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

IN THE MATTER OF APPLICATION NUMBER 79911
FILED BY Kobeh Valley Ranch LLC (c/o General Moly, Inc.)
ON June 15, 20 10, TO APPROPRIATE THE
WATERS OF UNDERGROUND (EUREKA COUNTY)

PROTEST

FILED
AUG 12 2010
STATE ENGINEER'S OFFICE

Comes now EUREKA COUNTY
Printed or typed name of protestant

whose post office address is POST OFFICE BOX 677, 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 79911, filed on JUNE 15, 20 10

by KOBEH VALLEY RANCH LLC (c/o General Moly, Inc.) to appropriate the

waters of UNDERGROUND situated in EUREKA
Underground or name of stream, lake, spring or other source

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

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

LEONARD FIORENZI, COMMISSION CHAIRMAN
Printed or typed name, if agent

Address POST OFFICE BOX 677
Street No. or PO Box

EUREKA, NEVADA 89316
City, State and ZIP Code

(775) 237 - 5262
Phone Number

Subscribed and sworn to before me this 6 day of AUGUST, 20 10

SARA G SIMMONS
NOTARY PUBLIC, STATE OF NEVADA
EUREKA COUNTY • NEVADA
CERTIFICATE # 97-0349-3
APPT. EXP. JULY 17, 2012

Notary Public

State of NEVADA
County of EUREKA

+ $25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Exhibit "A"
Eureka County Protest to Kobeh Valley Ranch LLC
Application Nos. 79911 - 79942

1. The proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon *Ground-Water Resources – Reconnaissance Series Report 30* by Rush and Everett (1964) is 16,000 acre feet annually (afa) and assumes that the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant clearly conclude that the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. The groundwater discharged in the Kobeh Valley hydrographic basin by phreatophytic vegetation and applicant's pumping will total approximately 26,300 acre-feet per year. These total amounts are in excess of the perennial yield of the basin and result in mining groundwater from the basin, which is specifically prohibited in Nevada. In addition, there is a consensus that underflow from Kobeh Valley to Diamond Valley does occur. In dispute is the quantity of interbasin flow. Predictive modeling studies by the applicant's consultants suggest pumping in Diamond Valley has a potential to cause water-level declines in Kobeh Valley, suggesting a hydrologic continuum between the two basins. Granting the change applications will cause the basin to be over pumped to the detriment of the basin and prior existing water rights holders.

   The applicant's own investigations show most of the water sought to be appropriated by these applications will be derived from basin storage. The State Engineer has previously denied applications seeking to appropriate water from basin storage.

   Diversion of groundwater above the annual recharge may unreasonably lower the static water in the subject basin and could negatively affect hydraulic gradient influences and adversely affect the quality of the remaining groundwater. Groundwater modeling by the applicant's consultants show that the effects of the applicant's groundwater extractions will continue for decades after mine operations cease.

2. Existing 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 interbasin flow with any level of certainty. 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. 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.

3. Currently, there are other pending applications to appropriate groundwater and pending change applications in the Kobeh Valley basin filed by this applicant pertaining to the Mt. Hope Mine Project. These outstanding applications seek to appropriate an additional approximately 16,120 acre-feet of water rights per year and seek changes to an additional 2,829.72 acre-feet of water rights per year. The applicant does not appear to intend to place the water sought to be appropriated in the other pending applications to beneficial use. The applicant must withdraw these applications or a decision must be rendered on these applications prior to ruling on change applications 79911 - 79942. If all the applicant's pending applications are approved, the quantity of water granted to the applicant would exceed the project needs. Change applications 79915, 79917, 79920 and 79936 seek to change the same water rights as other pending change applications currently on file by this applicant.

4. Sustained over-pumping in Kobeh Valley is likely to impact irrigation and stock watering water right holders, impact domestic well owners and surface water flows in Kobeh Valley. Sustained over-pumping in Kobeh Valley may impact irrigation and stock watering water rights, domestic well owners and surface water rights in Diamond Valley and Pine Valley. The owners of these rights contribute to the long-term economic viability of the greater Eureka community; therefore, unless adequately mitigated, such impacts will prove detrimental to the health and welfare of Eureka County.

5. 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. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined prior to granting the applications. In accordance with the Eureka County Code and the Eureka County Master Plan, Eureka County requests the ability to continue to review all hydrologic data offered in support of the applications. The applicant has acknowledged that Eureka County should be involved in the review of all hydrologic data offered in support of its project and that Eureka County should be involved in the development of an effective monitoring, management and mitigation plan.

6. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's 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. 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 stated that "These proceedings adjudicate *all stream waters* (emphasis added) 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." Considering that *all* water of and contributing to Pete Hanson Creek and Henderson Creek has been adjudicated, the applicant must prove that pumping will not impact any of the sources contributing to these creeks.

7. 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 encourages the proponents of these applications to engage its representatives and the Office of the State Engineer in dialogue that will result in a binding, mutually-beneficial agreement for development, management, monitoring, and mitigation of these groundwater resources.

8. The proposed place of use described in the applications is much larger than the mine's Plan of Operations project boundary.

9. The Diamond Valley Regional Flow System is being studied at the present time by the USGS. The grant of any further applications for the mine's project should be not be considered until the USGS study is complete.

10. The pit dewatering requires pumping of groundwater from Diamond Valley, currently over appropriated and over pumped. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined prior to granting the applications in light of the pit dewatering in Diamond Valley.

11. The proposed points of diversion for the applications lie in Basin 139 (Kobeh Valley), while the proposed place of use includes portions of Basin 153 (Diamond Valley) and Basin 53 (Pine Valley); therefore the applications involve a transfer of groundwater out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Diamond Valley. Compliance with the requirements of NRS 533.370(6) for interbasin transfers must be met.

12. The works necessary to achieve beneficial use of the subject water rights are substantial and costly. As the applications state, the applicant requires 11,300 afa of water rights to operate its Mt. Hope Mine Project. The applicant has not provided proof that there is a reasonable expectation of the applicant's financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence and of its good faith intention to construct any work necessary to apply the water to the intended beneficial use, to actually

construct the work and apply the water to the intended beneficial use with reasonable diligence.

13. The manner of use of water under the subject application is by nature of its activity a temporary use. Because it is a temporary use, any permit granted should be subject to a restriction that at the end of the mining use, the water will revert back to the source. Previous reports issued by the applicant indicated that a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right.

14. 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.

15. Any further changes to points of diversion for a proposed future well field shall 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.

16. Some of the subject change applications seek to change a previously filed change application that changed the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre. The limitation of the consumptive use duty of 2.3 acre-feet/acre should be maintained if the change applications to the base irrigation applications are granted.

17. Any proposed management, monitoring and mitigation plan to address potential impacts from the applicant's proposed pumping must be developed to a reasonable degree with supporting analytical data prior to any approval of the applications. A plan for monitoring and mitigation of potential impacts to water rights holders and threatened species must include specific, realistic measures to mitigate adverse impacts. The proposed mitigation measures must be clearly defined and demonstrated to have the desired affect. Overly broad proposals are not acceptable. 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 that the County will "Develop an evaluation program that relies upon and uses all available data, including, but not limited to reviewing existing data including hydrological data…" The Eureka County Code 9.060.C "mandates the use of peer-reviewed science in the assessment of impacts related to water resource development".

18. Applications 79911 – 79942 seek to change water right applications previously protested by Eureka County and approved by the State Engineer in Ruling 5966 issued March 26, 2009. The Seventh Judicial District Court vacated Ruling 5966 in its Order entered April 21, 2010 and ordered a new hearing on the applications. Based upon the Court's Order entered April 21, 2010, the representations of the applicant that it was not opposed to a full, new hearing on the previously filed applications at the prehearing conference held on May 24, 2010, and the fact that these are new applications for which no hearing has ever been held, the State Engineer needs to conduct a full and fair hearing on change applications 79911 - 79942.

19. Previous hydrogeologic investigations and groundwater modeling undertaken by the applicant's consultants and entered into evidence during the prior hearing in support of the mine's groundwater rights applications concluded that the 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 that 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. Furthermore, the current iteration of the regional groundwater model developed by the Applicant's consultants shows a region of high hydraulic conductivity in the mountains north of Mount Whistler that is likely associated with the development of secondary permeability related to deformation of the rocks due to faulting. If the proposed points of diversion are based on new data that support moderate to high values for hydraulic conductivity in the mountains, as opposed to low hydraulic conductivity, the impacts of groundwater extractions so close to Diamond Valley need to be specifically assessed. Given the extent of the deformation of the rocks and multiple episodes of faulting, it is unlikely that high secondary permeability is limited only to one area in the mountains.

20. Granting change applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law.

21. Eureka County requests that the hearing on these applications be held in Eureka, Nevada to facilitate access by protestant, the water users in the area and interested citizens.