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8 **BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION**

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10 In the Matter of:

11 GREAT BASIN RESOURCE WATCH'S  
12 APPEAL OF NOTICE OF DECISION TO  
13 RENEW WATER POLLUTION  
14 CONTROL PERMIT NEV2008106 TO  
EUREKA MOLY, LLC FOR THE  
MOUNT HOPE PROJECT

**NEVADA DIVISION OF  
ENVIRONMENTAL  
PROTECTION'S  
RESPONSE BRIEF**

15 The Nevada Division of Environmental Protection ("NDEP"), by and through legal  
16 counsel, hereby files its Response Brief to Great Basin Resource Watch's ("GBRW")  
17 Opening Brief. This Brief is based on the attached Memorandum of Points and  
18 Authorities and all pleadings on file, the exhibits attached hereto, as well as all oral  
19 arguments the State Environmental Commission will hear on this matter.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 The Mount Hope Project (the "Project") satisfies all Nevada statutory and  
23 regulatory standards governing water quality. First, NAC 445A.429 provides that a pit  
24 lake: (1) shall not have the potential to degrade the groundwaters of the State and (2)  
25 shall not have the potential to affect adversely the health of human, terrestrial or avian  
26 life. NAC 445A.429 effectively balances the protection of public health and terrestrial life  
27 with the State's economic interest in the continued operation of the mining industry. As  
28 detailed below, NDEP has received and evaluated many studies and a substantial amount

1 of data collected in and around the Mount Hope Project, and based on this information,  
2 concluded that the future Mount Hope pit lake will not degrade the State's groundwater,  
3 nor will it adversely affect the health of humans or animals. The same holds true for the  
4 potentially acid generating waste rock facility and the low grade ore stockpile which will  
5 be placed on low permeability subgrade that is designed to repel and drain stormwater  
6 filtering through these piles, collect it in synthetically lined drainages, and convey it  
7 through those drainages to ponds, where the water will be pooled and evaporated without  
8 impacting human health or the environment.

9 GBRW's brief manipulates the law and facts to justify its conclusions about the  
10 Project's protectiveness. First, GBRW has decided that pit lakes must meet drinking  
11 water standards. To meet that result, GBRW has misapplied and misread Nevada  
12 statutes and regulations pertaining to water pollution control. As a result, its critiques of  
13 NDEP's decision-making process are flawed both legally and factually. Second, the waste  
14 rock disposal facility and low grade ore stock pile will not cause groundwater degradation.  
15 On this point, GBRW's brief and its comments on the permit fail to establish that the  
16 engineering containment under, around and over (after mining has concluded) the  
17 potentially acid generating waste-rock and low grade ore, which is specifically designed to  
18 prevent this circumstance from occurring, will not and cannot perform as designed both  
19 during and after mining. In sum, a finding in GBRW's favor would completely upend the  
20 regulatory authority governing Nevada's hardrock mining industry, give undue validation  
21 to its unsubstantiated concerns, and call into question the viability of the mining industry  
22 now and into the future.

23 The SEC does not need to decide these issues now, as it should dismiss GBRW's  
24 appeal, without prejudice, based on the ripeness doctrine. In considering whether an  
25 agency's decision is ripe for review, an adjudicatory body like the SEC should consider  
26 whether it "would benefit from further factual development of the issues presented." *Ohio*  
27 *Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 733 (1998). While NDEP considers the  
28 current data and modeling analyses substantial and credible evidence to support a

1 decision to permit Eureka Moly, LLC (“E/M”) to mine past the groundwater table, NDEP  
2 acknowledges that its conclusions will only become more certain with data collection  
3 conducted after mining of the Project has commenced. As a result, NDEP will stipulate to  
4 revise the Permit to require E/M to obtain written NDEP approval of a revised  
5 groundwater flow model, predictive pit lake model, and ecological risk assessment, prior  
6 to E/M mining below the pre-dewatering groundwater elevation. This revised Permit item  
7 will include an additional public comment period and process for appeal. For these  
8 reasons, NDEP requests that the SEC allow for further factual development to occur by  
9 dismissing this appeal, without prejudice, and allowing GBRW to revisit this issue, if  
10 needed, prior to E/M mining below the groundwater table.

11 For these reasons, NDEP requests the following relief:

12 1. That the SEC convene a pre-hearing conference to decide NDEP’s request to  
13 dismiss this appeal, without prejudice, under the ripeness doctrine.

14 2. Alternatively, if the SEC decides at the pre-hearing conference that this  
15 matter is ripe for adjudication, that the SEC find NDEP’s decision to renew E/M’s permit  
16 is supported by substantial and credible evidence and complies with all applicable Nevada  
17 statutes and regulations.

