with existing
2 rights and based upon unsupported findings that mitigation would be sufficient to rectify
3 the conflict violates the Legislature's directive that the State Engineer must deny use or
4 change applications when the use or change would conflict with existing rights."⁴ Having
5 found petitioners had met their burden to show the State Engineer's decision was
6 incorrect, the court held "the State Engineer's decision to grant KVR's applications cannot
7 stand."⁵ The court reversed and remanded these cases to the district court for further
8 proceedings consistent with this opinion.⁶

9 The Nevada Supreme Court did not remand the cases to the State Engineer for
10 further proceedings consistent with its opinion which it could have done if the court
11 concluded additional administrative review and findings were necessary. Based upon the
12 Supreme Court's reversal of this Court's order denying petitions for judicial review and the
13 State Engineer's decision to grant KVR's applications, this Court finds that the petitions
14 for judicial review filed by the petitioners must be granted.

15 Good cause appearing,

16 IT IS HEREBY ORDERED that the petitions for judicial review filed by petitioners
17 in the above-captioned proceedings are **GRANTED**. The approval of the monitoring,
18 management, and mitigation plan, issued by respondent, STATE ENGINEER OF NEVADA
19 is **VACATED** and applications nos. 72695, 72696, 72697, 72698, 73545, 73546, 73547,
20 73548, 73549, 73550, 73551, 73552, 74587, 75988, 75989, 75990, 75991, 75992, 75993,
21 75994, 75995, 75996, 75997, 75998, 75999, 76000, 76001, 76002, 76003, 76004, 76005,
22 76006, 76007, 76008, 76009, 76745, 76746, 76802, 76803, 76804, 76805, 76989, 76990,

23
24 ⁴*Id.*

25 ⁵*Id.*

26 ⁶*Id.*



1 77171, 77525, 77526, 77527, 77553, 78424, 79911, 79912, 79913, 79914, 79915, 79916,
2 79917, 79918, 79919, 79920, 79921, 79922, 79923, 79924, 79925, 79926, 79927, 79928,
3 79929, 79930, 79931, 79932, 79933, 79934, 79935, 79936, 79937, 79938, 79939, 79940,
4 79941 and 79942 are hereby **DENIED** pursuant to NRS 533.370(2) in accordance with the
5 holding of the Supreme Court's opinion in 131 Nev. Adv. Opn. 84 issued October 29, 2015.

6 IT IS HEREBY FURTHER ORDERED that the permits issued by the State Engineer
7 for the above applications are **VACATED**.

8 DATED this 7th day of March, 2016.

9 
10 _____
11 DISTRICT JUDGE

NO. _____
FILED
MAR 09 2016
Eureka County Clerk
By Reane

Case Nos. CV 1108-155
CV-1108-156
CV-1108-157
CV-1112-164
CV-1112-165
CV-1202-170
CV-1207-178

Dept No. 2

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

EUREKA COUNTY, a political subdivision
of the State of Nevada,
Petitioner,

v.

STATE OF NEVADA, EX. REL., STATE
ENGINEER, DIVISION OF WATER
RESOURCES,

Respondent.

CONLEY LAND & LIVESTOCK, LLC, a
Nevada limited liability company, LLOYD
MORRISON, an individual,

Petitioners,

v.

OFFICE OF THE STATE ENGINEER OF
THE STATE OF NEVADA, DIVISION OF
WATER RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES, JASON KING, State
Engineer, KOBEH VALLEY RANCH, LLC,
Real Party in Interest,

Respondents.

CERTIFICATE OF SERVICE

SEVENTH JUDICIAL DISTRICT COURT
GARY D. FAIRMAN
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA





1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL and MARGARET ANN
5 ETCHEVERRY FAMILY, LP, a Nevada
6 registered foreign limited partnership,

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Petitioners,

v.

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

Respondent.

EUREKA COUNTY, a political subdivision
of the State of Nevada,

Petitioner,

v.

STATE OF NEVADA, EX. REL., STATE
ENGINEER, DIVISION OF WATER
RESOURCES,

Respondent.

KENNETH F. BENSON, an individual,
DIAMOND CATTLE COMPANY, LLC, a
Nevada limited liability company, and
MICHEL and MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
registered foreign limited partnership,

Petitioners,

v.

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

Respondent.



1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL AND MARGARET ANN
5 ETCHEVERRY FAMILY, LP, a Nevada
6 registered foreign limited partnership,

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Petitioners,

v.

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

Respondent.

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

Petitioners,

vs.

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

Respondents.

KOBEH VALLEY RANCH, LLC, a
Nevada limited liability corporation,

Intervenor-Respondents.



The undersigned being an employee of the Eureka County Clerk's Office,
hereby certifies that on the ____ day of March, 2016, I personally delivered a true and
correct copy of the following:

***Amended Order Granting Objection to Proposed Order Remanding to State
Engineer; Order Granting Petitions For Judicial Review; Order Vacating Permits***

addressed to:

Karen A. Peterson, Esq.
Allison, Mackenzie, Pavlakis, Wright &
Fagan Ltd.
P.O. Box 646
Carson City, Nevada 89701

Dale E. Ferguson, Esq.
Gordon H. DePaoli, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511

Theodore Beutel, Esq.
Eureka County District Attorney
P.O. Box 190
Eureka, Nevada 89316

Micheline Fairbank, Esq.
Nevada Attorney General's Office
100 North Carson Street
Carson City, Nevada 89701

Ross E. De Lipkau, Esq.
John R. Zimmerman, Esq.
Parson, Behle & Latimer
50 West Liberty Street, Suite 750
Reno, Nevada 89501

Laura A. Schroeder, Esq.
Therese A. Ure, Esq.
Schroeder Law Offices, P.C.
440 Marsh Avenue
Reno, Nevada 89509

In the following manner:

- | | | | |
|-------------------------------------|---|--------------------------|---------------------------|
| <input checked="" type="checkbox"/> | regular U.S. mail | <input type="checkbox"/> | overnight UPS |
| <input type="checkbox"/> | certified U.S. mail | <input type="checkbox"/> | overnight Federal Express |
| <input type="checkbox"/> | priority U.S. mail | <input type="checkbox"/> | Fax to # _____ |
| <input type="checkbox"/> | hand delivery - | | |
| <input type="checkbox"/> | copy placed in agency box located in the Eureka County Clerk's Office | | |

Amanda Pearce

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

March 22, 2016

Kobeh Valley Ranch, LLC
1726 Cole Blvd., Suite 115
Lakewood, CO 80401
Certified Mail No.: 7106 7808 0630 0062 2905

RE: Applications 85573 through 85604

Ladies and Gentlemen:

You are hereby notified that formal protests were filed in this office on January 15, 2016, by Etcheverry Family Limited Partnership, by Diamond Cattle Company, LLC, by Diamond Natural Resources Protection and Conservation Association and by Eureka County, against the granting of your applications, under the above-mentioned application numbers. Copies of these protests are enclosed; if you require additional copies you may obtain them on line at water.nv.gov.

The rules governing the *Practice and Procedure in Protest Hearings before the State Engineer* are contained in the Nevada Administrative Code Chapter 533. Pursuant to NAC 533.140, an answer to the protest may be filed in the Office of the State Engineer within 45 days of the date of this letter. A copy of the answer must be served at the same time on the Protestant.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason King".

Jason King, P.E.
State Engineer

JK/dl

Enclosures

cc: Parsons, Behle and Latimer, email
Schroeder Law Offices, P.C., email
Allison, MacKenzie, Ltd., email
Tamara Mahe, by request

APP510

CASE NOS.: CV-1108-155
CV-1108-156
CV-1108-157
CV-1112-164
CV-1112-165
CV-1202-170
CV-1207-178

DEPT. NO.: II

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

* * *

EUREKA COUNTY, a political subdivision of the
State of Nevada,

Petitioner,

vs.

STATE OF NEVADA, EX. REL., STATE
ENGINEER, DIVISION OF WATER
RESOURCES,

Respondent.

CONLEY LAND & LIVESTOCK, LLC, a Nevada
limited liability company; LLOYD MORRISON,
and individual,

Petitioners,

vs.

OFFICE OF THE STATE ENGINEER OF THE
STATE OF NEVADA, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES, JASON KING, State Engineer,
KOBEL VALLEY RANCH, LLC, Real Party om
Interest,

Respondents.

KENNETH F. BENSON, an individual,
DIAMOND CATTLE COMPANY, LLC, a
Nevada limited liability company, and MICHEL
and MARGARET ANN ETCHEVERRY
FAMILY, LP, a Nevada registered foreign limited
partnership,

Petitioners,

KOBEL VALLEY RANCH, LLC'S
MOTION TO ALTER OR AMEND
JUDGMENT

1 vs.

2
3 STATE ENGINEER OF NEVADA, OFFICE OF
4 THE STATE ENGINEER, DIVISION OF
5 WATER RESOURCES, DEPARTMENT OF
6 CONSERVATION AND NATURAL
7 RESOURCES,

8 Respondent.

9
10 EUREKA COUNTY, a political subdivision of the
11 State of Nevada,

12 Petitioner,

13 vs.

14
15 STATE OF NEVADA, EX. REL., STATE
16 ENGINEER, DIVISION OF WATER
17 RESOURCES,

18 Respondent.

19
20 KENNETH F. BENSON, an individual,
21 DIAMOND CATTLE COMPANY, LLC, a
22 Nevada limited liability company, and MICHEL
23 and MARGARET ANN ETCHEVERRY
24 FAMILY, LP, a Nevada registered foreign limited
25 partnership,

26 Petitioners,

27 vs.

28
29 STATE ENGINEER OF NEVADA, OFFICE OF
30 THE STATE ENGINEER, DIVISION OF
31 WATER RESOURCES, DEPARTMENT OF
32 CONSERVATION AND NATURAL
33 RESOURCES,

34 Respondent.

35
36 KENNETH F. BENSON, an individual,
37 DIAMOND CATTLE COMPANY, LLC, a
38 Nevada limited liability company, and MICHEL
39 and MARGARET ANN ETCHEVERRY
40 FAMILY, LP, a Nevada registered foreign limited
41 partnership,

42 Petitioners,

43 vs.

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

4 Respondent.

5
6 COMES NOW, Real Party in Interest, KOBEH VALLEY RANCH, LLC (hereinafter
7 "KVR"), by and through its attorneys of record, PAUL G. TAGGART, ESQ. and DAVID H.
8 RIGDON, ESQ., of the law firm of TAGGART & TAGGART, LTD., and, pursuant to NRCP 59(e),
9 hereby files this Motion to Alter or Amend this Court's March 9, 2016 Order granting Objection to
10 Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; and
11 Order Vacating Permits. This Motion is based on the attached Memorandum of Points and
12 Authorities, all papers and pleadings on file in this matter, and any oral argument that this Court may
13 permit.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUND AND HISTORY

KVR proposes to develop a molybdenum mine, also known as the Mount Hope Mine Project, to be located in Eureka County, Nevada. The Mount Hope Mine Project will be one of the largest primary molybdenum mines in the world. The development and operation of the mine will greatly enhance the economic development efforts of the State of Nevada and provide substantial tax revenue for Eureka County. Almost \$300 million dollars has already been invested in this effort and it is expected that when the mine is operational, it will employ about 400 people in full-time positions. This Court, in its March 9, 2016, order, denied water rights that are required for this project to succeed.

To develop the mine, several water applications were filed with the State Engineer to appropriate new water rights and change the point of diversion, place of use, and/or manner of use of existing water rights (collectively hereinafter "Applications").¹ The applications sought a total combined duty of 11,300 afa of groundwater for mining and milling purposes associated with the proposed mine. The Applications were protested by various parties including Eureka County.

KVR has expended significant time and resources in pursuit of the Applications, including three separate trips through this Court. In October 2008, the State Engineer conducted five days of hearings on the applications and, six months later, issued a ruling granting most of them. Eureka County and other protesters appealed that determination. This Court subsequently vacated the ruling and remanded the case back to the State Engineer for additional proceedings. The State Engineer conducted a second round of hearings in December 2010 and May 2011. On July 5, 2011 the State Engineer issued Ruling 6127 granting KVR 11,300 afa of groundwater rights. The Ruling was conditioned on the submission of a monitoring, management, and mitigation plan (hereinafter "3M Plan").

The Protestants again appealed the State Engineer's grant of the Applications. While the appeal was pending, in October 2011, KVR submitted a draft 3M Plan to the State Engineer. Although 3M Plans are regularly prepared in conjunction with large water rights projects, there is no statute or

¹ The Applications were filed by a variety of individuals and entities. Those Applications not filed by KVR were later assigned and/or transferred to KVR.

1 regulation which governs the development of such plans. Applicants rely heavily on the direction and
2 guidance of the State Engineer regarding how a plan should be drafted.

3 Accordingly, during the process of developing the plan, KVR met with the State Engineer to
4 discuss the draft plan's sufficiency. In reliance on the guidance provided by the State Engineer, KVR
5 revised the draft 3M Plan and submitted its final plan on May 10, 2012.

6 In June 2012, the State Engineer approved the final 3M Plan. At about the same time, on June
7 13, 2012, this Court upheld the findings and conclusions of the State Engineer in Ruling 6127. In July
8 2012, Protestants also appealed the State Engineer's approval of the final 3M Plan to this Court and on
9 May 15, 2013, this Court upheld the State Engineer's approval of the 3M Plan.

