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

IN THE MATTER OF APPLICATION NUMBER 82490
FILED BY McEWEN MINING INC.
ON FEBRUARY 5, , 20 13

PROTEST

FILED
APR 03 2013
STATE ENGINEER'S OFFICE

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 82490, filed on FEBRUARY 5, , 20 13

by McEWEN MINING INC. for the

waters of AN UNDERGROUND SOURCE 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:

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, COMMISSION CHAIRMAN
Printed or typed name, if agent

Address POST OFFICE BOX 694
Street No. or PO Box

EUREKA, NEVADA 89316
City, State and ZIP Code

(775) 237-7211
Phone Number

E-mail

RECEIVED
2013 APR 3 AM 11:33
STATE ENGINEERS OFFICE

Subscribed and sworn to before me this 28th day of March, 20 13

Toni M. Wright
Notary Public

TONI M. WRIGHT
Notary Public - State of Nevada
Appointment Recorded in Eureka County
No: 99-34907-8 - Expires December 20, 2014

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 McEwen Mining Inc.
Application Nos. 82490 through 82492

1. There may be no unappropriated water at the proposed source of supply, the proposed use may conflict with or impair and interfere with existing rights and protectable interests in existing domestic wells and may threaten to prove detrimental to the public interest. The proposed diversion of ground water may impact the domestic well at the 3-Bars Ranch, among others, and the dozens of vested water rights in the vicinity. The owners of these rights contribute to the long-term economic viability of Eureka County's communities; therefore, impacts to these rights will prove detrimental to the health and welfare of Eureka County.

2. The proposed points of diversion are at a higher elevation near the hydrographic basin boundaries of Pine, Kobeh and Grass Valleys and in the vicinity of dozens of pre-existing water rights in each respective basin. Hydrologic properties of the proposed points of diversion are not fully understood or analyzed; therefore, impacts associated with sustained pumping of substantial water at the proposed points of diversion are not known. Propagation of the cone of depression from the proposed points of diversion must be adequately determined prior to granting the applications. Eureka County requests the ability to review all hydrologic data offered in support of the applications.

3. Mining and milling in Nevada is commonly viewed as a temporary use of water due to the evanescent nature of mining. Once the operations come to an end, the water theoretically "returns" to the basin and becomes available for appropriation. However, many so-called temporary water rights have been used for decades and have the potential to be used far into the future. The consequence is an overdraft condition that can persist for generations. Furthermore, KVR acquired Atlas' "temporary" water rights for the Gold Bar project in the same basin - well after mining operations ceased and which should have been retired - and transferred them for use at the Mount Hope Project, which is proposed to operate more than 40 years. With this action, the Nevada State Engineer clearly demonstrated that temporary mining water rights have been allowed to be transferred and have a potential to be something other than temporary.

   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 should be subject to a restriction that at the end of the mining use for this specific project, the water will revert back to the source.

4. The proposed points of diversion and associated drawdown will occur near springs of regional significance, including Tonkin Springs, an important irrigation and stockwater resource that is also an important local recreational resource and fishery. Other nearby springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout and some of these waters have been fully adjudicated. For example, all waters of and contributing to Pete Hansen 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....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 Hansen Creek has

been adjudicated, the applicant must prove that pumping will not impact any of the sources contributing to Pete Hansen Creek.

5. The proposed points of diversion for the applications lie in Basin 53 (Pine Valley), while the proposed place of use is primarily in Basin 139 (Kobeh Valley); therefore the applications involve a transfer of ground water out of the source basin for use in another basin. As the applications state, the water will be placed to beneficial use in Kobeh Valley. Compliance with the requirements of NRS 533.370(3) for interbasin transfers must be met.

6. The works necessary to achieve beneficial use of the subject water rights are substantial and costly. The applicant has not presented the State Engineer with the scope of its proposed works, nor has the applicant demonstrated its ability to finance the works. Eureka County requests the opportunity to 1) review a proposed scope of work to achieve beneficial use and 2) satisfy its concerns regarding corporate purpose and financial ability.

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 the County as long as mine development does not conflict with or impair pre-existing rights and 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 Pine Valley is conducted in full accordance with Nevada law, the Eureka County Master Plan and related policies and ordinances, and does not unduly threaten the health and welfare of Eureka County citizens. As set forth in Eureka County's Master Plan, there should be reinjection or infiltration of water not consumed in the mining operation back in to the basin of origin in Eureka County to mitigate the effects of the Applicant's pumping. 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."

8. Any monitoring, management and mitigation (3M) plan should only properly be used to monitor, manage, and mitigate unknown impacts to existing users and Eureka County will support that effort. Eureka County opposes as contrary to law any attempts to order a future undefined 3M plan as a condition of approving applications with quantified known impacts to existing surface or ground water rights when the applications should be denied as configured or when any permits granted which impact ground water rights should contain express conditions negotiated to the satisfaction of the existing ground water rights holder that the rights of the existing appropriator can be satisfied under such express conditions. Any 3M plan to address impacts from the applicant's proposed pumping must be developed to a reasonable degree in

cooperation with potentially impacted water right holders with supporting analytical data prior to any approval of the 3M plan and the applications.

9. The applications should only be considered if they do not conflict with existing ground and surface water rights. A thorough analysis of potential impacts should be performed prior to approval of the applications and this analysis be provided to Eureka County for scientific review. If the analysis predicts conflicts with or impacts to existing surface water rights (including claims to vested rights), the applications should be rejected by the State Engineer. If the analysis predicts conflicts with or impacts to existing ground water rights, Eureka County would support specific express conditions in the permits showing protectable interests in existing domestic wells and showing the rights of holders of existing appropriations can be satisfied under such express conditions and so long as the express conditions are developed in cooperation with and approval of the affected water rights holders and Eureka County. Because of the uncertainty inherent in any analysis of this type, a 3M plan should be developed to protect water users and water dependent resources beyond the areas where impacts are predicted. This 3M plan should be developed in cooperation with Eureka County and prepared with input from other water right holders in the area. The 3M plan should be reasonably specific and defined prior to the approval of any applications. A 3M plan not prepared in this manner would be opposed by the County.

10. The projected water usage listed exceeds the water usage typically necessary for a gold heap leach operation of this scale that does not have dewatering needs.

11. Should these protests result in hearings before the State Engineer, Eureka County requests that such hearings be held in Eureka to facilitate access by the body of Protestants.