



United States Department of the Interior

Bureau of Land Management

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October 16, 2002

Arlan Melendez, Chairman
Reno-Sparks Indian Colony
98 Colony Road
Reno, NV 89502

Dear Chairman Melendez:

Thank you for meeting with me, other Bureau of Land Management representatives and Erica Niebauer from the Solicitor's Office on September 30 to discuss issues related to the potential filing of an *amicus curiae* brief in the Oil-Dri Corp. v. Washoe County litigation currently pending in U.S. District Court in Nevada. As we explained to you, your staff, your counsel, and counsel for the Great Basin Mine Watch during the consultation, the Federal Government is concerned that the court may determine the extent of Washoe County's authority to regulate mining operations on federal land under the Mining Law of 1872. We explained that the purpose of the filing would be to ensure that the court understands the government's position in this regard.

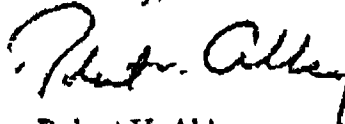
Your counsel questioned whether the filing of an *amicus* brief was warranted, considering the posture of the case, and indicated that the primary issue to be decided by the court was factual – that is, whether or not Oil-Dri's mining claims are valid under the Mining Law. He further stated that the Secretary of the Interior supports local involvement and, since the federal Record of Decision had been withdrawn, the local permit application, which covered both private and public lands, could only be denied or approved by Washoe County. Both you and counsel were concerned that the filing of such a brief could imply that the government is taking sides in favor of Oil-Dri, and that any referral determination should be screened from a trust perspective. You specifically indicated that if this matter were to be referred to the Department of Justice, you would make it known at the National Indian Congress in San Diego this November that the Solicitor places mining over trust interests. Your counsel concluded by stating that to file an *amicus* brief is discretionary, and that to weigh-in after the issues have been fully briefed would clearly send a message that mining interests were being chosen over tribal concerns. He further concluded that he did not understand the damage that would accrue to the Bureau if it did not participate in this litigation, and wondered why the Solicitor's Office would recommend such a filing.

Counsel for Great Basin Mine Watch expressed environmental concerns, including air and water quality impacts, and asked that the Solicitor's representative visit the site and report her observations to Washington, which she did. In addition, your counsel requested that, should the decision be made to move forward with the filing, that information should be conveyed to you in advance of the actual filing.

We have considered the concerns expressed by you and your attorneys. We nevertheless have concluded that the concerns expressed are outweighed by the interests of the Department in ensuring that U.S. District Courts in various jurisdictions (including Nevada as well as California) are fully aware of the Department's concern that local government may not usurp the Bureau's authority to manage Mining Law activities on federal lands within the Bureau's jurisdiction and that rulings on such issues should be consistent. The Solicitor has not recommended and the Department has not sought to intervene on either side of the dispute between Oil-Dri and the County. Rather, the Department has chosen to recommend that the Department of Justice take a more neutral approach by filing an *amicus curiae* ("friend of the court") brief. It is unfortunate that the attorneys for the Colony, in supporting the position taken by the County, have advanced positions and asserted legal interpretations that are in opposition to the Department's interest and contrary to established law. The position taken by the Department here is fully consistent with the Department's position where it intervened in other litigation opposing similar action taken by Los Angeles County. The Department of Justice is considering what action to take in the Oil-Dri matter. We will advise you of their decision.

I trust that the above summary of the meeting is accurate. Should you have any further concerns, or if you wish to clarify any statement made above, please do not hesitate to contact the Bureau, or to have your counsel contact Ms. Niebauer. Thank you again for meeting with us on such an expedited basis.

Sincerely,



Robert V. Abbey
State Director, Nevada

cc:

Patrick Smith, Smith & Doherty P.L.L.C.
Roger Flynn, Western Mining Action Project
Erica Niebauer, SAC/SOL/DOI
Fred Ferguson, HQ/SOL/DOI
Peter Schaumberg, HQ/SOL/DOI