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 (c/o General Moly, Inc.)
ON October 28, 20 15

PROTEST

FILED
JAN 15 2016
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 85583, filed on OCTOBER 28, 20 15

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

(775) 237-5262
Phone Number

jjgoicoechea@eurekanv.org
E-mail

State of Nevada
County of EUREKA

Subscribed and sworn to before me on JAN. 13, 2015

by J.J. GOICOECHEA

Signature of Notary Public Required

TONI M. WRIGHT
Notary Public - State of Nevada
Appointment Recorded in Eureka County
No: 93-34907-8 - Expires December 20, 2018

Notary Stamp or Seal 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 85573 through 85604
Filed by Kobeh Valley Ranch LLC

1. These Applications should be denied because they are practically identical[1] to applications which were approved by the State Engineer in Ruling 6127 and then rejected by the Nevada Supreme Court in *Eureka County et al. v. The State of Nevada, State Engineer, et al.*, 131 Nev. Adv. Opn. 84 (October 29, 2015) (hereinafter Supreme Court Opinion) for being in violation of NRS 533.370(2).

2. These Applications should be denied because the applicant, Kobeh Valley Ranch LLC (KVR), has failed to reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, the applicant has not reduced the size of its project or improved the project's water use efficiency to eliminate the conflicts, and the applicant has not worked cooperatively with senior water rights holders to resolve conflicts.

3. These Applications should be denied because, as configured, the proposed wells and groundwater drawdown will impair undetermined claims of pre-statutory vested rights.

4. Consideration of these Applications must, at a minimum, be postponed to allow the State Engineer time to call for proofs of vested claims to be filed and thereby identify all senior water rights holders whose rights will or may be impaired to be included in a valid process moving forward.

5. These Applications should be denied since they are inappropriate while direction from the District Court is pending in Case Nos. CV1108-155, CV1108-156, CV1108-157, CV1112-164, CV1112-165, CV1202-170 and CV1207-178 in the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. KVR asserts in Exhibit C, attached to each Application subject to this protest, these "new" 32 Applications are unnecessary but are being filed provisionally in case the original applications under Ruling 6127 "are determined by the District Court or the State Engineer to have been denied on account of the Supreme Court Order…." Eureka County asserts the Supreme Court's Opinion requires the original KVR applications be denied.[2] As such, Eureka County agrees the correct course of action by KVR is to file new applications if KVR wishes to proceed with trying to acquire water for its project. However, these Applications should not have been sent for publication by the State Engineer before District Court direction on how to proceed, as it is a waste of time and resources for all involved.

6. These Applications should be denied because they do not include any attempt to resolve the issues identified by the Supreme Court Opinion or the outstanding issues the Supreme Court did not address but nevertheless chose to reference in its Opinion, which highlights

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

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

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

7. These Applications should be denied because they do not include any design changes or water management changes necessary to avoid conflicts with existing water rights or impairment of vested water rights. It is unfortunate KVR continues to be intransigent in finding solutions for water pumping for the Mt. Hope Project that Eureka County and other affected water rights holders can support. Eureka County has no choice but to protest KVR's Applications that impact existing rights. Eureka County has protested water right applications by Barrick, Newmont, American Vanadium Resources, McEwen Mining and others in the past, and many very recently. Eureka County has been able to withdraw its protests with these entities because they made design changes or water management changes necessary to avoid conflicts with existing water rights and to avoid impairment of vested water rights. This is the first time to our knowledge a mining project has pushed forward its water right applications while predicting there will be impacts and conflicts, and drying up of water rights, but only "promising" to fix them at some time in the future. Eureka County's reply brief filed with the Nevada Supreme Court (at page 4) in the above referenced case clearly describes how KVR can move forward in a manner that removes conflicts and impairment, and that Eureka County can support: reconfigure the points of diversion of its proposed wells to eliminate conflicts with existing rights, reduce the size of its project or improve the project's water use efficiency to eliminate the conflicts, and work cooperatively with senior water rights holders to resolve conflicts.

8. Applications to Change 85575, 85577, 85579, 85581, 85582, 85583, 85584, 85585, 85586, 85588, 85589, 85591, 85592, 85593, 85594, 85596, 85597, 85598, 85599, 85603, and 85604 must be denied because they request changes of previous permits abrogated by the change applications that were the subject of Ruling 6127. Applications to Change the Point of Diversion, Manner of Use and Place of Use of a water right can only be filed if the right to be changed is valid. Once a permit is abrogated, it is no longer in force. There are no water rights which can be changed by the current round of Change Applications.

