



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

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

Name: Great Basin Resource Watch c/o Cavanaugh-Bill Law Offices, LLC

Physical Address: 401 Railroad Street, Suite 307, Elko, NV 89801

E-mail Address: julie@cblawoffices.org

Telephone Number: (775) 753-4357

Signature: 

Representative capacity (if applicable): Attorney

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.

See Attachment 4.

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

See Attachment 5.

Date of Request: 11/16/2018.

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

Mt Hope Water Pollution Control Permit Renewal, 2018 Appeal
WPCP Number NEV2008106
Attachment to Question 4:

A. Final decision was affected by other error of law - GBRW asserts that the Division is in error in determining that there is no degradation of waters of the State. - NAC 445A.2268, NAC 445A.121, NAC 445A.424-425, NAC 445A.429, NAC 445A.465, NRS 445A.305, NRS 445A.335, NRS 445A.405, NRS 445A.415,

B. Final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record due to the long-term pollution issue – the Division cannot ensure closure due to an inadequate mine plan. - NAC 445A.446 (NAC 445A.429-431), NRS 445A.425, NRS 445A.465

C. Final decision was arbitrary or capricious or characterized by abuse of discretion - There has been no exemption to Eureka Moly LLC. - NAC 445A.424

D. Final decision was arbitrary or capricious or characterized by abuse of discretion - The Division arbitrarily determined that the Pit Lake will cause no harm. - NAC 445A.429

Mt Hope Water Pollution Control Permit Renewal, 2018 Appeal
WPCP Number NEV2008106
Attachment to Question 5:

A. Final decision was affected by other error of law - GBRW asserts that the Division is in error in determining that there is no degradation of waters of the State. - NAC 445A.2268, NAC 445A.121, NAC 445A.424-425, NAC 445A.429, NAC 445A.465, NRS 445A.305, NRS 445A.335, NRS 445A.405, NRS 445A.415,

The surface water definition used by the Division is inadequate and does not adequately define pit lakes. Pit lakes qualify as polluted water and are “waters of the state.” The legislative declaration is to “maintain the quality of water in the state consistent with ...” and “encourage and promote the use of methods of waste collection and pollution control for all significant sources of water pollution (including point and diffuse sources).” To allow water to be degraded in pit lakes is erroneous and especially that pollution control other than treatment after the fact is the only approach.

Hence, GBRW disagrees with the Division’s separation of the term surface water from groundwater in regard to pit lakes. Pit lake water is both groundwater and surface water, and is going to be a large proportion (unknown at this point) of surface area of water bodies in Nevada. The water in pit lakes will certainly be a greater volume than all of the human made lakes completely within the borders of Nevada, so at the least, is a major resource that is likely to be degraded for certain municipal, industrial and agricultural uses. Pit lake water is in intimate contact with ground water, and will, at the very least, diffuse back and forth with groundwater. This factor has long been ignored by the NDEP, and it is time for the NDEP to recognize that pit lake water is indeed both ground water and surface water. To state something different is simply not consistent with the facts. When water enters a pit lake from a groundwater source, that water is most often already degraded, since it will have passed through strata that previously contained air during dewatering. The NDEP has no basis for indicating that the water entering a pit lake has not be already degraded. In this view, groundwater has already been degraded by the mining operation. And to suggest that the very large volume of pit lake water has no beneficial use is similar to saying that this water is useless and is mostly waste. Pit lake water is indeed both groundwater and surface water and should be regulated for the beneficial uses it does have. If it has no beneficial uses, that would suggest that a water purveyor could simply pump that water out of the pit lake and use it for whatever purpose they would desire. This is certainly not the case and demonstrates that even though it has not been designated, it is not a waste at all. Ultimately, the Nevada State Engineer and the Nevada Division of Environmental Protection should define what surface water and ground water really is in coherent and consistent definition.

