



*Working with Communities to Protect Their Land Air and Water*

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## **Federal Appeals Court Overturns Approval of Mt. Hope Molybdenum Mine on Public Land in Nevada**

San Francisco, CA, a three-judge panel of the federal Ninth Circuit Court of appeals issued its unanimous decision on Thursday, Dec. 28, overturning the federal Bureau of Land Management's (BLM) approval of the Mt. Hope Molybdenum Mine, located on public lands near Eureka, Nevada. The court found that "the BLM's environmental review of the Project violated NEPA [the National Environmental Policy Act] in several ways." The court "vacated" (i.e. invalidated) the BLM's Record of Decision (ROD) and Final Environmental Impact Statement (FEIS) which in 2012 had approved the mining plan submitted by Eureka Moly LLC. The lawsuit was filed by Great Basin Resource Watch (GBRW) and the Western Shoshone Defense Project (WSDP) in early 2013, and the Mine had yet to begin significant operations. GBRW and WSDP appealed the decision of the federal district court in Reno in July of 2014, which had rejected all of GBRW/WSDP's claims that the Mine violated federal environmental laws. However, as a result of the Ninth Circuit's decision, the Mine cannot be constructed or operate.

The Mt. Hope Mine was proposed as one of the largest open pit mines in the country, and would primarily extract and process the metal molybdenum. The Mine would directly disturb 8,355 acres and indirectly disturb 22,886 acres, create 1.7 billion tons of waste rock, and 1.0 billion tons of tailings waste by the end of the 44 years of ore processing. Mining the open pit would result in an excavation of approximately 2,300 feet below the existing water table and create a pit lake that is anticipated to form in the open pit is expected to be 1,000 feet deep. Water quality in the pit lake is predicted to exceed water quality standards for a number of pollutants. The Mine would pump groundwater at a rate of 11,250 to 12,050 acre-feet per year equivalent to 3.92 billion gallons per year for a total of up to 168.8 billion gallons over the roughly 43 years. The Mine proposal and BLM's review was severely criticized by both Eureka County and the federal Environmental Protection Agency (EPA).

"We are pleased that the court did the right thing to invalidate BLM's approval of the Mine. Such flagrant violations of federal law needs to be clearly recognized and acted upon to protect the public interest in clean air and water," said John Hadder, Executive Director of GBRW.

Among the numerous legal errors in BLM's environmental review of the Mine, the Ninth Circuit agreed with GBRW/WSDP that BLM failed to conduct the required analysis of the current (baseline) air quality conditions at the site. According to the court, "Establishing appropriate baseline conditions is critical to any NEPA analysis." "Without establishing the baseline conditions which exist . . . before [a project] begins, there is

simply no way to determine what effect the [project] will have on the environment and, consequently, no way to comply with NEPA.” The court found that BLM’s review failed to contain “accurate information and defensible reasoning.” The court held that “BLM’s analysis of air impacts in the FEIS was inadequate because the agency did not provide any support for its use of baseline values of zero for several air pollutants.”

GBRW/WSDP’s attorney Roger Flynn, of the nonprofit public interest law firm Western Mining Action Project, stated that “The court correctly found that BLM failed to protect the public’s right to have an accurate and adequate environmental review of such a destructive project. This is the fourth major mine case in recent years where the Ninth Circuit ruled that BLM in Nevada violated federal environmental law. It’s time BLM put the interests of local communities and clean air and water first, instead of approving yet another large open pit mine on the public’s land without adequate review and safeguards.”

The court also ruled that BLM failed to analyze at all the cumulative impact on the environment of the Mine coupled with the numerous other projects in the area. The court found that “The BLM made no attempt to quantify the cumulative air impacts of the Project together with the [nearby] Ruby Hill Mine and vehicle emissions. Nor did the BLM attempt to quantify or discuss in any detail the effects of other activities, such as oil and gas development, that are identified elsewhere in the FEIS as potentially affecting air resources.”

“The use of a zero baseline for a few of the air contaminants is significant in terms of satisfying air quality standards. In the case of nitrogen dioxide (a harmful “criteria pollutant” under the federal Clean Air Act), the projected Mine emissions alone are just below the clean air standard. A realistic baseline for nitrogen dioxide, now required by the court, coupled with the now required cumulative air impact analysis, may very well cause the Mine to violate the Clean Air Act. We are very grateful that the Ninth Circuit specifically required BLM to correct these glaring omissions in the agency’s review of the Mine,” said Hadder

Regarding the Mine’s impacts on local waters due to the massive groundwater pumping, the court declined to affirm the district court’s previous ruling that the Mine would not adversely affect protected federal water rights and lands that were established decades ago to protect public watering uses (such as cattle grazing). Instead, the court “remanded” (or sent back) the issue to BLM in determine the extent of the protected waters and lands. In 1994, BLM had filed water rights applications to protect the springs on Mt. Hope, yet these lands and waters at the site would be essentially destroyed by the Mine’s pumping and waste dumping.

“Our water here in Diamond Valley is very limited and the Mt. Hope would take a huge amount of water. At least for now we don’t have to worry that the mine will be taking our water,” said Carolyn Bailey, a member of one of the region’s oldest ranching families, and a resident of Diamond Valley nearest to Mt Hope.

“The Mt. Hope Mine Project would be one of the largest open pit mines in the nation. The public lands at and around Mt. Hope will be obliterated if this project goes forward as planned, and would deliver a significant blow to the nearby ranching and farming community. BLM and the company have a long way to go to address the public’s concerns,” said Hadder.

“The Western Shoshone that toured the Mount Hope site in 2007 all agreed that the impacts to the water resources, loss of mature piñon/juniper forest, and destruction of cultural sites to too high of a price for this mine. The Interior Department needs to remember that this is our Treaty Land, and they have an obligation to consult with the Western Shoshone in a meaning way. I hope this decision will show that there is opposition to the destruction from these mines,” said Larson Bill, Western Shoshone Defense Project.

The court’s decision is at: <https://cdn.ca9.uscourts.gov/datastore/opinions/2016/12/28/14-16812.pdf>