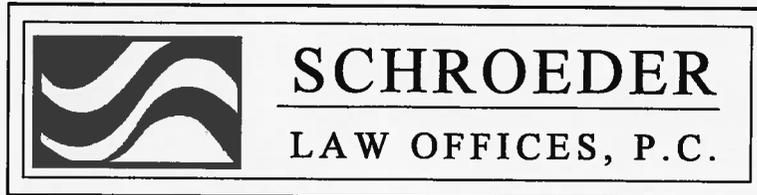


Laura A. Schroeder
Licensed in Oregon, Idaho,
Nevada and Washington

V. Scott Borison, Ph.D.
Certified Legal Manager

Daryl N. Cole
Office Manager



Cortney D. Duke
Oregon, Nevada

Sarah R. Liljefelt
Oregon, California

Wyatt E. Rolfe
Oregon, Nevada,
Washington

Therese A. Ure
Oregon, Nevada

December 6, 2012

VIA FEDERAL EXPRESS

Executive Secretary
State Environmental Commission
901 South Stewart Street, Suite 4001
Carson City, NV 89701

**RE: Request for Appeal Hearing
Permit NEV2008106 (New 2012)**

To Whom it May Concern:

Enclosed for filing on behalf of Carolyn Bailey, please find Form 3: Form for Requesting an Appeal Hearing.

The initial page has been enclosed in duplicate. Please file stamp one copy and return it to our office in the enclosed postage prepaid envelope.

Thank you for your assistance with this matter.

Very truly yours,

SCHROEDER LAW OFFICES, P.C.

Tara J. Jackson
Paralegal

TJJ:tjj

Enclosures

cc: Client

1915 NE Cesar E. Chavez Boulevard, Portland, Oregon 97212 (503) 281-4100

440 Marsh Avenue, Reno, Nevada 89509 (775) 786-8800

www.water-law.com counsel@water-law.com



FORM 3: FORM FOR REQUESTING AN APPEAL HEARING
 (Provide attachments as needed)

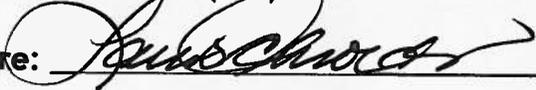
1. Name, address, telephone number, and signature of appellant:

Name: Carolyn Bailey c/o Schroeder Law Offices, P.C., Attn: Therese Ure

Physical Address: 440 Marsh Avenue, Reno, NV 89509

E-mail Address: counsel@water-law.com

Telephone Number: (775) 786-8800

Signature: 

Representative capacity (if applicable): Attorney

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2. Attach copy of Nevada Division of Environmental Protection final decision, such as permit or notice of alleged violation, being appealed.

3. Specify grounds of appeal: (check all that apply)

- Final decision in violation of constitutional or statutory provision;
- Final decision made upon unlawful procedure;
- Final decision was affected by other error of law;
- Final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
- Final decision was arbitrary or capricious or characterized by abuse of discretion;

4. For each ground of appeal checked above, please list the constitutional, Nevada Revised Statute (NRS), and/or Nevada Administrative Code (NAC) provision allegedly violated. Also list the statutes and/or or regulations that give the State Environmental Commission jurisdiction to hear the appeal.

Error of Law: NRS 233B.135(3)(d); also, see No. 5 below

Clearly Erroneous: NRS 233B.135(3)(e); also, see No. 5 below

Arbitrary/Capricious/Abuse of Discretion: NRS 233B.135(3)(f); also, see No. 5 below

SEC Jurisdiction: NRS 445A.605; NAC 445A.388

5. For each ground of appeal checked above, provide a brief and concise statement of the facts which provide the basis for the appeal.

1. Mining facilities cannot degrade the waters of the United States. NAC 445A.424. However, the Mount Hope Project Environmental Impact Statement (“EIS”) reports that there is a potential for impacts to ground water quality from drainage from tailings impoundments and waste rock piles. EIS p. 3-219.

NDEP’s decision to issue Permit No. NEV2008106, which has the potential to degrade waters of the State, was affected by an error of law, was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, and was arbitrary, capricious, and characterized by an abuse of discretion.

2. In areas where evaporation exceeds precipitation, such as Mount Hope, all process components must achieve zero discharge. NAC 445A.433(1)(a). Further, “[a]ll sources must be designed to minimize releases of contaminants into groundwaters or subsurface migration pathways so that any release from the facility will not degrade waters of the State.” NAC 445A.433(1)(b). The Nevada Division of Environmental Protection (“NDEP”) retains authority to impose design, operational, or monitoring requirements above regulatory requirements. See, e.g., NAC 445A.433(2).

Here, NDEP had information regarding flash flood events on Mount Hope that are more frequent and severe than a 24-hour storm event with a 100-year recurrence interval (and lower intervals). Further, the Mount Hope Project EIS reports that the proposed modification or sedimentation of natural drainages will result in increased area or incidence of flooding from the present data. EIS pp. 3-62, 3-74, and 3-217. The USGS has data that NDEP could have used and referenced when imposing higher standards due to the conditions of the project location. NDEP’s decision to issue Permit No. NEV2008106, without requiring the facility and components to withstand flash flood events, was affected by an error of law, was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, and was arbitrary, capricious, and characterized by an abuse of discretion.

3. The Mount Hope Project EIS states that concentrations of pollutants will exceed Nevada water quality standards in the pit lake that is created by the mine. EIS p. 3-220. The EIS also reports that because access to the pit lake will be restricted for humans and wildlife, beneficial uses for drinking water are not applicable. *Id.* However, the analysis fails to consider drinking water for animals that cannot be fenced out, such as birds. Further, fences are not permanent, fail-proof structures (as any rancher knows), and it is not reasonable to assume that wildlife will never gain access to the pit lake. Moreover, Permit No. NEV2008106 does not require netting to keep out migratory birds.

In addition, Mount Hope Project EIS refutes NDEP’s finding that the degraded water in the pit lake will not degrade ground water quality. The EIS reports that there is a potential for impacts to ground water quality due to formation of a ground water sink in the open pit. EIS p. 3-220. NDEP’s decision to issue Permit No. NEV2008106, without considering and imposing drinking standards for wildlife, and without protecting groundwater quality, was affected by an error of law, was clearly erroneous in view of the reliable, probative and

substantial evidence on the whole record, and was arbitrary, capricious, and characterized by an abuse of discretion.

4. Permit No. NEV2008106 allows the mine to use water for dust suppression that exceeds Profile I reference values (water quality standards) with prior written authorization from NDEP. Allowing an exception to water quality standards would be a major modification to the permit and the permit should require a public notice hearing prior to allowing deviation from Profile I reference values. NAC 445A.417. Use of water that does not meet Profile I reference values would degrade the waters of the state.

NDEP's decision to issue Permit No. NEV2008106, allowing deviation from Profile I reference values without public notice hearing, was affected by an error of law, was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, and was arbitrary, capricious, and characterized by an abuse of discretion.

Date of Request: Thursday, December 6, 2012.

Send Form to: Executive Secretary, State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, NV 89701