10 This Court's approvals of the State Engineer's determinations were appealed to the Nevada
11 Supreme Court and the two appeals were consolidated into a single appeal. After briefing and argument,
12 the Supreme Court reversed and remanded the case to this Court. In the order of reversal and remand,
13 the Supreme Court specifically declined to answer the question of whether "the State Engineer has
14 authority to grant an application that conflicts with existing rights based on a determination that the
15 applicant will be able to mitigate" the conflict.² Instead the Supreme Court found that the specific 3M
16 Plan approved by the State Engineer "is not supported by sufficient evidence that successful mitigation
17 effort may be undertaken so as to dispel the threat to the existing rights holders."³

18 The standards for 3M Plans adopted by the Supreme Court in the decision were unprecedented
19 and, therefore, unknown to both KVR and the State Engineer at the time the plan was drafted and
20 approved. Neither KVR nor the State Engineer could have reasonably anticipated that the final 3M Plan
21 would be required to comply with such standards.

22 On March 9, 2016, this Court entered its Amended Order Granting Objection to Proposed Order
23 Remanding to State Engineer; Order Granting Petitions for Judicial Review; and Order Vacating
24 Permits. This Order effectively denies KVR's Applications outright, requires KVR to start over, and
25 makes it significantly more difficult, expensive, and time-consuming to acquire the water resources

27 ² *Eureka Cnty. v. State Engineer*, 131 Nev.Adv.Op. 84 at 2, 359 P.3d 1114, 1115 (2015).

28 ³ *Id.*

1 needed to develop the mine project.

2 KVR respectfully submits that this Courts March 9, 2016, Amended Order was issued in error
3 and, pursuant to NRCP 59(e), requests this Court alter or amend the order to allow the case to be
4 remanded to the State Engineer for the purpose of allowing KVR to submit evidence of its ability to
5 successfully mitigate conflicts and amend the 3M Plan to bring it into compliance with instructions
6 provided by the Supreme Court.

7 **II. STANDARD OF REVIEW**

8 NRCP 59(e) authorizes a party to file a motion requesting alteration or amendment of a judgment
9 within "10 days after service of written notice of entry of the judgment." Notice of Entry of Judgment in
10 this matter was filed on March 14, 2016. Since Rule 59(e) does not provide standards for granting a
11 motion to alter or amend a judgment, a district court enjoys considerable discretion in granting or
12 denying a Rule 59(e) motion.⁴ A district court's decision to grant or deny a motion for reconsideration is
13 reviewed under an abuse of discretion standard.⁵ "A district court may properly reconsider its decision if
14 it (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was
15 manifestly unjust, or (3) if there is an intervening change in controlling law."⁶

16 KVR respectfully submits that the March 9, 2016 order was issued in error and is manifestly
17 unjust in that it fails to allow KVR an adequate opportunity to amend the 3M Plan to render it compliant
18 with the newly articulated and wholly unprecedented standards adopted by the Nevada Supreme Court.

19 **III. ARGUMENT**

20 A. **This Court erroneously concluded that the Supreme Court would have remanded**
21 **this case directly to the State Engineer if it had intended for further proceedings**
22 **to occur before the State Engineer.**

23 This Court stated that "[t]he Nevada Supreme Court did not remand the cases to the State Engineer
24 for further proceedings consistent with its opinion which it could have done if the court concluded
25 additional administrative review and findings were necessary." However, the Supreme Court is not

26
27 ⁴ *Stevo Design, Inc. v. SBR Marketing Ltd.*, 919 F.Supp.2d 1112, 1117 (D. Nev. 2013).

28 ⁵ *Smith v. Clark County School Dist.*, 737 F.3d 950, 954 (9th Cir., 2013).

⁶ *Id.* at 955 (internal quotations and citations omitted).

1 empowered to remand issues directly to the State Engineer.⁷ Instead, in administrative appeals,
2 particularly when the Supreme Court wants an administrative agency to take substantive action consistent
3 with its instructions, the Supreme Court remands to a district court for that court to then remand to the
4 administrative agency.⁸

5 Given this long-standing practice, it would be quite extraordinary for the Supreme Court to
6 bypass a district court and remand a case directly to the State Engineer. When the Supreme Court
7 remanded this case back to this Court it did so for the purpose of having the Court conduct or order
8 "proceedings consistent with this order."⁹ Since a district court is only empowered by NRS 533.450 to
9 review the fact-finding proceedings conducted by the State Engineer, and not to conduct its own fact-
10 finding proceedings in the matter, an order for remand to the district court is effectively an order
11 requiring the district court to further remand the issue to the State Engineer for additional fact-finding.

12 In addition, the statement in the Supreme Court decision that "the State Engineer's decision to
13 grant KVR's applications cannot stand" must be read within its proper context.¹⁰ The Supreme Court
14 did not find that no 3M Plan can ever provide substantial evidence for a finding that impacts from
15 proposed pumping can be fully mitigated. It only held that this particular 3M Plan did not provide such
16 substantial evidence. This is the context for the quote.

17 What the Supreme Court effectively said was that if this particular 3M Plan is the only
18 substantial evidence supporting the State Engineer's determination, that determination cannot be upheld.
19 This opens the door for the development and implementation of a different 3M Plan on remand that
20 could provide substantial evidence supporting the State Engineer's approval of the permits. Given the
21 enormous negative economic impacts that will result from a complete denial of KVR's Applications,
22 KVR urges this Court to give it the opportunity to develop such a plan and provide evidence of its ability
23

24 ⁷ See *Town of Eureka v. Office of State Engineer*, 108 Nev. 163, 169-70, 826 P.2d 948, 952 (1992)(remanding case to district
25 court for referral to the State Engineer to conduct further proceedings); *Application of Fillipini*, 66 Nev. 17, 31, 202 P.2d 535,
26 541-41 (1949)(remanding to the district court issues concerning whether and to what extent an application would injure
27 appellant); *Revert v. Ray*, 95 Nev. 782, 788, 603 P.2d 262, 265 (1979)(reversing and remanding to district court for further
28 proceedings by State Engineer.); *Great Basin Water Network v. State Eng'r*, ___ Nev. ___, ___, 234 P.3d 912, 920
(2010)(reversing and remanding case to district court for further remand to State Engineer to conduct further proceedings).

⁸ *Id.*

⁹ *Eureka Cnty. v. State Engineer*, 131 Nev. Adv. Op. 84 at 16, 359 P.3d 1114, 1121 (2015).

¹⁰ *Id.*

1 to successfully mitigate conflicts without requiring it to start over.

2 B. KVR reasonably relied on the State Engineer's direction regarding the
3 development of the 3M Plan.

4 The Nevada Supreme Court has held that "the State Engineer has been charged with the statutory
5 duty of administering the complex system of water rights within the state. We believe that *lay members*
6 *of the public are entitled to rely upon its advice as to the procedures to be followed under the state water*
7 *law.*"¹¹ As noted above, Nevada currently has no statute or regulation governing the development,
8 amendment, and implementation of 3M Plans. Accordingly, applicants who are required to submit such
9 plans must rely solely on the direction and guidance of the State Engineer as to what elements must be
10 included within such plans and what standards will be used to review a plan.

11 In accordance with the requirements of Ruling 6127, KVR submitted a draft 3M Plan for the
12 State Engineer to review and provide feedback.¹² A meeting was held between KVR and the State
13 Engineer for the specific purpose of receiving input from the State Engineer regarding the sufficiency of
14 the plan.¹³ Based on this guidance, KVR made revisions and submitted a final 3M Plan to the State
15 Engineer for approval.¹⁴ In addition, throughout the development of the plan, KVR consulted with
16 Eureka County and other Protestants to ensure that their concerns would be fully addressed.¹⁵ The final
17 3M Plan was approved by the State Engineer after more than a year of cooperation and collaboration
18 between KVR, the State Engineer, and the Protestants.

19 KVR's reliance on the State Engineer's advice and guidance as to the sufficiency of the 3M Plan
20 was reasonable given the fact that there was no statute, regulation, or precedential case law which
21 provided alternative direction as to what the plan should include or what standards would guide its
22 approval. In good-faith reliance on the State Engineer's advice, KVR diligently pursued the
23 development of the 3M Plan using the best resources available to it at the time. The Nevada Supreme
24 Court has clearly directed that an applicant "cannot be punished for the State Engineer's failure to follow

25
26 ¹¹ *Desert Irr., Ltd. v. State*, 113 Nev. 1049, 1061, 944 P.2d 835, 843 (1997)(emphasis added).

27 ¹² State Engineer Record on Appeal (hereinafter "ROA") 295-335.

28 ¹³ ROA 354-376.

¹⁴ *Id.*

¹⁵ See ROA 54-167, 178, 181, 195-196, 204, 207-208, 214, and 227-241.

his statutory duty.”¹⁶ The Supreme Court’s finding that the State Engineer failed to meet his statutory duty in approving the 3M Plan and the associated permits should not result in KVR being punished with the vacation of the permits. Rather, this Court should remand the case to the State Engineer to allow KVR to revise the 3M Plan to conform to the Supreme Court’s newly adopted standards.

C. The decision of the Nevada Supreme Court articulated new and unprecedented standards for the development of 3M Plans.

Prior to the Supreme Court’s decision, there was no statute, regulation, or case law that articulated the standards for approval of a 3M Plan developed in conjunction with an application to appropriate water. The adoption by the Supreme Court of the standard of review for 3M Plans is new and wholly unprecedented. There is simply no way that KVR could have known the standard that the Supreme Court would apply to its review of the plan before the rendering of the decision. If the State Engineer and KVR had known the Supreme Court would require a 3M Plan to be part of the original approval or to include more specific mitigation evidence, KVR would have done it. KVR should be given the opportunity to do that now.

This Court, on two prior occasions [Judges Papez and Thompson] affirmed the actions taken by the State Engineer. Given this, it is manifestly unjust to vacate the Permits before providing KVR an opportunity to amend the plan in a manner that will bring it into conformance with the Supreme Court’s directive.

D. This Court’s vacation of the KVR’s permits is manifestly unjust.

The denial of KVR’s Applications, as required by this Court’s Order, will have significant economic ramifications for the State of Nevada. KVR may lose the priority position of the Applications for the remaining water in Kobeh Valley. In the time since KVR’s Applications were filed, numerous entities, including Eureka County, have filed new applications to appropriate the groundwater sought by KVR. If KVR’s applications are denied, the water associated with those applications will be made available to these later-filed applications. This is a manifestly unjust result. A project of great economic significance to the State of Nevada should not be placed in jeopardy based on a failure of the 3M Plan to

¹⁶ *Great Basin Water Network v. State Eng’r*, ___ Nev. ___, ___, 234 P.3d 912, 920 (2010).

1 conform to a post-hoc standard articulated by the Supreme Court. Rather, KVR should be given a fair
2 opportunity to draft a plan that complies with the ruling of the Supreme Court before they are summarily
3 denied.

4 **IV. CONCLUSION**

5 For the reasons stated above, KVR respectfully requests this Court amend its Order to allow the
6 case to be remanded to the State Engineer for the purpose of providing KVR the opportunity to
7 address the issues raised by the Supreme Court and amend the 3M Plan to bring it into compliance
8 with the standards articulated the Supreme Court.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any persons.

DATED this 25th day of March, 2016.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date, I served or caused to be served, a true and correct copy of the foregoing KOBEH VALLEY RANCH, LLC'S MOTION TO ALTER OR AMEND JUDGMENT by:

☒ By **U.S. POSTAL SERVICE**: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

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☐ By **U.S. CERTIFIED, RETURN RECEIPT POSTAL SERVICE**: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

☐ By **ELECTRONIC DELIVERY**, via:

DATED this 25th day of March, 2016.



Employee of TAGGART & TAGGART, LTD.

Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

1
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5
6 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF EUREKA
8

9 EUREKA COUNTY, a political subdivision
10 of the State of Nevada,

11 Petitioner,

12 vs.

13 THE STATE OF NEVADA, EX REL.,
14 STATE ENGINEER, DIVISION OF WATER
15 RESOURCES,

16 Respondent.

17 CONLEY LAND & LIVESTOCK LLC, a
18 Nevada limited liability company, LLOYD
19 MORRISON, an individual,

20 Petitioners,

21 vs.

22 THE OFFICE OF THE STATE ENGINEER
23 OF THE STATE OF NEVADA, DIVISION
24 OF WATER RESOURCES, DEPARTMENT
25 OF CONSERVATION AND NATURAL
26 RESOURCES, JASON KING, State
27 Engineer; KOBEH VALLEY RANCH, LLC,
28 Real Party in Interest,

Respondents.

Case No. CV 1108-155
Case No. CV 1112-164

Dept. No. 2

Case No. CV 1108-156

Dept. No. 2

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1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL AND MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
registered foreign limited partnership,

5 Petitioners,

6 vs.

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

10 Respondents.

Case No. CV 1108-157
Case No. CV 1112-165
Case No. CV 1202-170

Dept. No. 2

11 **NOTICE OF APPEAL**

12 Notice is hereby given that the State Engineer of Nevada, Office of the State Engineer,
13 Division of Water Resources, Department of Conservation and Natural Resources, Division of
14 Water Resources ("Nevada State Engineer"), by and through counsel, Nevada Attorney
15 General Adam Paul Laxalt and Senior Deputy Attorney General Micheline N. Fairbank, hereby
16 appeals to the Nevada Supreme Court from the Amended Order Granting Objection to
17 Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review;
18 Order Vacating Permits entered by this Court on March 9, 2016. Notice of Entry of Order was
19 served on March 14, 2016. A copy of said Notice of Entry of Amended Order is attached
20 hereto as Exhibit 1.

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INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	Notice of Entry of Amended Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits filed March 14, 2016	12

EXHIBIT 1

EXHIBIT 1

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Case Nos. CV1108-155
CV1108-156
CV1108-157
CV1112-164
CV1112-165
CV1202-170
CV1207-178

Dept. No. 2

NO. FILED
MAR 14 2016
Eureka County Clerk
By Amador Co.

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

EUREKA COUNTY, a political
subdivision of the State of Nevada,

Petitioner,

vs.