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

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

10. These Applications should be denied because they threaten to conflict with or impair water of and contributing to Pete Hanson Creek and Henderson Creek. Groundwater modeling studies by the applicant show more than five feet of drawdown in southern Pine Valley attributable to the mine's proposed groundwater withdrawals. This drawdown occurs near springs of regional significance. Some of these springs are located in the headwaters of streams with known populations of endangered Lahontan Cutthroat Trout, and most of these waters have been fully adjudicated or have undetermined claims of vested rights. For example, all waters of and contributing to Pete Hanson Creek and Henderson Creek have been fully adjudicated. On page 6 of the Pete Hansen and Henderson Creek Decree, it is made clear "[t]hese proceedings adjudicate *all stream waters* tributary to both Pete Hansen Creek and Henderson Creek. Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain. Several perennial springs situated in the stream system as well as snow melt waters, contribute to the stream system flow." (Emphasis added.) To date, modeling and data provided to the State Engineer do not **prove** that pumping will not impact any of the sources contributing to these creeks.

11. These Applications must be denied based on the record before the State Engineer that proves the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in Kobeh Valley, and threatens to prove detrimental to the public interest. Kobeh Valley is a designated basin. The perennial yield of Basin 139 based upon Ground-Water Resources - Reconnaissance Series Report 30 by Rush and Everett (1964) is up to 16,000 acre feet annually (afa) provided the natural groundwater discharge (phreatophyte evapotranspiration) from the basin can be captured by an appropriator. In Kobeh Valley, most naturally recharged groundwater is discharged by phreatophytic vegetation on the valley floor, with a reconnaissance-level evapotranspiration estimate by the USGS of 15,000 acre-feet per year. Hydrogeologic investigations and groundwater modeling by the applicant conclude the proposed use will take decades before it results in capture of a significant proportion of phreatophytic discharge. The valley floor phreatophytic vegetation will continue to occur notwithstanding the mine's pumping. Reports issued by the applicant indicate a majority of the water sought to be pumped would come from groundwater storage. The State Engineer has previously denied applications seeking to appropriate water from groundwater storage and recognized that water sought to be appropriated from groundwater storage is not a permanent water right. Relocating the wellfield closer to groundwater discharge areas would accelerate capture of natural groundwater discharge. Eureka County would be more amenable to applications proposing pumping to more effectively capture groundwater discharge, as the potential for conflicts to prior rights and sensitive resources is greatly diminished by that encouraged practice.

12. These Applications must be denied because the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells in

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

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

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

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

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

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

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

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

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

necessary to achieve beneficial use of the water rights are substantial and costly. According to the Applications, the applicant requires 11,300 afa of water rights to operate the Mt. Hope Mine Project. Despite its purported *intentions*, KVR by its *actions* has plainly demonstrated it does *not* have the intention or financial ability to put the water to beneficial use and the project going forward is speculative, at best. In late 2007, General Moly's stock was selling at over $12.00 per share. Today, it is worth about $0.19 per share; a reduction in value of 99%. As of January 13, 2016, the molybdenum oxide price was $5.30/lb. General Moly's latest presentation on its website[5] highlights that "General Moly's 80% ownership NPV breakeven price is $10.82 per pound molybdenum, and the undiscounted cash flow breakeven price (going forward excluding sunk capital) is $9.35 per pound molybdenum." Since the original permits were granted, the proposed project has:

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

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

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

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

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

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

15. The Applications should be denied or consideration of the Applications delayed until the Diamond Valley Regional Flow System Study by the USGS, now going through final review and expected to be published any day, is complete.

16. Propagation of the cones of depression from each of the proposed points of diversion must be adequately determined, using real data and limited assumptions, prior to consideration of the Applications. Not all of the proposed points of diversion have been explored. Consequently, well yields and the hydrologic properties of the aquifer near some proposed points of diversion are purely hypothetical; therefore, impacts associated with pumping of substantial water rights at the proposed points of diversion are not known.

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

18. These Applications should be denied because there are applications for water rights in Kobeh Valley filed with the State Engineer which have a filing/priority date senior to

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

19. The manner of use of water under the subject Applications is by nature of its activity a temporary use. Because it is a temporary use, any permit granted under these Applications must be subject to a restriction that at the end of the mining use, the water will revert back to the source.

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

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

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

23. The applicant holds notices filed with the BLM associated with water supply exploration activities for locations in Diamond Valley, which is over appropriated and over pumped. The notices associated with the water supply exploration activities in Diamond Valley are outside the Plan of Operations project boundary but within the proposed place of use listed in the Applications.

24. Any further changes to points of diversion for a proposed future well field must require the filing of additional change applications subject to the same regulatory process as the current Applications; that is, they must be published in the local newspaper, are subject to protest, and must meet the statutory requirements for approval.

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

26. Considering Change Applications that are not supported by adequate proof of beneficial use will cause the basin to be over pumped to the detriment to the basin, prior water right holders and in direct conflict with the forfeiture provisions of Nevada water law. For example, cropping inventories by the State Engineer's office for the water rights at the Bartine Ranch show that only a portion of the water rights have been put to beneficial use. Only water rights put to beneficial use and in good standing should be changed to mining and milling if the State Engineer determines the Change Applications should be granted.

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

28. Eureka County requests the hearing on these Applications be held in Eureka, Nevada to facilitate access by protestants, the water users in the area and interested citizens.

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