18 **II. STATEMENT OF FACTS**

19 **A. Mount Hope Mine Project**

20 The Mount Hope Project covers approximately 8,253 acres on both private land  
21 (261 acres) and public land (7992 acres) in west-central Eureka County, Nevada. The  
22 Project area intersects with three hydrologic basins: Kobeh Valley to the south and west,  
23 Diamond Valley to the east and Pine Valley to the north. The Project, once operational, is  
24 expected to mine up 29 million tons of molybdenum ore per year with a mine lifespan of  
25 approximately 44-years. The molybdenum ore will be extracted from a single open pit.

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1           **B. Original Permit**

2           Eureka Moly, LLC, a joint venture between General Moly, Inc. (80%) and POS  
3 Minerals Corporation (20%), filed an application to permit the Project on July 11, 2008.  
4 E/M revised the permit application twice on November 9, 2009 and August 20, 2012.  
5 Thereafter, NDEP provided public notice and held a public hearing in Eureka, Nevada  
6 regarding E/M's permit application. As part of this process, NDEP received comments  
7 from GBRW. *See* GBRW's 2012 Comment Letter attached as **Exhibit 1**. GBRW  
8 commented on the need for additional site monitoring wells, possible improvements to the  
9 pit lake study, and on the proximity of a proposed stormwater channel to the Potentially  
10 Acid Generating (PAG) Waste Rock Disposal Facility (WRDF). *Id.* In addition to  
11 responding to these comments, NDEP added an item to the Permit's Schedule of  
12 Compliance (SOC)<sup>1</sup> requiring E/M to install 7 additional monitoring wells. *See* 2012  
13 Permit Notice of Decision attached as **Exhibit 2** at NDEP 25. GBRW did not comment on  
14 any of the other provisions of the Permit, nor did it appeal NDEP's decision to issue the  
15 Permit. On December 13, 2012, NDEP's decision to grant the Permit became final.

16           **C. Permit Renewal**

17           Pursuant to NAC 445A.409(2) and 445A.420, the term of E/M's original permit was  
18 five years. E/M applied for renewal of the Project permit on August 2, 2017. The renewal  
19 application, due to the lack of mine development over the previous five years, was nearly  
20 identical to the original permit application. NDEP conducted a public comment period for  
21 E/M's renewal application. In response to E/M's renewed permit application, GBRW  
22 submitted a 27-page comment letter on June 23, 2018. The letter offers GBRW's concerns  
23 regarding the level of characterization, modeling approaches, monitoring well locations,  
24 mined materials management, and NDEP's interpretation of the regulations it  
25 administers. *See* GBRW's June 23, 2018 letter attached as **Exhibit 3**.

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28           <sup>1</sup> A SOC sets out specific studies or data collection efforts that the permittee must complete to maintain compliance with the permit terms. SOC items are firm requirements in the permit with a specified timeframe for completion.

1 NDEP reviewed and evaluated GBRW's belated concerns and made a number of  
2 modifications to the SOC and continuing investigations in the renewed permit.  
3 See NDEP's November 6, 2018 Notice of Decision attached as **Exhibit 4**. Specifically,  
4 NDEP's modifications were as follows: First, E/M is required to construct an additional  
5 monitoring well downgradient of the non-potentially acid generating waste rock disposal  
6 facility (non-PAG WRDF) for the purpose of obtaining additional background (pre-mining)  
7 and post-mining water quality data to detect any impact to water quality in that area  
8 from mining operations. *Id.* at NDEP 71. Second, E/M is required to revise the waste rock  
9 management plan to provide additional characterization of portions of the final pit wall.  
10 *Id.* at NDEP 75-76. These characterization data will increase certainty in the pit lake  
11 model's final water quality predictions. Third, to address GBRW's concern about the  
12 engineering design of the SP-7 conveyance system<sup>2</sup> and its potential to collapse under the  
13 non-PAG WRDF, E/M is required to submit a revised design that will provide a more  
14 robust conveyance system that will ensure flows are conveyed as intended beneath the  
15 non-PAG WRDF footprint and exit at the nearest natural drainage. *Id.* at NDEP 80.  
16 Fourth, E/M is required to implement a study that will measure the diffusion of oxygen in  
17 the pit wall rock, which GBRW hypothesizes may impact water quality in the pit lake. *Id.*  
18 at NDEP 82.

19 NDEP issued the Notice of Decision for the Mount Hope Project Permit renewal on  
20 November 6, 2018. The Permit became effective on November 21, 2018. See 2018 Permit,  
21 NEV2008106 attached as **Exhibit 5**. Despite NDEP addressing most of GBRW's  
22 concerns, GBRW filed the present appeal on November 16, 2018.