Case No : CV1108-155

Dept. No.: 2

THE STATE OF NEVADA, EX. REL.,
STATE ENGINEER, DIVISION OF
WATER RESOURCES, and KOBEH
VALLEY RANCH, LLC, a Nevada
limited liability company,

Respondents.

CONLEY LAND & LIVESTOCK, LLC, a
Nevada limited liability company; LLOYD
MORRISON, an individual;

Petitioners/Plaintiffs,

vs.

Case No.: CV1108-156

Dept. No.: 2

THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA, DIVISION
OF WATER RESOURCES, DEPARTMENT
OF CONSERVATION AND NATURAL
RESOURCES, JASON KING, State Engineer;
KOBEH VALLEY RANCH, LLC, Real Party
in Interest;

Respondents/Defendants.

///

///

///

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

Petitioners,

5 vs.

Case No.: CV1108-157

Dept. No.: 2

6 STATE ENGINEER, OF NEVADA,
7 OFFICE OF THE STATE ENGINEER,
8 DIVISION OF WATER RESOURCES,
9 DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES, and
KOBEN VALLEY RANCH, LLC, a
Nevada limited liability company,

10 Respondents. /

11 EUREKA COUNTY,
12 a political subdivision of the State of Nevada,

Petitioner,

13 vs.

Case No.: CV1112-164

Dept. No.: 2

14 THE STATE OF NEVADA, EX. REL.,
15 STATE ENGINEER, DIVISION OF
16 WATER RESOURCES, and KOBEN
VALLEY RANCH, LLC, a Nevada
limited liability company,

17 Respondents. /

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

Petitioners,

22 vs.

Case No.: CV1112-165

Dept. No.: 2

23 STATE ENGINEER OF NEVADA,
24 OFFICE OF THE STATE ENGINEER,
25 DIVISION OF WATER RESOURCES,
26 DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES, and KOBEN
VALLEY RANCH, LLC a Nevada limited
liability company,

27 Respondents. /

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DIAMOND CATTLE COMPANY, LLC, a
Nevada limited liability company, and
MICHEL AND MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
registered foreign limited partnership,

Petitioners,

Case No.: CV1202-170

vs.

Dept. No.: 2

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

Respondent.

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

Petitioners,

Case No.: CV1207-178

vs.

Dept. No.: 2

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

Respondent,

AND

KOBEH VALLEY RANCH, LLC, a
Nevada limited liability company,

Intervenor-
Respondent.

**NOTICE OF ENTRY OF AMENDED ORDER
GRANTING OBJECTION TO PROPOSED ORDER REMANDING
TO STATE ENGINEER; ORDER GRANTING PETITIONS
FOR JUDICIAL REVIEW; ORDER VACATING PERMITS**

NOTICE IS HEREBY given that on the 9th day of March, 2016, the Court duly
entered an AMENDED ORDER GRANTING OBJECTION TO PROPOSED ORDER

ALLISON MacKENZIE, LTD.
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1 REMANDING TO STATE ENGINEER; ORDER GRANTING PETITIONS FOR JUDICIAL
2 REVIEW; ORDER VACATING PERMITS in the above-entitled matters. A copy of said
3 AMENDED ORDER is attached hereto as Exhibit "1".

4 AFFIRMATION

5 The undersigned does hereby affirm that the preceding document DOES NOT
6 contain the social security number of any person.

7 DATED this 14th day of March, 2016.

8
9 KAREN A. PETERSON, ESQ.
Nevada State Bar No. 0366
ALLISON MacKENZIE, LTD.
10 402 North Division Street
Carson City, Nevada 89703

11 ~ and ~

12 EUREKA COUNTY DISTRICT ATTORNEY
13 701 South Main Street
Post Office Box 190
14 Eureka, Nevada 89306

15
16 BY:

17 THEODORE BEUTEL, ESQ.
Nevada State Bar No. 5222

18 Attorneys for EUREKA COUNTY
19
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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date I caused the foregoing document to be served to all parties to this action by:

☒ Placing a true copy thereof in a sealed postage prepaid envelope, first class mail, in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]

☐ Via electronic transmission

☐ Hand-delivery [NRCP 5(b)(2)(A)]

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Courtesy Copy to:
Honorable Gary D. Fairman
Seventh Judicial District Court
P.O. Box 151629
Ely, NV 89315

DATED this 14th day of March, 2016.


NANCY FONTENOT

4838-0522-0143, v. 1

EXHIBIT 66199

EXHIBIT 66199

SEVENTH JUDICIAL DISTRICT COURT
GARY D. FAIRMAN
DISTRICT JUDGE
DEPARTMENT 3
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



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Case Nos. CV 1108-155
CV-1108-156
CV-1108-157
CV-1112-164
CV-1112-165
CV-1202-170
CV-1207-178

Dept No. 2

NO
FILED
MAR - 20
EUREKA COUNTY CLERK
By G. D. Fairman

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

EUREKA COUNTY, a political subdivision
of the State of Nevada,
Petitioner,

v.

STATE OF NEVADA, EX. REL., STATE
ENGINEER, DIVISION OF WATER
RESOURCES,

Respondent.

CONLEY LAND & LIVESTOCK, LLC, a
Nevada limited liability company, LLOYD
MORRISON, an individual,

Petitioners,

v.

OFFICE OF THE STATE ENGINEER OF THE
STATE OF NEVADA, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES, JASON KING, State Engineer,
KOBEN VALLEY RANCH, LLC, Real Party in
Interest,

Respondents.

AMENDED ORDER
GRANTING OBJECTION TO
PROPOSED ORDER REMANDING
TO STATE ENGINEER: ORDER
GRANTING PETITIONS FOR JUDICIAL
REVIEW: ORDER VACATING PERMITS

SEVENTH JUDICIAL DISTRICT COURT

GARY D. FAIRMAN

DISTRICT JUDGE

DEPARTMENT 2
WHITE MING. LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL and MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
registered foreign limited partnership,

5 Petitioners,

6 v.

7 STATE ENGINEER OF NEVADA, OFFICE OF
8 THE STATE ENGINEER, DIVISION OF
9 WATER RESOURCES DEPARTMENT OF
10 CONSERVATION AND NATURAL
11 RESOURCES,

12 Respondent.

13 EUREKA COUNTY, a political subdivision of
14 the State of Nevada,

15 Petitioner,

16 v.

17 STATE OF NEVADA, EX. REL., STATE
18 ENGINEER, DIVISION OF WATER
19 RESOURCES,

20 Respondent.

21 KENNETH F. BENSON, an individual,
22 DIAMOND CATTLE COMPANY, LLC, a
23 Nevada limited liability company, and
24 MICHEL and MARGARET ANN
25 ETCHEVERRY FAMILY, LP, a Nevada
26 registered foreign limited partnership,

Petitioners,

v.

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

Respondent.



1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL AND MARGARET ANN
5 ETCHEVERRY FAMILY, LP, a Nevada
6 registered foreign limited partnership,

7 Petitioners,

8 v.

9 STATE ENGINEER OF NEVADA, OFFICE OF
10 THE STATE ENGINEER, DIVISION OF
11 WATER RESOURCES DEPARTMENT OF
12 CONSERVATION AND NATURAL
13 RESOURCES,

14 Respondent.

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

21 Petitioners,

22 vs.

23 STATE ENGINEER OF NEVADA,
24 OFFICE OF THE STATE ENGINEER,
25 DIVISION OF WATER RESOURCES,
26 DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES,

Respondents.

KOBEH VALLEY RANCH, LLC, a
Nevada limited liability corporation,

Intervenor-Respondents.

On May 20, 2013, petitioners MICHEL AND MARGARET ANN ETCHEVERRY FAMILY, LP, DIAMOND CATTLE COMPANY, LLC and KENNETH F. BENSON appealed this Court's findings of fact, conclusions of law, and order denying petitions for judicial



1 review, entered May 17, 2013 (Nevada Supreme Court case no. 63255). The appeal was
2 consolidated with the appeal in Nevada Supreme Court case no. 61324 for appellate
3 purposes. The court reversed and remanded the case for proceedings consistent with the
4 opinion.¹ The remittitur was issued on November 23, 2015.

5 On November 25, 2015, Kobeh Valley Ranch, LLC ("KVR") via email, submitted to
6 the court a proposed order remanding to State Engineer; on December 3, 2015, Eureka
7 County, Kenneth F. Benson, Diamond Cattle Company LLC and Michel and Margaret Ann
8 Etcheverry Family, L.P. filed a joint objection to proposed orders of Kobeh Valley Ranch,
9 LLC; on December 7, 2015, Michel and Margaret Ann Etcheverry Family, L.P., Diamond
10 Cattle Company, LLC and Kenneth Benson ("petitioners") filed an objection to proposed
11 orders of Kobeh Valley Ranch, LLC; on December 16, 2015, KVR filed its reply to joint
12 objection to proposed orders of Kobeh Valley Ranch LLC; on December 15, 2015,
13 respondent Jason King, P.E., the State Engineer, filed his joinder to Kobeh Valley Ranch,
14 LLC's reply to joint objection to proposed orders; on January 8 and 12, 2016, petitioners
15 filed a request for review of objection to proposed orders of Kobeh Valley Ranch, LLC, the
16 court has reviewed the pleadings and finds that no further briefing or hearing is
17 necessary.²

18 The court has reviewed the Nevada Supreme Court's opinion issued October 29,
19 2015. The Nevada Supreme Court held that "substantial evidence does not support the
20 State Engineer's finding that KVR would be able to "adequately and fully" mitigate the fact
21 that its ground water appropriations will cause Kobeh Valley springs that sources existing
22 rights to cease to flow."³ The court further held that "The State Engineer's decision to
23

24 ¹Eureka County v. State Engineer, 131 Nev. Adv. Opn. 84 (2015).

25 ²7JDCR 11.

26 ³Eureka County v. State Engineer at 16



1 grant KVR's applications when the result of appropriations would conflict with existing
2 rights and based upon unsupported findings that mitigation would be sufficient to rectify
3 the conflict violates the Legislature's directive that the State Engineer must deny use or
4 change applications when the use or change would conflict with existing rights."⁴ Having
5 found petitioners had met their burden to show the State Engineer's decision was
6 incorrect, the court held "the State Engineer's decision to grant KVR's applications cannot
7 stand "⁵ The court reversed and remanded these cases to the district court for further
8 proceedings consistent with this opinion.⁶

9 The Nevada Supreme Court did not remand the cases to the State Engineer for
10 further proceedings consistent with its opinion which it could have done if the court
11 concluded additional administrative review and findings were necessary. Based upon the
12 Supreme Court's reversal of this Court's order denying petitions for judicial review and the
13 State Engineer's decision to grant KVR's applications, this Court finds that the petitions
14 for judicial review filed by the petitioners must be granted.

15 Good cause appearing,

16 IT IS HEREBY ORDERED that the petitions for judicial review filed by petitioners
17 in the above-captioned proceedings are **GRANTED**. The approval of the monitoring,
18 management, and mitigation plan, issued by respondent, STATE ENGINEER OF NEVADA
19 is **VACATED** and applications nos. 72695, 72696, 72697, 72698, 73545, 73546, 73547,
20 73548, 73549, 73550, 73551, 73552, 74587, 75988, 75989, 75990, 75991, 75992, 75993,
21 75994, 75995, 75996, 75997, 75998, 75999, 76000, 76001, 76002, 76003, 76004, 76005,
22 76006, 76007, 76008, 76009, 76745, 76746, 76802, 76803, 76804, 76805, 76989, 76990,

23
24 ⁴*Id*

25 ⁵*Id*.

26 ⁶*Id*.

SEVENTH JUDICIAL DISTRICT COURT
GARY D. FAIRMAN
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



1 77171, 77525, 77526, 77527, 77553, 78424, 79911, 79912, 79913, 79914, 79915, 79916,
2 79917, 79918, 79919, 79920, 79921, 79922, 79923, 79924, 79925, 79926, 79927, 79928,
3 79929, 79930, 79931, 79932, 79933, 79934, 79935, 79936, 79937, 79938, 79939, 79940,
4 79941 and 79942 are hereby DENIED pursuant to NRS 533.370(2) in accordance with the
5 holding of the Supreme Court's opinion in 131 Nev. Adv. Opn. 84 issued October 29, 2015.

6 IT IS HEREBY FURTHER ORDERED that the permits issued by the State Engineer
7 for the above applications are VACATED.

8 DATED this 7th day of March, 2016.

9
10 
11 DISTRICT JUDGE
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Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

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6

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF EUREKA

8

EUREKA COUNTY, a political subdivision
of the State of Nevada,

Case No. CV 1108-155
Case No. CV 1112-164

10

Petitioner,

Dept. No. 2

11

vs.

12

THE STATE OF NEVADA, EX REL.,
STATE ENGINEER, DIVISION OF WATER
RESOURCES,

13

14

Respondent.

15

CONLEY LAND & LIVESTOCK LLC, a
Nevada limited liability company, LLOYD
MORRISON, an individual,

Case No. CV 1108-156

16

17

Petitioners,

Dept. No. 2

18

vs.

19

THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA, DIVISION
OF WATER RESOURCES, DEPARTMENT
OF CONSERVATION AND NATURAL
RESOURCES, JASON KING, State
Engineer; KOBEH VALLEY RANCH, LLC,
Real Party in Interest,

20

21

22

23

Respondents.

24

25

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26

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///

1 KENNETH F. BENSON, an individual,
2 DIAMOND CATTLE COMPANY, LLC, a
3 Nevada limited liability company, and
4 MICHEL AND MARGARET ANN
ETCHEVERRY FAMILY, LP, a Nevada
registered foreign limited partnership,

5 Petitioners,

6 vs.

