

Via Facsimile (202/208-6956) and Federal Express



October 22, 2002

The Honorable Gale A. Norton
Secretary of Interior
U.S. Department of Interior
1849 C Street, NW, Room 7229
Washington, D.C. 20240

Dear Madam Norton:

I am writing you about an urgent matter involving the proposed Oil-Dri mining and processing project proposed immediately adjacent to our tribal homeland in Hungry Valley, on the outskirts of Reno, Nevada. As our legal trustee, we are requesting that you dissuade the BLM from filing an amicus brief in the pending litigation in direct opposition to our legal position and that of Washoe County.

The Oil-Dri Corporation, the world's largest manufacturer of kitty litter, has filed for mining claims under the Mining Act of 1872 that nearly surround our small reservation lands on three sides. Oil-Dri proposes to mine these clays and build a processing plant adjacent to Indian and non-Indian residential communities, and haul the finished product through a residential area in North Reno.

In addition to filing a plan of operations with the BLM, Oil-Dri filed for a special use permit with Washoe County to construct this project which straddles federal and private lands. The project is proposed in the last open space valley remaining adjacent to the sprawling Reno-Sparks metropolitan area—one of the fastest growing areas in the Nation.

Because of serious environmental impacts and threats to the public health and safety of residential communities (Indian and non-Indian) and overwhelming opposition from local community groups, the Washoe County Commissioners voted to deny the special use permit. Oil-Dri responded by suing the county in federal court in Nevada seeking monetary damages for the denial. The Colony has intervened in the suit, and the matter is fully briefed before the Court.

In an October 16, 2002 letter, the BLM informed the Colony that it intends to move forward with an amicus brief in this litigation challenging Washoe County's authority to regulate mining operations on federal land under the 1872 Mining Act. Prior to receiving this letter, in meetings with the BLM, we argued strongly against the BLM filing this amicus brief. In its October 16 letter, the BLM informs us that the Justice Department "is considering what action to take in the Oil-Dri matter."

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As Secretary of the Interior, you have a trust responsibility to safeguard our lands and protect our small tribe. The BLM should not be the final word on this. At the very least, the Department of Interior should stay neutral on this issue given the devastating injuries to our trust resources and the degradation of the health and quality of life of our tribal community that may result from this project.

You have pledged to afford greater respect and deference to local control in the West. This is especially appropriate in this instance where major components of the proposed project (the processing plant and haul road) are located on private lands—where the 1872 Mining Act has no application. Neither the State of Nevada nor Washoe County (nor the Colony) are against mining. In this instance, however, a generally pro-mining county like Washoe County concluded that Oil-Dri's project (as proposed on private and federal lands) posed too great a risk to the public health and safety. Oil-Dri should defend *for itself* its decision to file for this particular special use permit and proposed project configuration. Our Tribe strongly objects to and resents our legal trustee joining this suit to support Oil-Dri in its argument of federal preemption of local control.

The voluminous administrative record documents potentially devastating consequences to our tribal trust resources. For example, our tribal municipal well is within one-half mile of the proposed North Mine and the groundwater table has already dropped substantially in the Hungry Valley basin in recent years. Replacement water wells (also within one-half mile of the proposed North Mine) show that groundwater is already high in arsenic. The Oil-Dri project could worsen the existing arsenic concentrations in the Hungry Valley aquifer.

In addition to gambling with our water supply, the Oil-Dri project will emit substantial air pollution (fine particulates) that will blow on to our residential community—which already experiences a higher rate of respiratory diseases than other Washoe County residents.

The decision on whether the Interior Department chooses this case to file an amicus brief is a discretionary matter. Given your trust responsibilities to our Tribe, the unique circumstances involving the private/federal land aspect of this project, and the uncommon alliance between local governments and our Tribe, we respectfully request that you inform the Justice Department that it should not pursue this matter on behalf of the Department of Interior.

Sincerely,


Arlan D. Melendez
Tribal Chairman

cc: The Honorable John Ashcroft
The Honorable Neal McCaleb
National Congress of American Indians