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

FILED
JUL 08 2016
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 86158
FILED BY KOBEH VALLEY RANCH, LLC
ON APRIL 27, 20 16

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 86158, filed on APRIL 27, 20 16

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

(775) 237-5262
Phone Number

jjgoicoechea@eurekanv.org
E-mail

State of Nevada
County of EUREKA

Subscribed and sworn to before me on June 21, 2016

by J.J. GOICOECHEA

Signature of Notary Public Required

TONI M. WRIGHT
Notary Public - State of Nevada
Appointment Recorded in Eureka County
No: 99-34907-8 - 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 86152, 86153, 86157, 86158, 86159, 86160 and 86161
Filed by Kobeh Valley Ranch, LLC

Applications 86152 and 86153 (in combination with Applications 86149, 86150, 86151) 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 57840, 66062, 57835, 57836, and 57839, respectively. The proposed place of use includes more than 90,000 acres occupying portions of the Kobeh Valley and Diamond Valley Hydrographic Areas.

Applications 86157, 86158, 86159, 86160 and 86161 request changes in the Points of Diversion, Place of Use and Manner of Use for permits 78272, 78273, 78274, and 78275 for water purportedly to be used for irrigation at the Bobcat Ranch. Applicant's Exhibit C stated "The four [sic] change applications changing Permits 78272 through 78275 are being filed to replace the new appropriation for mining use that were approved in Ruling 6127." The records of the State Engineer show the Applicant was unsuccessful in meeting the State Engineer's requirement to file proofs of completion for the base rights (permits 78272 through 78275) by August 27, 2015 and has yet to diligently move toward putting the water to beneficial use as of the date of this protest.

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 86157, 86158, 86159, 86160 and 86161 should be denied because the base rights (permits 78272, 78273, 78274 and 78275) represent "stacking" of irrigation rights at the Bobcat Ranch when the permits that were the subject of Ruling 6127 were dismissed by the District Court and the water rights reverted back to the source. Water rights to the Bobcat Ranch acquired by KVR had a permit condition limiting the annual duty from all sources to 4.0 acre-feet per acre on 1,584.33 acres. Allowing permits 78272, 78273, 78274 and 78275 to revert back to the Bobcat Ranch doubled the amount of water rights available to the ranch, far in excess of an annual duty of 4.0 acre-feet per acre.

3. Applications 86157, 86158, 86159, 86160 and 86161 should be denied because the base rights (permits 78272, 78273, 78274 and 78275) amounted to speculation. These base-right applications to "re-wet" the Bobcat Ranch were filed in spite of a Memorandum of Understanding (MOU) between the Bureau of Land Management (BLM) and KVR to cease farming at the Bobcat Ranch and re-establish beneficial vegetation there. They are also contrary to sworn testimony of KVR and Mt Hope Project personnel before the State Engineer to the effect that KVR was ". . . not in the farming business. . ." and that the sole purpose of KVR was to provide water to General Moly's Mt Hope Project. Additional testimony indicated re-wetting the Bobcat Ranch was merely a "business decision," in other words there was money to be made speculating in water resources. In combination with other applications approved by the NSE at about the same time, these applications resulted in the basin becoming fully appropriated, leaving no unappropriated water in the basin, thereby limiting future development in Kobeh Valley. When asked to comment on this outcome, General Moly personnel stated anyone in the basin who might need water rights could obtain them from KVR.

4. Applications 86157, 86158, 86159, 86160 and 86161 should be denied because the base rights permits 78272, 78273, 78274 and 78275) are unnecessary to meet the water supply demand of the project, estimated at an average of pumping rate of 7,000 gpm. Other applications filed by KVR have requested a combined diversion rate of more than 14,000 gpm. Applications 86157, 86158, 86159, 86160 and 86161 appear to be a thinly veiled attempt to circumvent State of Nevada water law that requires water be put to beneficial use because once the use is changed to mining and milling no further action on the base-rights permits will be needed to keep them in good standing for an extended period of time other than filing for an endless stream of extensions of time, meanwhile tying up water resources in Kobeh Valley from development by others.

5. Applications 86157, 86158, 86159, 86160 and 86161 should be denied because the Applicant KVR failed to prosecute the work with diligence to maintain the base rights (permits 78272, 78273, 78274 and 78275) in good standing. Instead, they filed for and received an extension of time for the Proof of Completion, despite clear indications they had not proceeded with due diligence. A condition of the State Engineer's approval of permits 78272 through 78275 was "Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before August 27, 2015." The Nevada State Engineer verbally committed to Eureka County, when the County questioned the wisdom in granting applications to "re-wet" the Bobcat Ranch, that no extensions of time would be granted for these permits to ensure that the applications did not amount to de facto speculation of the groundwater resource. With minimal effort, KVR could have complied with this permit condition because the wells, pumps and flow meters as well as diesel engines and underground piping were all in place although KVR sold and removed all of the center-pivot irrigation equipment from the ranch. The documentation filed

September 21, 2015 in support of an Extension of Time for Permits 78272 through 78275 stated "Permittee is unaware of [oblivious to] the type and description of the submersible [sic] pumps, and currently installed flow meters." And that ". . . Permittee cannot obtain that data prior to the current due date." In other words, over the course of nearly one year KVR pumped only one well (out of four) at the Bobcat Ranch to irrigate only 300 acres of alfalfa (out of a total of 1,584.33 acres). This nicely documented, deplorable effort shows the Permittee's general lack of will to diligently perfect its water rights. This lack of diligence by the Permittee is underscored by the fact that the Permittee did not even expend minimal effort to record the make, model and serial numbers of the already installed flow meters, a task that their local staff based in Eureka could have accomplished with negligible effort. Unfortunately, contrary to his assurances to Eureka County, the State Engineer did not ". . . hold their feet to the fire. . ." and granted a one year extension for Proof of Completion until August 27, 2016.

6. Applications to Change 86157, 86158, 86159, 86160 and 86161 must be denied because they request changes of previous permits which should have been 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.

7. Applications 86152 and 86153 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]

8. Applications 86152 and 86153 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

[1] Ruling 6127, p. 24

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 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.

9. Applications 86152 and 86153 seek to change the manner of use from irrigation at a consumptive use duty of 2.3 acre feet/acre and Applications 86157, 86158 86159, 86160 and 86161 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" or "stacked water."

10. 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).

11. 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.

12. 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.

13. 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]

14. 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. 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.

[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.

15. 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.

16. 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." 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.

17. 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.

18. 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

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

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.

19. 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.

20. 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 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?

21. 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.

22. 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.

23. 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."

24. 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 prior to 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.