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

10 Respondents.

Case No. CV 1108-157
Case No. CV 1112-165
Case No. CV 1202-170

Dept. No. 2

11 CASE APPEAL STATEMENT

12 1. Name of appellant filing this case appeal statement:

13 a. The State Engineer of Nevada, Office of the State Engineer, Division of Water
14 Resources, Department of Conservation and Natural Resources, Division of
15 Water Resources.

16 2. Identify the judge issuing the decision, judgment, or order appealed from:

17 a. The Honorable Judge Gary D. Fairman.

18 b. Order being appealed: Amended Order Granting Objection to Proposed Order
19 Remanding to State Engineer; Order Granting Petitioners for Judicial Review;
20 and Order Vacating Permits filed March 9, 2016.

21 3. Identify each appellant and the name and address of counsel for each appellant:

22 a. The appellant is the State Engineer of Nevada, Office of the State Engineer,
23 Division of Water Resources, Department of Conservation and Natural
24 Resources, Division of Water Resources.

25 b. The attorneys for the State Engineer of Nevada, Office of the State Engineer,
26 Division of Water Resources, Department of Conservation and Natural
27 Resources, Division of Water Resources:

28 ///

Adam Paul Laxalt
Attorney General
Micheline N. Fairbank
Senior Deputy Attorney General
Nevada Bar No. 8062
100 North Carson Street
Carson City, Nevada 89701-4717
Tel: (775) 684-1225
Fax: (775) 684-1108

4. Identify each respondent and the name and address of appellate counsel, if known, for each:

Karen A. Peterson, Esq. (Nevada Bar No. 366)
Dawn Ellerbrock, Esq. (Nevada Bar No. 7327)
ALLISON, MACKENZIE, LTD.
402 North Division Street
Carson City, Nevada 89703

Ms. Peterson and Ms. Ellerbrock are attorneys of record for Eureka County. It is unknown whether Ms. Peterson and Ms. Ellerbrock will represent Eureka County in the appeal.

Theodore Beutel, Esq. (Nevada Bar No. 5222)
EUREKA COUNTY DISTRICT ATTORNEY
Post Office Box 190
Eureka, Nevada 89316

Mr. Beutel is an attorney of record for Eureka County. It is unknown whether Mr. Beutel will represent Eureka County in the appeal.

Jennifer Mahe, Esq. (Nevada Bar No. 9620)
MAHE LAW, LTD.
707 North Minnesota Street, Suite D
Carson City, Nevada 89703

Ms. Mahe is an attorney of record for Eureka County. It is unknown whether Ms. Mahe will represent Eureka County in the appeal.

Laura A. Schroeder, Esq. (Nevada Bar No. 3595)
Therese A. Ure, Esq. (Nevada Bar No. 10255)
SCHROEDER LAW OFFICES, P.C.
440 Marsh Avenue
Reno, Nevada 89509-1515

Ms. Schroeder and Ms. Ure are attorneys of record for Kenneth F. Benson, Diamond Cattle Company, LLC, and Michel and Margaret Ann Etchevery Family LP. It is unknown whether Ms. Schroeder and Ms. Ure will represent these parties in the appeal.

///

///

1 Francis M. Wikstrom, Esq. (Utah Bar No. 3462)
2 PARSONS BEHLE & LATIMER
3 201 South Main Street, Suite 1800
4 Salt Lake City, Utah 84111

5 Mr. Wikstrom is an attorney of record for Kobeh Valley Ranch, LLC
6 before the district court. Mr. Wikstrom is not an attorney licensed to
7 practice law in the state of Nevada. Upon information and belief,
8 Mr. Wikstrom was granted leave to appear under SCR 42. It is unknown
9 whether Mr. Wikstrom will represent Kobeh Valley Ranch, LLC in the
10 appeal.

11 Ross E. de Lipkau, Esq. (Nevada Bar No. 1628)
12 John R. Zimmerman, Esq. (Nevada Bar No. 9729)
13 PARSONS BEHLE & LATIMER
14 50 West Liberty Street, Suite 750
15 Reno, Nevada 89501

16 Mr. de Lipkau and Mr. Zimmerman are attorneys of record for
17 Kobeh Valley Ranch, LLC. It is unknown whether Mr. de Lipkau or
18 Mr. Zimmerman will represent Kobeh Valley Ranch, LLC in the appeal.

19 Paul G. Taggart, Esq. (Nevada Bar No. 6136)
20 David H. Rigdon, Esq. (Nevada Bar No. 13567)
21 TAGGART & TAGGART, LTD.
22 108 North Minnesota Street
23 Carson City, Nevada 89703

24 Mr. Taggart and Mr. Rigdon are attorneys of record for Kobeh Valley
25 Ranch, LLC. Upon information and belief, Mr. Taggart and Mr. Rigdon
26 will represent Kobeh Valley Ranch, LLC in the appeal.

27 5. Indicate whether any attorney identified above in response to questions 3 or 4 is not
28 licensed to practice law in Nevada and, if so, whether the district court granted that
attorney permission to appear under SCR 42 (attach a copy of any district court order
granting such permission):

a. Upon information and belief, Francis M. Wikstrom, Esq. (Utah Bar No. 3462) is
not licensed to practice law in the state of Nevada. Further, upon information
and belief, Mr. Wikstrom was granted permission pursuant to SCR 42, however,
the Office of the Attorney General is not in possession of the order granting such
leave.

///

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- 1 6. Indicate whether appellant was represented by appointed or retained counsel in the
2 district court:
 - 3 a. Appellant was represented by the Office of the Attorney General before the
4 district court.
- 5 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:
 - 6 a. Appellant is represented by the Office of the Attorney General on appeal.
- 7 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the
8 date of entry of the district court order granting such leave:
 - 9 a. Appellant did not seek in forma pauperis status and was not granted leave to
10 proceed in forma pauperis.
- 11 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,
12 indictment, information, or petition was filed):
 - 13 a. A petition for judicial review was filed on August 8, 2011, before the Seventh
14 Judicial District Court case no. CV 1108-155.
 - 15 b. A petition for writ of prohibition, complaint and petition for judicial review was
16 filed on August 10, 2011, before the Seventh Judicial District Court in case
17 no. CV 1108-156.
 - 18 c. A petition for judicial review was filed on August 10, 2011, before the Seventh
19 Judicial District Court in case no. CV 1108-157.
 - 20 d. A petition for judicial review was filed on December 29, 2011, before the
21 Seventh Judicial District Court in case no. CV 1112-164.
 - 22 e. A petition for judicial review was filed on December 29, 2011, before the
23 Seventh Judicial District Court in case no. CV 1112-165.
 - 24 f. A petition for judicial review was filed on February 3, 2012, before the Seventh
25 Judicial District Court in case no. CV 1201-170.
 - 26 g. A petition for judicial review was filed on July 5, 2012, before the Seventh
27 Judicial District Court in case no. CV 1207-178.

28 ///

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

a. This is an appeal from the Amended Order Granting Objection to Proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; Order Vacating Permits filed on March 9, 2016, and which the notice of entry of order was served March 14, 2016. The March 9, 2016, Order followed the Nevada Supreme Court's opinion, 131 Nev. Adv. Op. 84, which was issued on October 19, 2015. Based upon the District Court's interpretation of the Nevada Supreme Court's opinion, the District Court did not remand to the State Engineer applications to appropriate water for a beneficial use nos. 72695, 72696, 72697, 72698, 73545, 73546, 73547, 73548, 73549, 73550, 73551, 73552, 74587, 75988, 75889, 75990, 75991, 75992, 75993, 75994, 75995, 75996, 75997, 75998, 75999, 76000, 76001, 76002, 76003, 76004, 76005, 76006, 76007, 76008, 76745, 76746, 76802, 76803, 76804, 76805, 76989, 76990, 77171, 77525, 77526, 77527, 77553, 78424, 79911, 79912, 79913, 79914, 79915, 79916, 79917, 79918, 79919, 79920, 79921, 79922, 79923, 79924, 79925, 79926, 79927, 79928, 79929, 79930, 79931, 79932, 79933, 79934, 79935, 79936, 79937, 79938, 79939, 79940, 79941, and 79942, but rather denied those applications pursuant to NRS 533.370(2). The State Engineer appeals the District Court's interpretation of the Nevada Supreme Court's decision and the District Court's exercise of the executive authority in violation of the Nevada Constitution Article 3, Section 1, and NRS Chapter 533.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

///

///

- 1 a. Yes, this case was previously subject to an appeal from the Seventh Judicial
2 District Court's denial of petitions for judicial review arising out of the State
3 Engineer's Ruling No. 6127. The docket number of the prior proceedings were
4 case nos. 61324 and 63258, which were consolidated in the following caption:

5 EUREKA COUNTY, A POLITICAL
6 SUBDIVISION OF THE STATE OF
7 NEVADA; KENNETH F. BENSON,
8 INDIVIDUALLY; DIAMOND CATTLE
9 COMPANY, LLC, A NEVADA LIMITED
10 LIABILITY COMPANY; AND MICHEL AND
11 MARGARET ANN ETCHEVERRY FAMILY,
12 LP, A NEVADA REGISTERED FOREIGN
13 LIMITED PARTNERSHIP,

Appellants,

vs.

11 THE STATE OF NEVADA STATE
12 ENGINEER; THE STATE OF NEVADA
13 DIVISION OF WATER RESOURCES; AND
14 KOBEH VALLEY RANCH, LLC, A NEVADA
15 LIMITED LIABILITY COMPANY,

Respondents.

Case No. 61324

14 MICHEL AND MARGARET ANN
15 ETCHEVERRY FAMILY, LP, A NEVADA
16 REGISTERED FOREIGN LIMITED
17 PARTNERSHIP; DIAMOND CATTLE
18 COMPANY, LLC, A NEVADA LIMITED
19 LIABILITY COMPANY; AND KENNETH F.
20 BENSON, AN INDIVIDUAL,

Appellants,

vs.

19 STATE ENGINEER, OF NEVADA, OFFICE
20 OF THE STATE ENGINEER,
21 DEPARTMENT OF CONSERVATION AND
22 NATURAL RESOURCES; AND KOBEH
23 VALLEY RANCH, LLC, A NEVADA
24 LIMITED LIABILITY COMPANY,

Respondents.

Case No. 63258

- 23 12. Indicate whether this appeal involves child custody or visitation:

24 a. This appeal does not involve child custody or visitation.

- 25 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

26 a. Based upon the nature of the appeal, this case does not involve the possibility of
27 settlement.

28 ///

Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 8th day of April, 2016.

ADAM PAUL LAXALT
Attorney General

By: Micheline N. Fairbank
MICHELINE N. FAIRBANK
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Email: mfairbank@ag.nv.gov
*Counsel for Respondent,
Nevada State Engineer*

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this this 8th day of April, 2016, I served a true and correct copy of the foregoing CASE APPEAL STATEMENT, by placing said document in the U.S. Mail, postage prepaid, addressed to:

Karen A. Peterson, Esq.
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Theodore Beutel, Esq.
EUREKA COUNTY DISTRICT ATTORNEY
Post Office Box 190
Eureka, Nevada 89316
Attorneys for Eureka County

///

///

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24 *Town of Minden*

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26 Fernley, Nevada 89408
27 *Attorneys for Municipal Water Purveyors,*
28 *City of Fernley*

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Carson City

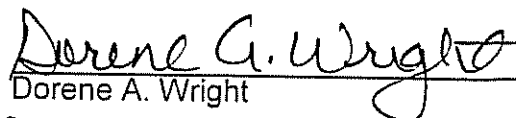
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Las Vegas, Nevada 89169
Attorneys for Municipal Water Purveyors,
Southern Nevada Water Authority


Dorene A. Wright

CASE NOS.: CV-1108-155
CV-1108-156
CV-1108-157
CV-1112-164
CV-1112-165
CV-1202-170
CV-1207-178

DEPT. NO.: II

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

* * *

EUREKA COUNTY, a political subdivision of the
State of Nevada,

Petitioner,

vs.

STATE OF NEVADA, EX. REL., STATE
ENGINEER, DIVISION OF WATER
RESOURCES,

Respondent.

CONLEY LAND & LIVESTOCK, LLC, a Nevada
limited liability company; LLOYD MORRISON,
and individual,

Petitioners,

vs.

OFFICE OF THE STATE ENGINEER OF THE
STATE OF NEVADA, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES, JASON KING, State Engineer,
KOBEL VALLEY RANCH, LLC, Real Party om
Interest,

Respondents.

KENNETH F. BENSON, an individual,
DIAMOND CATTLE COMPANY, LLC, a
Nevada limited liability company, and MICHEL
and MARGARET ANN ETCHEVERRY
FAMILY, LP, a Nevada registered foreign limited
partnership,

Petitioners,

**REAL PARTY IN INTEREST KOBEL
VALLEY RANCH, LLC'S NOTICE OF
APPEAL**

1 vs.

2
3 STATE ENGINEER OF NEVADA, OFFICE OF
4 THE STATE ENGINEER, DIVISION OF
5 WATER RESOURCES, DEPARTMENT OF
6 CONSERVATION AND NATURAL
7 RESOURCES,

8 Respondent.

9
10 EUREKA COUNTY, a political subdivision of the
11 State of Nevada,

12 Petitioner,

13 vs.

14
15 STATE OF NEVADA, EX. REL., STATE
16 ENGINEER, DIVISION OF WATER
17 RESOURCES,

18 Respondent.

19
20 KENNETH F. BENSON, an individual,
21 DIAMOND CATTLE COMPANY, LLC, a
22 Nevada limited liability company, and MICHEL
23 and MARGARET ANN ETCHEVERRY
24 FAMILY, LP, a Nevada registered foreign limited
25 partnership,

26 Petitioners,

27 vs.