23 **D. Water Quality is Not Expected to Harm Human, Terrestrial or Avian**  
24 **Life.**

25 The factual matters at issue in this appeal concern the water quality and ecological  
26 risk in and around the pit both during and after E/M's mining of the molybdenum deposit.  
27 NDEP's decision to grant the original and renewed permit is based on studies that were  
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<sup>2</sup> SP-7 is a spring that will be covered up by the non-PAG WRDF. The conveyance system is designed to collect and transport spring water under the non-PAG WRDF.

1 conducted in and around the Project which generated data and information for input into  
2 PHREEQC – a publicly available and widely accepted United States Geological Survey  
3 computer model. The PHREEQC model provides NDEP with predictive quantitative  
4 results of water quality in and around the pit.

5 **1. Substantial data has been and will be collected in and around**  
6 **the Project which will increasing the certainty of the modeling**  
7 **results.**

8 **a. Rock characterization data**

9 E/M conducted a geochemical investigation, which collected samples from drilled  
10 bore holes to determine the subsurface characteristics of the rock or rocks in and around  
11 the Project. A total of 3,846 field and laboratory tests and analyses<sup>3</sup> were conducted on  
12 the rock samples taken from bore holes to determine their physical and chemical  
13 properties. *See* Waste Rock and Pit Wall Geochemical Characterization attached as  
14 **Exhibit 6** at NDEP 146. Of particular relevance to this appeal, the tests and analyses  
15 were utilized to identify the areas where waste rock<sup>4</sup> and pit wall rock were PAG  
16 (potentially acid generating) or non-PAG and where this rock had the potential to release  
17 metals. These data and information were inputted in the PHREEQC model to determine  
18 whether the waste rock extracted from the pit and the pit walls had the potential to  
19 degrade waters above state action levels. With this information, NDEP formed  
20 management and closure strategies to ensure protection of waters of the State during  
21 operations and closure of the mining facility.

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24 <sup>3</sup> The characterization report consisted of 250 contact tests, 250 multi-elemental  
25 analyses, 137 ABA analysis, 137 NAG tests, 137 MWMPs analyzed for Profile I  
26 constituent release, 29 kinetic tests, and 2,902 additional total metals analyses performed  
27 on historic pulps.

28 <sup>4</sup> Waste rock is rock extracted from the ground that does not contain the target  
mineral in concentrations that would be economic to recover. Waste rock may be  
deposited on the surface with or without engineered containment depending on its  
potential to degrade waters of the State (e.g., on a prepared subgrade with additional  
high-density polyethylene liner in the drainage channels, as discussed below), or  
redeposited in a previously mined pit.

1                                   **b.     Hydrologic data**

2           E/M also conducted a hydrologic investigation of the Project to determine the  
3 background (pre-mining) water balance<sup>5</sup>, groundwater gradient<sup>6</sup>, hydraulic conductivity<sup>7</sup>,  
4 and water quality within the Project.<sup>8</sup> Groundwater elevations and gradients in the  
5 Project area were evaluated using data collected between 1900 and 2007 from nearly 400  
6 wells located in Antelope, Diamond, Kobeh, Pine, South Monitor, and North Monitor  
7 valleys. Several wells were sampled to determine alluvial and bedrock background  
8 groundwater quality in Kobeh and Diamond valleys. The analyses indicate that Kobeh  
9 Valley background alluvial water exceeds the NDEP Profile I reference values (prescribed  
10 standards for drinking water established by NAC 445A.424, 445A.4525 and 445A.455) for  
11 arsenic and manganese. The Diamond Valley background alluvial water exceeds NDEP  
12 Profile I reference values for manganese, sulfate and total dissolved solids (TDS). In  
13 addition, Kobeh Valley background bedrock groundwater exceeds NDEP Profile I  
14 reference values for manganese and Diamond Valley background bedrock water exceeds  
15 for fluoride, pH, aluminum, arsenic, iron and manganese. *See* 2018 Permit Renewal Fact  
16 Sheet attached as **Exhibit 7** at NDEP 257.

17           The original draft permit required E/M to monitor a network of 19 wells during  
18 mining operations and compare the water samples in these wells to background  
19 conditions for the purpose of determining whether mine operations were impacting water  
20 quality. Even though NDEP had originally determined that this well network was  
21 vertically, geographically, and spatially oriented to cover all potential impacts from the  
22 mine’s process components<sup>9</sup>, NDEP still required E/M to install seven additional  
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24           <sup>5</sup> A water balance determines how much water is flowing into and out of the Project  
25 area, or a particular component of the Project (e.g. pit lake), on an annual basis.

26           <sup>6</sup> The groundwater gradient determines the direction of groundwater flow.

27           <sup>7</sup> Hydraulic conductivity determines the speed at which groundwater flows.

28           <sup>8</sup> The majority of the Project lies in the Kobeh Valley with smaller portions of the  
project lying in the Diamond Valley and Pine Valley basins.