B. Final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record due to the long-term pollution issue – the Division cannot ensure closure due to an inadequate mine plan. - NAC 445A.446 (NAC 445A.429-431), NRS 445A.425, NRS 445A.465

The Division’s Response 11 states: “While the Division agrees with GBRW that more available data up front is best, the Division has determined that the available data set is adequate for initial characterization of the Mount Hope Project. The iterative nature of the Water Pollution Control Permit allows for the continued collection of samples and the ability to modify the Waste Rock Management Plan, Pit Lake Study, etc. as the mine develops and more information is acquired and the site specific nature of the deposit becomes better understood.”

GBRW understands that improvements can be made as more data is acquired at the site. However, there is ample evidence that significant pollution will occur under the existing mine plan. Eureka County required a long-term funding mechanism to management pollution at the mine, which also indicates difficulty

in establishing closure of the mine. We also quote EPA's assessment, which is consistent with our opinion. The Division has a number of "Schedule of Compliance" items related to gathering additional data. We think these should be done first before renewal, especially since the mine has not been developed yet. Nevada regulation (NAC 445A.446) states, "Permanent closure is complete when the requirements contained in NAC 445A.429, 445A.430 and 445A.431 have been achieved." NAC 445A.429 requires that, "The holder of the permit must institute appropriate procedures to ensure that all mined areas do not release contaminants that have the potential to degrade the waters of the State." GBRW seriously questions whether Eureka Moly can "ensure" that there will be no release of contaminants when there is no end-date for active treatment. Analysis of conditions at the site and plan to manage toxic drainage continues to be inadequate.

C. Final decision was arbitrary or capricious or characterized by abuse of discretion - There has been no exemption to Eureka Moly LLC. - NAC 445A.424

The Division has not granted any exemption to EML (Eureka Moly LLC) under NAC 445A.424 that would allow EML to create a facility that will degrade groundwater.

D. Final decision was arbitrary or capricious or characterized by abuse of discretion - The Division arbitrarily determined that the Pit Lake will cause no harm. - NAC 445A.429

In its Comment to Response 20, the Division uses the Profile III "standards," however, these are not codified standards, but rather guidance action levels. The NDEP has allowed pit lakes to form that will contain degraded water based on assumptions within the SLERA that are unreliable. The NDEP has long used a very tortuous excuse for allowing pit lakes to form, and utilizes assumptions that are unreliable, at best. First of all, the pit lake predictions are notoriously unreliable, and the history of predicting pit lakes has not been adequate even for sulfate, which is one of the two primary constituents for determining the acidity of the pit lake. Sulfur is intimately tied to sulfide minerals, which very often contain trace elements that can contribute to toxicity, and thus the risk assessment of the pit lake. If geochemical modelers are not determining sulfate release correctly, the other metals are certainly going to be generally of limited viability. On top of these highly unreliable pit lake predictions, ecological risk assessments are used which rely on animal species of which many/most are not present in the Great Basin. Thus, we are asked to believe that a very unreliable risk assessment based on unreliable pit lake water quality estimates can conclude with a reasonable level of uncertainty that these pit lakes do not even have the *potential* to adversely affect wild life, including migratory birds. If these unreliable numbers suggest that the pit lake water quality may affect livestock, the attempt is made to artificially reduce that risk by suggesting that only a portion of the water from the pit lake will be consumed by the livestock. While this may be the case for livestock, it is unlikely to be the case for avian species that may well rely on the pit lake for their entire water supply.

The Division also cites the SLERA and determines that the risk is below their action threshold. The Division then goes on to state: "In addition, these studies and assessments shall address all available data, alternative pit lake or backfill scenarios, and mitigations to reduce ecological risk and the potential to degrade groundwater, as applicable." GBRW asserts that SLERA is not a meaningful analysis and thus any decision based on this assessment is baseless and therefore, arbitrary and capricious. Further, the Division states in response 20 quoted above procedures to "reduce" the "potential to degrade groundwater," thus the Division admits that a "potential to degrade groundwater" exists. Therefore, the Division's decision is an incorrect application of the law contained in **NAC 445A.429**.