28
29 STATE ENGINEER OF NEVADA, OFFICE OF
30 THE STATE ENGINEER, DIVISION OF
31 WATER RESOURCES, DEPARTMENT OF
32 CONSERVATION AND NATURAL
33 RESOURCES,

34 Respondent.

35
36 KENNETH F. BENSON, an individual,
37 DIAMOND CATTLE COMPANY, LLC, a
38 Nevada limited liability company, and MICHEL
39 and MARGARET ANN ETCHEVERRY
40 FAMILY, LP, a Nevada registered foreign limited
41 partnership,

42 Petitioners,

43 vs.

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

4 Respondent.
5

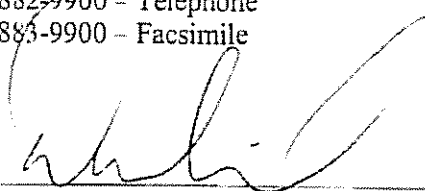
6 NOTICE is hereby given that Real Party in Interest, KOBEH VALLEY RANCH, LLC, by and
7 through its attorneys of record, PAUL G. TAGGART, ESQ. and DAVID H. RIGDON, ESQ., of the
8 law firm of TAGGART & TAGGART, LTD., hereby appeals to the Supreme Court of Nevada from
9 the Amended Order Granting Objection to Proposed Order Remanding to State Engineer; Order
10 Granting Petitions for Judicial Review; and Order Vacating Permits ("Order") entered by this Court on
11 March 9, 2016. Notice of Entry of that Order was served on March 14, 2016. A copy of the Order is
12 attached hereto as Exhibit 1.

13 **AFFIRMATION**
14 Pursuant to NRS 239B.030

15 The undersigned does hereby affirm that the preceding document does not contain the social
16 security number of any persons.

17 DATED this 12th day of April, 2016.
18

19 TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703
20 (775)882-9900 - Telephone
21 (775)883-9900 - Facsimile

22
23 By: 
24 PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
25 DAVID H. RIGDON, ESQ.
Nevada State Bar No. 13567
26 Attorneys for Real Party in Interest
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date, I served or caused to be served, a true and correct copy of the foregoing NOTICE OF APPEAL by:

☒ [X]

By **U.S. POSTAL SERVICE**: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

Karen A. Peterson, Esq.
Allison, Mackenzie, Pavlakis, Wright &
Fagan, Ltd.
P.O. Box 646
Carson City, NV 89701

Dale E. Ferguson, Esq.
Gordon H. DePaoli, Esq.
Woodburn and Wedge
6100 Neil Rd., Suite 500
Reno, NV 89511

Theodore Beutel, Esq.
Eureka County District Attorney
P.O. Box 190
Eureka, NV 89316

Micheline Fairbank, Esq.
Nevada Attorney General's Office
100 N. Carson St.
Carson City, NV 89701

Ross E. De Lipkau, Esq.
Gregory H. Morrison, Esq.
Parsons, Behle & Latimer
50 West Liberty St., Suite 750
Reno, NV 89501

Laura A. Schroeder, Esq.
Therese A. Ure, Esq.
Schroeder Law Offices, P.C.
440 Marsh Ave.
Reno, NV 89509

☐ []

By **U.S. CERTIFIED, RETURN RECEIPT POSTAL SERVICE**: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

☐ []

By **ELECTRONIC DELIVERY**, via:

DATED this 12 day of April, 2016.


Employee of TAGGART & TAGGART, LTD.

CASE NOs.: CV-1108-155
CV-1108-156
CV-1108-157
CV-1112-164
CV-1112-165
CV-1202-170
CV-1207-178

DEPT. NO.: II

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

* * *

EUREKA COUNTY, a political subdivision of the
State of Nevada,

Petitioner,

vs.

STATE OF NEVADA, EX. REL., STATE
ENGINEER, DIVISION OF WATER
RESOURCES,

Respondent.

CONLEY LAND & LIVESTOCK, LLC, a Nevada
limited liability company; LLOYD MORRISON,
and individual,

Petitioners,

vs.

OFFICE OF THE STATE ENGINEER OF THE
STATE OF NEVADA, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES, JASON KING, State Engineer,
KOBEL VALLEY RANCH, LLC, Real Party om
Interest,

Respondents.

KENNETH F. BENSON, an individual,
DIAMOND CATTLE COMPANY, LLC, a
Nevada limited liability company, and MICHEL
and MARGARET ANN ETCHEVERRY
FAMILY, LP, a Nevada registered foreign limited
partnership,

Petitioners,

REAL PARTY IN INTEREST KOBEL
VALLEY RANCH, LLC'S CASE
APPEAL STATEMENT

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89701
1734812-9900 - Telephone
1734813-9900 - Facsimile

1 vs.
2
3 STATE ENGINEER OF NEVADA, OFFICE OF
4 THE STATE ENGINEER, DIVISION OF
5 WATER RESOURCES, DEPARTMENT OF
6 CONSERVATION AND NATURAL
7 RESOURCES,
8 Respondent.
9
10 EUREKA COUNTY, a political subdivision of the
11 State of Nevada,
12 Petitioner,
13 vs.
14 STATE OF NEVADA, EX. REL., STATE
15 ENGINEER, DIVISION OF WATER
16 RESOURCES,
17 Respondent.
18
19 KENNETH F. BENSON, an individual,
20 DIAMOND CATTLE COMPANY, LLC, a
21 Nevada limited liability company, and MICHEL
22 and MARGARET ANN ETCHEVERRY
23 FAMILY, LP, a Nevada registered foreign limited
24 partnership,
25 Petitioners,
26 vs.
27 STATE ENGINEER OF NEVADA, OFFICE OF
28 THE STATE ENGINEER, DIVISION OF
WATER RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES,
Respondent.
KENNETH F. BENSON, an individual,
DIAMOND CATTLE COMPANY, LLC, a
Nevada limited liability company, and MICHEL
and MARGARET ANN ETCHEVERRY
FAMILY, LP, a Nevada registered foreign limited
partnership,
Petitioners,
vs.

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

Respondent.

COMES NOW, Real Party in Interest, KOBEH VALLEY RANCH, LLC, by and through its
attorneys of record, PAUL G. TAGGART, ESQ. and DAVID H. RIGDON, ESQ., of the law firm of
TAGGART & TAGGART, LTD., and hereby files the Case Appeal Statement pursuant to the Nevada
Rules of Appellate Procedure ("NRAP") 3(f) as follows:

1. Name of appellant filing this case appeal statement:

Real Party in Interest - KOBEH VALLEY RANCH, LLC

2. Identify the judge issuing the decision, judgment, or order appealed from:

THE HONORABLE GARY D. FAIRMAN

3. Identify each appellant and the name and address of counsel for each appellant:

KOBEH VALLEY RANCH, LLC

Attorneys for appellant KOBEH VALLEY RANCH, LLC

PAUL G. TAGGART, ESQ.

Nevada State Bar No. 6136

DAVID H. RIGDON, ESQ.

Nevada State Bar No. 13567

Taggart & Taggart, Ltd.

108 N. Minnesota St.

Carson City, NV 89703

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

Attorneys for appellant STATE ENGINEER

ADAM PAUL LAXALT

Attorney General

MICHELINE N. FAIRBANK

Senior Deputy Attorney General

Nevada State Bar No. 8062

100 North Carson St.

Carson City, NV 89701

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

EUREKA COUNTY

Attorneys for respondent EUREKA COUNTY

KAREN A. PETERSON, ESQ.

Nevada State Bar No. 366

DAWN ELLERBROCK, ESQ.

Nevada State Bar No. 7327

Allison MacKenzie, Ltd.

402 N. Division St.

Carson City, NV 89703

THEODORE BEUTEL, ESQ.

Nevada State Bar No. 5222

Eureka County District Attorney

P.O. Box 190

Eureka, NV 89316

KENNETH F. BENSON, DIAMOND CATTLE COMPANY, LLC, and MICHAEL and MARGARET ANN ETCHEVERRY FAMILY, LP

Attorneys for respondents KENNETH F. BENSON, DIAMOND CATTLE COMPANY, LLC, and MICHAEL and MARGARET ANN ETCHEVERRY FAMILY, LP

LAURA A. SCHROEDER, ESQ.

Nevada State Bar No. 3595

THERESE A. URE, ESQ.

Nevada State Bar No. 10255

Schroeder Law Offices, P.C.

440 Marsh Ave.

Reno, NV 89509

CONLEY LAND & LIVESTOCK LLC and LLOYD MORRISON

Attorneys for respondents CONLEY LAND & LIVESTOCK LLC and LLOYD MORRISON
Unknown at this time.

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

Upon information and belief all attorneys identified above are licensed to practice law in Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Appellant was represented in the district court by retained counsel ROSS E. DE LIPKAU, ESQ. and JOHN ZIMMERMAN, ESQ. of the law firm of Parsons Behle & Latimer and retained

counsel PAUL G. TAGGART, ESQ. and DAVID H. RIGDON, ESQ., of the law firm of Taggart & Taggart, Ltd.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellant is represented on appeal by retained counsel PAUL G. TAGGART, ESQ. and DAVID H. RIGDON, ESQ., of the law firm of Taggart & Taggart, Ltd.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

Appellant was not granted leave to proceed in forma pauperis.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

In Case No. CV-1108-155 a Petition for Judicial Review was filed on August 8, 2011.

In Case No. CV-1108-156 a Petition for Writ of Prohibition, Complaint, and Petition for Judicial Review was filed on August 10, 2011.

In Case No. CV-1108-157 a Petition for Judicial Review was filed on August 10, 2011.

In Case No. CV-1112-164 a Petition for Judicial Review was filed on December 29, 2011.

In Case No. CV-1112-165 a Petition for Judicial Review was filed on December 29, 2011.

In Case No. CV-1201-170 a Petition for Judicial Review was filed on February 3, 2012.

In Case No. CV-1207-178 a Petition for Judicial Review was filed on July 5, 2012.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This is an appeal from the Amended Order Granting Objection to proposed Order Remanding to State Engineer; Order Granting Petitions for Judicial Review; and Order Vacating Permits filed on March 9, 2016 and for which the Notice of Entry of Order was served on March 14, 2016.

The March 9, 2016 Amended Order was issued on remand by the Nevada Supreme Court as noted in 131 Nev. Adv. Op. 84, issued on October 19, 2015. Based on the District Court's erroneous interpretation of the Nevada Supreme Court opinion, the District Court failed to further remand consideration of the subject applications to appropriate water and applications to change the point of diversion, place of use, or manner of use of appropriated water to the State Engineer. Real Party in Interest, Kobeh Valley Ranch, LLC, appeals the District Court's interpretation of the remand instructions contained within the Nevada Supreme Court opinion and the District Court's exercise of executive authority in violation of the Nevada Constitution Article 3, Section 1, and NRS Chapter 533.

1 11. Indicate whether the case has previously been the subject of an appeal to or original writ
2 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the
prior proceeding:

3 This case was previously subject to an appeal from the District Court's denial of the various
4 Petitions for Judicial Review arising from State Engineer Ruling 6127. The docket numbers of
the consolidated appeal were Case Nos. 61324 and 63258.

5 12. Indicate whether this appeal involves child custody or visitation:

6 This appeal does not involve child custody or visitation.

7 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

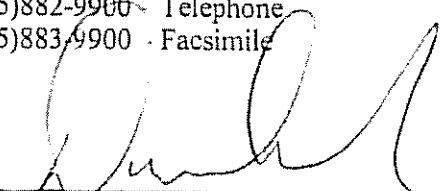
8 This appeal does not involve the possibility of settlement.
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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any persons.

DATED this 2nd day of April, 2016.

TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703
(775)882-9900 Telephone
(775)883-9900 Facsimile

By: 
PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
DAVID H. RIGDON, ESQ.
Nevada State Bar No. 13567
Attorneys for Real Party in Interest

Taggart & Taggart, Ltd.
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(775)883-9900 Facsimile

Taggart & Taggart, Ltd.
101 North Minnesota Street
Carson City, Nevada 89301
(775) 883-0980 Telephone
(775) 883-0980 Facsimile

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date, I served or caused to be served, a true and correct copy of the foregoing CASE APPEAL STATEMENT by:

☒ By U.S. POSTAL SERVICE: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

Karen A. Peterson, Esq.
Allison, Mackenzie, Pavlakis, Wright &
Fagan, Ltd.
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Carson City, NV 89701

Dale E. Ferguson, Esq.
Gordon H. DePaoli, Esq.
Woodburn and Wedge
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Theodore Beutel, Esq.
Eureka County District Attorney
P.O. Box 190
Eureka, NV 89316

Micheline Fairbank, Esq.
Nevada Attorney General's Office
100 N. Carson St.
Carson City, NV 89701


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Gregory H. Morrison, Esq.
Parsons, Behle & Latimer
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Reno, NV 89501

Laura A. Schroeder, Esq.
Therese A. Ure, Esq.
Schroeder Law Offices, P.C.
440 Marsh Ave.
Reno, NV 89509

☐ By U.S. CERTIFIED, RETURN RECEIPT POSTAL SERVICE: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

☐ By ELECTRONIC DELIVERY, via:

DATED this 12 day of April, 2016.



Employee of TAGGART & TAGGART, LTD.

PAUL G. TAGGART
SONIA E. TAGGART

TAGGART & TAGGART, LTD.
A PROFESSIONAL CORPORATION
108 NORTH MINNESOTA STREET
CARSON CITY, NEVADA 89703
www.taggartandtaggart.com

RACHEL L. WISE
DAVID H. RIGDON

April 27, 2016

Jason King
State Engineer
DIVISION OF WATER RESOURCES
901 South Stewart Street, 2nd Floor
Carson City, Nevada 89701

Re: Kobeh Valley Ranch Water Right Applications

Dear Mr. King:

Kobeh Valley Ranch, LLC ("KVR") requests that the State Engineer immediately proceed with the consideration and granting of change applications that are pending, and that are being filed concurrently with this letter, for use at the Mt. Hope mining project.

In Ruling 6127, the State Engineer approved water rights for the Mt. Hope project. However, that approval was reviewed and remanded by the Supreme Court. The Seventh Judicial District Court then vacated Ruling 6127. The State Engineer and KVR have appealed that ruling. However, KVR is entitled to proceed forward at this time without being delayed further by the Supreme Court proceeding.

To avoid further delay, in 2015, KVR filed new change applications. Those change applications identify the same base rights as those used in the change applications that were permitted in Ruling 6127. KVR would like the State Engineer to grant its 2015 change applications as soon as possible so KVR can move forward with the Mt. Hope project.

Further, concurrent with this letter, KVR is filing additional change applications on water rights it owns or controls to provide the water that is needed for the Mt. Hope project. KVR requests the State Engineer to expeditiously process these change applications and grant them during 2016. KVR is prepared to appear at an evidentiary hearing later this year to present evidence regarding mitigation that will address the concerns raised by the Supreme Court in its review of Ruling 6127.

Below is a more detailed explanation of KVR's request.

I. KVR's 2015 Change Applications

Kobeh Valley Ranch, LLC ("KVR") owns multiple existing water rights in Kobeh Valley and Diamond Valley. KVR also owns several applications to appropriate in Kobeh Valley.

KVR filed change applications on many of its water rights that were granted in Ruling 6127. Those applications were: Change Applications 79913, 79915, 79917, 79919, 79920,

79921, 79922, 79923, 79924, 79926, 79927, 79929, 79930, 79931, 79932, 79934, 79935, 79936, 79937, 79941 and 79942 ("Original Change Applications"). In 2015, KVR filed the following new change applications that identify the same base rights as the Original Change Applications. Those applications were: Change Applications 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 ("2015 Change Applications").

A. Fish Creek Change Applications

Permit 9682, Certificate 2780, is for 474 acre feet on 65.54 acres. Application 85585 is seeking to change the 474 acre feet that is appurtenant to the 65.54 acres identified in Certificate 2780. Based on the consumptive use duty of 2.7 acre feet per acre applied over the 65.54 certificated acres, a total pumping of 176.96 acre feet is requested as the consumptive use for mining, milling, and domestic use under Application 85585.

Permit 11072, certificate 2880, is for 322.5 acre feet to irrigate 132.76 acres. Application 85597 is to change the full 322.5 acre feet appurtenant to the 132.76 acres. Since the consumptive duty of 2.7 acre feet per acre applied on 132.76 acres totals of 358.452 is in excess of the certificated amount, the total 322.5 acre feet is being requested as the consumptive use for mining, milling, and domestic use under amount under Application 85597.

The existing rights are to be stripped from a total of 198.3 acres under Permits 9682 and 11072. The total consumptive use amount requested for pumping from the change applications regarding the Fish Creek Ranch under Applications 85585 and 85597 is 499.458 acre feet. The water from Permits 9682 and 11072 is being changed to proposed Well PoO 3 and Well 206 respectively.

B. Damale Ranch Change Applications

The portions of Permit 35866, Certificate 11256 and Permit 64616 owned by KVR are for a total combined duty of 819.24 acre feet on 204.81 acres. Applications 85596 and 85603 are seeking to change the 819.24 acre feet appurtenant to the 204.81 acres. Based on the consumptive use duty of 2.7 acre feet per acre applied over the 204.81 acres, a total of 552.99 acre feet is requested as the consumptive use for mining, milling, and domestic use under Applications 85596 and 85603. The total consumptive use amount requested for pumping from the change applications regarding Damale Ranch under Applications 85596 and 85603 is 552.99 acre feet. Application 85596 requests the water right to be diverted from proposed well 206. Application 85603 requests the water right to be diverted from proposed Well PoO 3.

C. Atlas Gold Mining, Inc.

KVR owns existing mining, milling and domestic water rights originally appropriated by Atlas Gold Mining, Inc., for a total duty of 1,389.60 acre feet. KVR is seeking to change the point of diversion and place of use only. The total combined duty requested under change Applications 85581, 85584, 85586, 85591, 85592, 85593, 85598, and 85599 is 1,389.60 acre

feet. The point of diversion for the water from these existing rights is proposed to be pumped from Well PoO_3, Well 206, and Well 229.

D. Bobcat Ranch, LLC

Permits 72580 through 72588 are permitted for 6,337.32 acre feet to irrigate 1,584.33 acres on the Bobcat Ranch. Permits 72580 through 72588 were the base rights for the following Original Change Applications that were approved in Ruling 6127: Permits 79913, 79915, 79917, 79920, 79921, 79926, 79927, 79932, and 79942. The following 2015 Change Applications were filed in 2015 and identify the same Bobcat Ranch base rights: Applications 85575, 85577, 85579, 85582, 85589, 85594, 85583, 85588, and 85604. Three of these 2015 Change Applications - Applications 85583, 85588, and 85604 - were filed on base rights to the base rights. Concurrently with the filing of this letter, these applications are being amended accordingly.

The total combined duty of the 2015 Change Applications at Bobcat Ranch is restricted to the consumptive use portion of 4,277.691 afa. The water in these applications is proposed to be pumped from wells PoO_1, PoO_3, Well 226, Well 227, Well 228, and Well 229.

II. KVR's 2015 Applications to Appropriate

KVR was awarded new appropriations in Ruling 6127. The new appropriation applications were Applications 79911, 79912, 79914, 79916, 79918, 79925, 79928, 79933, 79938, 79939, and 79940 ("Original Applications to Appropriate"). The approval of those new appropriations was vacated and appeal of the vacation of Ruling 6127 is pending.

In 2015, KVR filed new applications to appropriate. Those applications are Applications 85573, 85574, 85576, 85578, 85580, 85587, 85590, 85595, 85600, 85601, and 85602 ("2015 Applications to Appropriate"). KVR's 2015 Applications to Appropriate were filed after an application by Eureka County. However, the State Engineer may grant KVR 2015 Applications to Appropriate before considering Eureka County's application. First, the State Engineer can grant KVR's 2015 Applications to Appropriate as temporary mining rights pursuant to NRS 533.371. If approved under this authority, the 2015 Applications to Appropriate would not be a permanent long-term commitment of the perennial yield of Kobeh Valley, and would not conflict with Eureka County's application. Second, the State Engineer can designate preferred uses in Kobeh Valley pursuant to NRS 534.120 and prefer mining uses over all other uses.

III. Change Applications Filed Concurrently With This Letter ("2016 Change Applications")

KVR owns sufficient existing rights to replace the water that was approved in the Original Applications to Appropriate that are currently in litigation. If the State Engineer elects to not grant KVR's 2015 Applications to Appropriate based on the authority in NRS 533.371 or NRS 534.120, KVR is filing 2016 Change Applications to replace the water that was awarded in the Original Applications to Appropriate. However, if the Original Applications to Appropriate are later reinstated as a result of the pending appeal, KVR may withdraw these 2016 Change Applications.

A. 2016 Change Applications Involving Permits 78272-78275

Permits 78272-78275 were filed on April 17, 2009 and approved on August 27, 2014. Permits 78272-78275 are currently being used for irrigation purposes pursuant to the permit terms. Each right is limited to 4,344 afa, with a total combined duty of 6,337.32 acre feet, to irrigate 1,584.33 acres. Change applications are being filed concurrently with this letter to change the consumptive use portion of these rights to mining, milling, and domestic purposes. The water rights are being changed to Wells 220, 222, 224, and 227.

B. 2016 Change Applications Involving Diamond Valley Water Rights

Permits 57835, 57836, 57839, and 57840 are irrigation rights with a total combined duty of 312.92 afa to irrigate 78.23 acres. The consumptive use component is 195.57 afa. Permit 66062 is for 303.08 acre feet to irrigate 75.77 acres. The consumptive use portion of this right is 189.43 acre feet. The Original Change Applications included applications that were approved in Ruling 6127 to change these water rights. Those Original Change Applications were Applications 76008, 76802, 76804, 76805, and 78424. New 2016 Change Applications are being filed concurrently with this letter that identify the same base rights as those in Applications 76008, 76802, 76804, 76805, and 78424. The total consumptive duty that is being sought in these applications is no greater than the consumptive use of the base rights.

Permits 50962, 50963, and 57838 are irrigation water rights with a total combined duty of 473.2 acre feet on a total of 118.3 acres. The consumptive use component of these rights is 295.75 acre feet. 2016 Change Applications are filed concurrently with this letter to request the change of the total consumptive use portion of these rights.

IV. Conclusion

KVR owns a total of 15,679.94 afa in existing rights in Kobeh Valley. The combined consumptive use duty of the 2015 Change Applications and the 2016 Change Applications in Kobeh Valley is 10,997.43 acre feet. The total duty of KVR's Diamond Valley groundwater rights is 1,089.20 acre feet. The total consumptive use duty of these rights is 680.75 acre feet. Accordingly, KVR respectfully requests the State Engineer to grant the 2015 Change Applications and the 2015 Applications to Appropriate. Alternatively, KVR respectfully requests the State Engineer to grant the 2015 Change Applications and the 2016 Change Applications that are filed concurrently with this letter with a total combined consumptive duty of 11,678.18 acre feet per annum.

Sincerely,


PAUL G. TAGGART, ESQ.

PGT:ct
cc: Client

AMENDED

Application No. 85576

**APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC
WATERS OF THE STATE OF NEVADA**

THIS SPACE FOR OFFICE USE ONLY

Date of Filing in State Engineer's Office OCT 28 2015

Returned to applicant for correction _____

Corrected Application filed APR 27 2016 Map filed Dec. 5, 2005 Under 72695

The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company

1726 Cole Blvd, Suite 115

of Lakewood

Street Address or P.O. Box

City or Town

Colorado 80401

State and ZIP Code

hereby make(s) application for permission to appropriate the

public waters of the State of Nevada, as hereinafter stated. (If applicant is a corporation, give date and place of incorporation; if a copartnership or association, give names of members.)

February 23, 2007, Nevada

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

1. The source of water is underground.
Name of the stream, lake, underground, spring or other sources.
2. The amount of water applied for is 3.0 cfs up to 2,000 afa.
One second foot equals 448.83 gallons per minute.
 - (a) If stored in a reservoir give the number of acre-feet _____
3. The water is to be used for mining, milling, and domestic.
Irrigation, power, mining, commercial, domestic or other use. Must be limited to one major use.
4. If use is for:
 - (a) Irrigation, state number of acres to be irrigated _____
 - (b) Stockwater, state number and kind of animals _____
 - (c) Other use (describe fully in No. 12) _____
 - (d) Power:
 - (1) Horsepower developed _____
 - (2) Point of return of water to stream _____

5. The water is to be diverted from its source at the following point: (Describe as being within a 40-acre subdivision of public survey, and by course and distance to a found section corner. If on unsurveyed land, it should be so stated.)

SW¼ SW¼, Section 31, T.21N., R.51E., MDB&M, or at a point from which the NE corner of Section 24, T.21N., R.50E., MDB&M, bears N.3°21'W., a distance of 15,760 feet. Being Well No. 226 as shown on the map filed under Permit 79911.

6. Place of use: (Describe by legal subdivision. If on unsurveyed land, it should be so stated)

See Exhibit A attached hereto

7. Use will begin about January 1 and end about December 31 of each year.
Month and Day Month and Day

8. Description of proposed works. (Under the provisions of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e. diversion structure, ditches and flumes, drilled well with a pump and motor, etc.)

Drilled and cased well, electrical motor and submersible pump, and pipelines comprising the distribution system to the mine and mill site

9. Estimated cost of works: \$3,000,000

10. Estimated time required to construct works: Five (5) Years

(If the well is complete, describe works.)

11. Estimated time required to complete the application of water to beneficial use: Ten (10) Years

12. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

See Exhibit B Attached hereto

13. Miscellaneous remarks:

Paul@legalnt.com

E-mail Address

(775) 882-9900

Phone No.

Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

RECEIVED

APR 27 2016

Paul G. Taggart, Esq. STATE ENGINEER'S OFFICE

Paul G. Taggart Type or print name clearly

Signature, applicant or agent

Taggart & Taggart, Ltd.

Company Name

108 N. Minnesota Street

Street Address or PO Box

Carson City, NV 89703

City, State, ZIP Code

Revised 07/13 \$360 FILING FEE AND SUPPORTING MAP MUST ACCOMPANY APPLICATION

APP567

EXHIBIT "A",
PROPOSED PLACE OF USE

See map filed in support of Application 79911 for proposed Place of Use.

Division	Section	Township	Range	Meridian
W½	2	20N	50E	MDB&M
All	3 - 5	20N	50E	MDB&M
All	1 - 3	21N	50E	MDB&M
All	10 - 15	21N	50E	MDB&M
All	22 - 27	21N	50E	MDB&M
All	34 - 36	21N	50E	MDB&M
S½	32 & 33	21N	50E	MDB&M
All	1 - 36	21N	51E	MDB&M
All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
All	30 & 31	22N	53E	MDB&M
All	34 - 36	23N	51E	MDB&M
All	31	21½N	53E	MDB&M

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APR 27 2016

STATE ENGINEER'S OFFICE

Exhibit B
Remarks

This application is being filed to be used in conjunction with applications to change filed simultaneously herewith from Kobeh and Diamond Valleys and those previously filed under Applications 85575, 85577, 85579, 85581, 85582, 85584, 85585, 85586, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, and 85603 in Kobeh Valley. The total combined duty of all the Kobeh Valley Ranch, LLC applications will not exceed the consumptive use of 11,678.18 acre feet.

The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly, and submitted to the Bureau of Land Management.

Groundwater will be developed from the Kobeh Valley Groundwater Basin, through a series of production wells. Water will be conveyed to a storage reservoir via a booster pumping station. Water from the storage reservoir will be conveyed to the reduction plant or mill, located within the Diamond Valley drainage basin. After the water is placed to a beneficial use within the reduction plant, a portion of the water will be diverted to a recycling pond, with such water returned to the storage reservoir. The vast majority of water will be carried via the tailings leaving the reduction plant, and will be placed in a tailings pond, located within Kobeh Valley.

Thus, the majority of water consumption will take place in Kobeh Valley, and not Diamond Valley.

The total volume of water to be consumed, being the total combined duty of all applications filed herewith shall not exceed 11,678.18 acre-feet annually. The contemplated mine life, as currently best determined, is 44 years, commencing upon start up or commencement of the mine and works of reduction.

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

AMENDED

Application No. 85583

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office _____

Returned to applicant for correction _____

Corrected application filed APR 27 2016 Map filed June 15, 2010 Under 79911

The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company

1726 Cole Blvd, Suite 115

of Lakewood

Street Address or PO Box

City or Town

Colorado 80401

State and ZIP Code

hereby make(s) application for permission to change the

☒ Point of diversion

☒ Place of use

☒ Manner of use

☐ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Permit 72583

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APR 27 2016

1. The source of water is underground

STATE ENGINEER'S OFFICE

Name of stream, lake, underground, spring or other sources.

2. The amount of water to be changed 1.0 cfs, 211.25 afa

Second feet, acre-feet. One second foot equals 448.83 gallons per minute.

3. The water to be used for mining, milling and domestic

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use

4. The water heretofore used for irrigation and domestic

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

SE 1/4 SW 1/4, Section 35, T.21N., R.50E., MDB&M, or at a point from which the NE corner of Section 24, T.21N, R50E., MDB&M bears N.28°42'E., a distance of 17,865 feet. Being Well PoO 3 as shown on the map accompanying Application 79911.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

SW 1/4 NW 1/4, Section 23, T.19N., R.47E., MDB&M, or at a point from which bears S.43°41'48"E., a distance of 1,908.68 feet from the NW corner of said Section 23. Being Well No. 2 as shown on the map filed under Permit 72580.

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)

See Exhibit A attached hereto

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

S $\frac{1}{4}$ Section 15; S $\frac{1}{2}$ N $\frac{1}{2}$, a portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ Section 21; N $\frac{1}{4}$, SW $\frac{1}{4}$ Section 22; N $\frac{1}{4}$ Section 23; NW $\frac{1}{4}$ Section 24; all in T.19N., R.47E., MDB&M. See map filed under Permit 72580.

9. Proposed use will be from January 1 to December 31 of each year.
Month and Day Month and Day

10. Existing use permitted from January 1 to December 31 of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

Drilled and cased well, electrical motor and submersible pump, and pipelines comprising distribution system to mine and mill site.

12. Estimated cost of works \$3,000,000

13. Estimated time required to construct works 5 years

If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use 10 Years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

See Exhibit B attached hereto

16. Miscellaneous remarks:

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APR 27 2016

STATE ENGINEER'S OFFICE

Paul@legalnt.com

E-mail Address

(775) 882-9900

Phone No.

Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

Paul G. Taggart, Esq.

Paul G. Taggart
Type or print name clearly

Signature, applicant or agent

Taggart & Taggart, Ltd.

Company Name

108 N. Minnesota Street

Street Address or PO Box

Carson City, NV 89703

City, State, ZIP Code

EXHIBIT "A",
PROPOSED PLACE OF USE

See map filed in support of Application 79911 for proposed Place of Use.

Division	Section	Township	Range	Meridian
W½	2	20N	50E	MDB&M
All	3 - 5	20N	50E	MDB&M
All	1 - 3	21N	50E	MDB&M
All	10 - 15	21N	50E	MDB&M
All	22 - 27	21N	50E	MDB&M
All	34 - 36	21N	50E	MDB&M
S½	32 & 33	21N	50E	MDB&M
All	1 - 36	21N	51E	MDB&M
All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
All	30 & 31	22N	53E	MDB&M
All	34 - 36	23N	51E	MDB&M
All	31	21½N	53E	MDB&M

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

Exhibit B
Remarks

This application is being filed to be used in conjunction with other applications to change filed simultaneously herewith from Kobeh and Diamond Valleys and those previously filed under Applications 85575, 85577, 85579, 85581, 85582, 85584, 85585, 85586, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, and 85603 in Kobeh Valley. The total combined duty of all the change applications will not exceed the consumptive use of 11,678.18 acre feet.

The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly, and submitted to the Bureau of Land Management.

Groundwater will be developed from the Kobeh Valley Groundwater Basin, through a series of production wells. Water will be conveyed to a storage reservoir via a booster pumping station. Water from the storage reservoir will be conveyed to the reduction plant or mill, located within the Diamond Valley drainage basin. After the water is placed to a beneficial use within the reduction plant, a portion of the water will be diverted to a recycling pond, with such water returned to the storage reservoir. The vast majority of water will be carried via the tailings leaving the reduction plant, and will be placed in a tailings pond, located within Kobeh Valley.

Thus, the majority of water consumption will take place in Kobeh Valley, and not Diamond Valley.

The total volume of water to be consumed, being the total combined duty of all applications filed herewith shall not exceed 11,678.18 acre-feet annually. The contemplated mine life, as currently best determined, is 44 years, commencing upon start up or commencement of the mine and works of reduction.

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APR 27 2016

STATE ENGINEER'S OFFICE

AMENDED

Application No. 85588

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office OCT 28 2015

Returned to applicant for correction _____

Corrected application filed APR 27 2016 Map filed June 15, 2010 Under 79911

The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company

1726 Cole Blvd, Suite 115

of Lakewood

Street Address or PO Box

City or Town

Colorado 80401

State and ZIP Code

hereby make(s) application for permission to change the

☒ Point of diversion

☒ Place of use

☒ Manner of use

☐ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Permit 72584

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APR 27 2016

STATE ENGINEER'S OFFICE

1. The source of water is underground

Name of stream, lake, underground, spring or other sources.

2. The amount of water to be changed 3.99 cfs, 842.91 afa

Second feet, acre-feet. One second foot equals 448 83 gallons per minute.

3. The water to be used for mining, milling and domestic

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use

4. The water heretofore used for irrigation and domestic

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

NE 1/4 NE 1/4, Section 36, T.22N., R.50E., MDB&M, or at a point from which the SE corner of said Section 36 bears S.10°34'30"E., a distance of 4850 feet. Being Well No. 228 as shown on the map filed under Permit 79911.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

NE 1/4 SE 1/4, Section 21, T.19N., R.47E., MDB&M, or at a point which bears S.01°14'21"W., a distance of 3,911.35 feet from the NE corner of said Section 21. Being Well No. 5 as shown on the map filed under Permit 72580.

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)
See Exhibit A attached hereto

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

S½ Section 15; S½ N¼, a portion of the NW¼ NE¼, NE¼ NE¼, N¼ S¼ Section 21; N¼, SW¼ Section 22; N¼ Section 23; NW¼ Section 24; all in T.19N., R.47E., MDB&M. See map filed under Permit 72580.

9. Proposed use will be from January 1 to December 31 of each year.
Month and Day Month and Day

10. Existing use permitted from January 1 to December 31 of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

Drilled and cased well, electrical motor and submersible pump, and pipelines comprising distribution system to mine and mill site.

12. Estimated cost of works \$3,000,000

13. Estimated time required to construct works 5 years

If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use 10 Years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

See Exhibit B attached hereto

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

16. Miscellaneous remarks:

Paul@legaltnt.com

E-mail Address

(775) 882-9900

Phone No.

Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

Paul G. Taggart, Esq.

Paul G. Taggart

Signature, applicant or agent

Taggart & Taggart, Ltd.

Company Name

108 N. Minnesota Street

Street Address or PO Box

Carson City, NV 89703

City, State, ZIP Code

EXHIBIT "A",
PROPOSED PLACE OF USE

See map filed in support of Application 79911 for proposed Place of Use.

Division	Section	Township	Range	Meridian
W½	2	20N	50E	MDB&M
All	3 - 5	20N	50E	MDB&M
All	1 - 3	21N	50E	MDB&M
All	10 - 15	21N	50E	MDB&M
All	22 - 27	21N	50E	MDB&M
All	34 - 36	21N	50E	MDB&M
S½	32 & 33	21N	50E	MDB&M
All	1 - 36	21N	51E	MDB&M
All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
All	30 & 31	22N	53E	MDB&M
All	34 - 36	23N	51E	MDB&M
All	31	21½N	53E	MDB&M

RECEIVED
APR 27 2016
STATE ENGINEER'S OFFICE

Exhibit B
Remarks

This application is being filed to be used in conjunction with other applications to change filed simultaneously herewith from Kobeh and Diamond Valleys and those previously filed under Applications 85575, 85577, 85579, 85581, 85582, 85584, 85585, 85586, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, and 85603 in Kobeh Valley. The total combined duty of all the change applications will not exceed the consumptive use of 11,678.18 acre feet.

The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly, and submitted to the Bureau of Land Management.

Groundwater will be developed from the Kobeh Valley Groundwater Basin, through a series of production wells. Water will be conveyed to a storage reservoir via a booster pumping station. Water from the storage reservoir will be conveyed to the reduction plant or mill, located within the Diamond Valley drainage basin. After the water is placed to a beneficial use within the reduction plant, a portion of the water will be diverted to a recycling pond, with such water returned to the storage reservoir. The vast majority of water will be carried via the tailings leaving the reduction plant, and will be placed in a tailings pond, located within Kobeh Valley.

Thus, the majority of water consumption will take place in Kobeh Valley, and not Diamond Valley.

The total volume of water to be consumed, being the total combined duty of all applications filed herewith shall not exceed 11,678.18 acre-feet annually. The contemplated mine life, as currently best determined, is 44 years, commencing upon start up or commencement of the mine and works of reduction.

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

AMENDED

85603

Application No. _____

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office OCT 28 2015

Returned to applicant for correction _____

Corrected application filed APR 27 2016 Map filed June 15, 2010 Under 79911The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company1726 Cole Blvd, Suite 115of Lakewood

Street Address or PO Box

City or Town

Colorado 80401

State and ZIP Code

hereby make(s) application for permission to change the

☒ Point of diversion☒ Place of use☒ Manner of use☒ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Permit 64616**RECEIVED****APR 27 2016**

STATE ENGINEER'S OFFICE

1. The source of water is underground

Name of stream, lake, underground, spring or other sources.

2. The amount of water to be changed 2.24 cfs, 819.24 afa

Second feet, acre-feet. One second foot equals 448.83 gallons per minute.

3. The water to be used for mining, milling and domestic

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use

4. The water heretofore used for irrigation and domestic

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

SE 1/4 SW 1/4, Section 35, T.21N., R.50E., MDB&M, or at a point from which the NE corner of Section 24, T.21N. R.50E., MDB&M bears N.28°42'E., a distance of 17.865 feet. Being Well PoO_3 as shown on the map accompanying Application 79911.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

NE 1/4 NE 1/4, Section 21, T.19N., R.47E., MDB&M, or at a point from which the NE corner of said Section 21 bears N.0°54'E., a distance of 1,280 feet. See map filed under Permit 64616

APP578

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)

See Exhibit A attached hereto

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

within the S¼ S¼ Section 16; N¼ N¼ Section 21; all in T19N, R47E, MDB&M. See map filed under Permit 64616

9. Proposed use will be from January 1 to December 31 of each year.
Month and Day Month and Day

10. Existing use permitted from January 1 to December 31 of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

Drilled and cased well, electrical motor and submersible pump, and pipelines comprising distribution system to mine and mill site.

12. Estimated cost of works \$3,000,000

13. Estimated time required to construct works 5 years

If well completed, describe well

14. Estimated time required to complete the application of water to beneficial use 10 Years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

See Exhibit B attached hereto

16. Miscellaneous remarks:

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

Paul@legaltnt.com

E-mail Address

(775) 882-9900

Phone No

Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

Paul G. Taggart, Esq.

Paul G. Taggart
Type or print name clearly

Signature, applicant or agent

Taggart & Taggart, Ltd.

Company Name

108 N. Minnesota Street

Street Address or PO Box

Carson City, NV 89703

City, State, ZIP Code

EXHIBIT "A",
PROPOSED PLACE OF USE

See map filed in support of Application 79911 for proposed Place of Use.

Division	Section	Township	Range	Meridian
W½	2	20N	50E	MDB&M
All	3 - 5	20N	50E	MDB&M
All	1 - 3	21N	50E	MDB&M
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All	22 - 27	21N	50E	MDB&M
All	34 - 36	21N	50E	MDB&M
S½	32 & 33	21N	50E	MDB&M
All	1 - 36	21N	51E	MDB&M
All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
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All	34 - 36	23N	51E	MDB&M
All	31	21½N	53E	MDB&M

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STATE ENGINEER'S OFFICE

Exhibit B
Remarks

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Groundwater will be developed from the Kobeh Valley Groundwater Basin, through a series of production wells. Water will be conveyed to a storage reservoir via a booster pumping station. Water from the storage reservoir will be conveyed to the reduction plant or mill, located within the Diamond Valley drainage basin. After the water is placed to a beneficial use within the reduction plant, a portion of the water will be diverted to a recycling pond, with such water returned to the storage reservoir. The vast majority of water will be carried via the tailings leaving the reduction plant, and will be placed in a tailings pond, located within Kobeh Valley.

Thus, the majority of water consumption will take place in Kobeh Valley, and not Diamond Valley.

The total volume of water to be consumed, being the total combined duty of all applications filed herewith shall not exceed 11,678.18 acre-feet annually. The contemplated mine life, as currently best determined, is 44 years, commencing upon start up or commencement of the mine and works of reduction.

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

AMENDED

Application No. 85604

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office OCT 28 2015

Returned to applicant for correction _____

Corrected application filed APR 27 2016 Map filed June 15, 2010 Under 79911

The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company

1726 Cole Blvd, Suite 115

of Lakewood

Street Address or PO Box

City or Town

Colorado 80401

State and ZIP Code

hereby make(s) application for permission to change the

☒ Point of diversion

☒ Place of use

☒ Manner of use

☐ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Permit 72585

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

1. The source of water is underground

Name of stream, lake, underground, spring or other sources.

2. The amount of water to be changed 2.72 cfs, 1280.0 afa

Second feet, acre-feet. One second foot equals 448.83 gallons per minute.

3. The water to be used for mining, milling and domestic

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use

4. The water heretofore used for irrigation and domestic

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

SW¼ SW¼, Section 31, T.21N., R.51E., MDB&M, or at a point from which the NE corner of Section 24, T.21N., R.50E., MDB&M, bears N.3°21'W., a distance of 15.260 feet. Being Well No. 226 as shown on the map filed under Permit 79911.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

SW¼ SW¼, Section 22, T.19N., R.47E., MDB&M, or at a point which bears S.18°09'28"E., a distance of 4,223.74 feet from the NW corner of said Section 22. Being Well No. 3 as shown on the map filed under Permit 72580.

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)

See Exhibit A attached hereto

85604

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

S $\frac{1}{2}$ Section 15; S $\frac{1}{2}$ N $\frac{1}{4}$, a portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{4}$ S $\frac{1}{2}$ Section 21; N $\frac{1}{4}$, SW $\frac{1}{4}$ Section 22;
N $\frac{1}{4}$ Section 23; NW $\frac{1}{4}$ Section 24; all in T.19N., R.47E., MDB&M. See map filed under Permit 72580.

9. Proposed use will be from January 1 to December 31 of each year.
Month and Day Month and Day

10. Existing use permitted from January 1 to December 31 of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

Drilled and cased well, electrical motor and submersible pump, and pipelines comprising distribution system to mine and mill site.

12. Estimated cost of works \$3,000,000

13. Estimated time required to construct works 5 years

If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use 10 Years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

See Exhibit B attached hereto

16. Miscellaneous remarks:

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APR 27 2016

STATE ENGINEER'S OFFICE

Paul@legalnt.com

E-mail Address

(775) 882-9900

Phone No.

Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

Paul G. Taggart, Esq.

Paul G. Taggart
Type or print name clearly

Signature, applicant or agent

Taggart & Taggart, Ltd.

Company Name

108 N. Minnesota Street

Street Address or PO Box

Carson City, NV 89703

City, State, ZIP Code

EXHIBIT "A",
PROPOSED PLACE OF USE

See map filed in support of Application 79911 for proposed Place of Use.

Division	Section	Township	Range	Meridian
W½	2	20N	50E	MDB&M
All	3 - 5	20N	50E	MDB&M
All	1 - 3	21N	50E	MDB&M
All	10 - 15	21N	50E	MDB&M
All	22 - 27	21N	50E	MDB&M
All	34 - 36	21N	50E	MDB&M
S½	32 & 33	21N	50E	MDB&M
All	1 - 36	21N	51E	MDB&M
All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
All	30 & 31	22N	53E	MDB&M
All	34 - 36	23N	51E	MDB&M
All	31	21½N	53E	MDB&M

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APR 27 2016

STATE ENGINEER'S OFFICE

Exhibit B
Remarks

This application is being filed to be used in conjunction with other applications to change filed simultaneously herewith from Kobeh and Diamond Valleys and those previously filed under Applications 85575, 85577, 85579, 85581, 85582, 85584, 85585, 85586, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, and 85603 in Kobeh Valley. The total combined duty of all the change applications will not exceed the consumptive use of 11,678.18 acre feet.

The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly, and submitted to the Bureau of Land Management.

Groundwater will be developed from the Kobeh Valley Groundwater Basin, through a series of production wells. Water will be conveyed to a storage reservoir via a booster pumping station. Water from the storage reservoir will be conveyed to the reduction plant or mill, located within the Diamond Valley drainage basin. After the water is placed to a beneficial use within the reduction plant, a portion of the water will be diverted to a recycling pond, with such water returned to the storage reservoir. The vast majority of water will be carried via the tailings leaving the reduction plant, and will be placed in a tailings pond, located within Kobeh Valley.

Thus, the majority of water consumption will take place in Kobeh Valley, and not Diamond Valley.

The total volume of water to be consumed, being the total combined duty of all applications filed herewith shall not exceed 11,678.18 acre-feet annually. The contemplated mine life, as currently best determined, is 44 years, commencing upon start up or commencement of the mine and works of reduction.

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APR 27 2015

STATE ENGINEER'S OFFICE

Application No.

86149

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office

APR 27 2016

Returned to applicant for correction

Corrected application filed

Map filed Sept. 14, 2007 Under 76005The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company1726 Cole Blvd, Suite 115of Lakewood

Street Address or PO Box

City or Town

Colorado 80401

State and ZIP Code

hereby make(s) application for permission to change the

☒ Point of diversion☒ Place of use☒ Manner of use☐ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Permit 57835**RECEIVED****APR 27 2016**1. The source of water is underground

Name of stream, lake, underground, spring or other sources.

STATE ENGINEER'S OFFICE2. The amount of water to be changed 0.66 cfs, 155.48 afa

Second feet, acre-feet. One second foot equals 448.83 gallons per minute.

3. The water to be used for mining, milling and dewatering

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use

4. The water heretofore used for irrigation

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

SE 1/4 SE 1/4 of unsurveyed Section 12, T.22N., R.51E., MDB&M, or at a point from which the W 1/4 corner of Section 13, T.22N., R.51 1/4 E., MDB&M bears N.23°02'49"E., a distance of 2,183.38 feet. See map filed under Permit 76005.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

SE 1/4 SW 1/4, Section 13, T.23N., R.52E., MDB&M, or at a point from which the SW corner of said Section 13 bears S68°40'37"W., a distance of 2,140.00 feet. See map filed under Permit 57835.

DV
10 *153*
6.1

APP586

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)

See Exhibit A attached hereto. Reference is made to the map supporting Application No. 72695
79911

PLD
5/3/16

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

within the E $\frac{1}{4}$ & E $\frac{1}{4}$ W $\frac{1}{4}$ Section 24, NE $\frac{1}{4}$ & E $\frac{1}{4}$ NW $\frac{1}{4}$ Section 25, T.23N., R.52E., MDB&M; W $\frac{1}{4}$ W $\frac{1}{4}$ Section 19; W $\frac{1}{4}$ NW $\frac{1}{4}$ Section 30, T.23N., R.53E., MDB&M. See map filed under Permit 57835.

9. Proposed use will be from January 1 to December 31 of each year.
Month and Day Month and Day

10. Existing use permitted from January 1 to December 31 of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

Drilled and cased well, electrical motor and submersible pump, and pipelines comprising distribution system to mine and mill site.

12. Estimated cost of works \$3,000,000

13. Estimated time required to construct works 5 years

If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use 10 Years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

See Exhibit B attached hereto

16. Miscellaneous remarks:

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

Paul G. Taggart, Esq.

Paul@legaltnt.com

E-mail Address

(775) 882-9900

Phone No.

Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

Paul G. Taggart, Esq.

Paul G. Taggart

Signature, applicant or agent

Taggart & Taggart, Ltd.

Company Name

108 N. Minnesota Street

Street Address or PO Box

Carson City, NV 89703

City, State, ZIP Code

EXHIBIT "A",
PROPOSED PLACE OF USE

See map filed in support of Application 79911 for proposed Place of Use.

Division	Section	Township	Range	Meridian
W½	2	20N	50E	MDB&M
All	3 - 5	20N	50E	MDB&M
All	1 - 3	21N	50E	MDB&M
All	10 - 15	21N	50E	MDB&M
All	22 - 27	21N	50E	MDB&M
All	34 - 36	21N	50E	MDB&M
S½	32 & 33	21N	50E	MDB&M
All	1 - 36	21N	51E	MDB&M
All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
All	30 & 31	22N	53E	MDB&M
All	34 - 36	23N	51E	MDB&M
All	31	21½N	53E	MDB&M

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Exhibit B
Remarks

This application is being filed to be used in conjunction with other applications to change filed simultaneously herewith from Kobeh and Diamond Valleys and those previously filed under Applications 85575, 85577, 85579, 85581, 85582, 85584, 85585, 85586, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, and 85603 in Kobeh Valley. The total combined duty of the Diamond Valley Applications is 1,089.20 acre feet, not to exceed a consumptive duty of 680.75 acre feet. The total combined duty of all the change applications in both valleys will not exceed the consumptive use of 11,678.18 acre feet.

The points of diversion are fully set forth in the Hydrogeology and Numerical Flow Modeling Report dated April, 2010, prepared by Eureka Moly, and submitted to the Bureau of Land Management.

Groundwater will be developed from the Diamond Valley Groundwater Basin, through a series of production wells. Water will be conveyed to a storage reservoir via a booster pumping station. Water from the storage reservoir will be conveyed to the reduction plant or mill, located within the Diamond Valley drainage basin. After the water is placed to a beneficial use within the reduction plant, a portion of the water will be diverted to a recycling pond, with such water returned to the storage reservoir.

The vast majority of water for the project will be supplied by the Kobeh Valley rights and will be carried via the tailings leaving the reduction plant, and will be placed in a tailings pond, located within Kobeh Valley.

The contemplated mine life, as currently best determined, is 44 years, more or less, commencing upon start up or commencement of the mine and works of reduction.

RECEIVED

APR 27 2016

STATE ENGINEER'S OFFICE

86150

Application No. _____

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

THIS SPACE FOR OFFICE USE ONLY

APR 27 2016

Date of filing in State Engineer's Office _____

Returned to applicant for correction _____

Corrected application filed _____

Map filed March 27, 2008 Under 76802

The applicant Kobeh Valley Ranch, LLC, a Nevada limited liability company1726 Cole Blvd, Suite 115of Lakewood

Street Address or PO Box

City or Town

Colorado 80401

State and ZIP Code

hereby make(s) application for permission to change the

☒ Point of diversion☒ Place of use☒ Manner of use☐ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Permit 57836

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APR 27 2016

STATE ENGINEER'S OFFICE

1. The source of water is underground

Name of stream, lake, underground, spring or other sources.

2. The amount of water to be changed 0.66 cfs, 147.60 afa

Second feet, acre-feet. One second foot equals 448.83 gallons per minute.

3. The water to be used for mining, milling and dewatering

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use

4. The water heretofore used for Irrigation

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

NE 1/4 SW 1/4 of unsurveyed Section 12, T.22N., R.51E., MDB&M, or at a point from which the W 1/4 corner of Section 13, T.22N., R.51 1/2 E., MDB&M bears N.77°48'34"E., a distance of 2,865.65 feet (Well MH1). See map filed under Permit 76802.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

SE 1/4 SW 1/4, Section 13, T.23N., R.52E., MDB&M, or at a point from which the SW corner of said Section 13 bears S68°40'37"W., a distance of 2,140.00 feet. See map filed under Permit 57835.

10-153
4.1
APP590

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)

See Exhibit A attached hereto. Reference is made to the map supporting Application No. 72695
79911

PLO
5/3/16

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

Within the E $\frac{1}{4}$ & E $\frac{1}{4}$ W $\frac{1}{4}$ of Section 24, NE $\frac{1}{4}$ & E $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T.23N., R.52E., MDB&M;
W $\frac{1}{4}$ W $\frac{1}{4}$ of Section 19; W $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T.23N., R.53E., MDB&M. See map filed under Permit 57835.

9. Proposed use will be from January 1 to December 31 of each year.
Month and Day Month and Day

10. Existing use permitted from January 1 to December 31 of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

Drilled and cased well, electrical motor and submersible pump, and pipelines comprising distribution system to mine and mill site.

12. Estimated cost of works \$3,000,000

13. Estimated time required to construct works 5 years

If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use 10 Years

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STATE ENGINEER'S OFFICE

16. Miscellaneous remarks:

Paul@legaltnt.com

E-mail Address

(775) 882-9900

Phone No.

Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

Paul G. Taggart, Esq.

Paul G. Taggart Type or print name clearly

Signature, applicant or agent

Taggart & Taggart, Ltd.

Company Name

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All	22 - 27	21N	50E	MDB&M
All	34 - 36	21N	50E	MDB&M
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All	5 - 8	21N	52E	MDB&M
All	18 & 19	21N	52E	MDB&M
All	30 & 31	21N	52E	MDB&M
All	36	21½N	51½E	MDB&M
All	31 - 36	21½N	52E	MDB&M
All	34 - 36	22N	50E	MDB&M
All	1 - 3	22N	51E	MDB&M
All	10 - 15	22N	51E	MDB&M
All	20 - 36	22N	51E	MDB&M
All	1	22N	51½E	MDB&M
All	12 & 13	22N	51½E	MDB&M
All	24 & 25	22N	51½E	MDB&M
All	36	22N	51½E	MDB&M
All	1 - 36	22N	52E	MDB&M
All	6 & 7	22N	53E	MDB&M
All	18 & 19	22N	53E	MDB&M
All	30 & 31	22N	53E	MDB&M
All	34 - 36	23N	51E	MDB&M
All	31	21½N	53E	MDB&M

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The vast majority of water for the project will be supplied by the Kobeh Valley rights and will be carried via the tailings leaving the reduction plant, and will be placed in a tailings pond, located within Kobeh Valley.

The contemplated mine life, as currently best determined, is 44 years, more or less, commencing upon start up or commencement of the mine and works of reduction.

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