<sup>9</sup> A process component is a distinct portion of a constructed facility which is a point  
source. NAC 445A.375. A point source is any discernible, confined and discrete  
conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well,

1 monitoring wells in response to GBRW's 2012 comments (plus two additional wells  
2 previously approved but not previously incorporated into the Permit). *See* 2012 Permit  
3 Notice of Decision attached as Exhibit 2 at NDEP 25. During the 2018 Permit renewal  
4 public comment period, GBRW commented again on this same monitoring well network,  
5 and, in response to those comments, NDEP required E/M to install an additional well.  
6 *See* NDEP's 2018 Notice of Decision attached as Exhibit 4 at NDEP 71. The data that  
7 have been collected from these wells and will be collected from these wells during mining  
8 operations will be inputted into the PHREEQC model to increase the certainty of its  
9 modeling results.

10 **c. Data that will be collected after mining commences.**

11 The 2018 Permit Renewal requires E/M to submit a revised Waste Rock  
12 Management Plan (WRMP) within 180 days after it initiates the Project's construction  
13 schedule. *See* the Permit attached as Exhibit 5 at NDEP 92. This updated WRMP is  
14 required to include a characterization plan that outlines sampling and analytical  
15 procedures for portions of the final pit wall that have not been characterized. The data  
16 collected from this characterization plan will be inputted into the PHREEQC model to  
17 further characterize the expected pit lake water quality.

18 **2. Pit lake water will not mix with surrounding groundwater.**

19 NDEP has reviewed the groundwater flow model and the PHREEQC model results  
20 which are based on the above referenced data collected in and around the Project. The  
21 model results indicate that the Mount Hope pit lake is expected to be a hydrologic sink.  
22 In other words, the volume of water that is expected to flow into the pit lake from the  
23 surrounding aquifer and precipitation after mining is complete<sup>10</sup> is expected to be equal to  
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25 discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel  
26 or other floating craft, from which pollutants are or may be discharged. NRS 445A.395.

27 <sup>10</sup> The model simulations assume that NDEP will authorize E/M to mine beneath  
28 the water table. As discussed more fully below, E/M must obtain NDEP's approval before  
it mines beneath the water table.



1 the evaporation from the surface of the pit lake at equilibrium.<sup>11</sup> Groundwater levels  
2 around the perimeter of the mine pit are expected to remain higher in elevation than the  
3 water elevation in the pit lake; therefore, water in the pit lake will not mix with  
4 surrounding groundwater due to the downward gradient from the surrounding  
5 groundwater table to the surface of the pit lake. See July 2010 Hydrology and Numerical  
6 Modeling Executive Summary attached as **Exhibit 8** at NDEP 266.

7 **3. Pit lake geochemistry will not harm human health or the**  
8 **environment.**

9 The PHREEQC model was also used to predict pit lake water chemistry at specific  
10 time steps after mining has completed and water is permitted to flow into the pit from the  
11 surrounding aquifer. During the early filling period, up to approximately 50 years after  
12 mine dewatering has stopped, the chemistry of the pit lake is expected to be  
13 predominately influenced by groundwater and pit wall runoff inflows. See Final Pit Lake  
14 Geochemistry Report attached as **Exhibit 9** at NDEP 300. During later periods of filling,  
15 the pit lake water quality will be most affected by evapoconcentration.<sup>12</sup> *Id.* According to  
16 the model, the constituents of concern that are predicted to exceed NDEP Profile III  
17 reference values<sup>13</sup> are fluoride and cadmium. *Id.* at NDEP 330. The pH of the pit lake is  
18 predicted to be neutral to slightly alkaline, with a pH of approximately 7.7 su, throughout  
19 the pit filling to 200 years post-closure. *Id.*

20 E/M performed an ecological risk assessment of the Mount Hope Pit Lake. This  
21 evaluation used the predicted pit lake water quality result from the PHREEQC model  
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23 <sup>11</sup> The modeling results assume the current climate conditions persist over the life  
24 of the model simulation period, which is 1,613 years into the future (33 years of  
dewatering, followed by 1,580 years of post-dewatering pit lake development).

25 <sup>12</sup> Evapoconcentration is increased concentration of constituents due to evaporation  
of pit lake water.

26 <sup>13</sup> NDEP developed Profile III reference values in 2014 to represent toxicity  
27 screening levels for pit lakes. The 2010 pit lake geochemistry report stated that the pit  
28 lake would exceed Profile I reference values for fluoride, antimony, cadmium, and  
manganese, which is incorrect, because Profile I reference values apply only to  
groundwater, not to pit lake water. Only fluoride and cadmium exceed Profile III  
reference values.

1 and followed guidance provided by the U.S. Department of the Interior, BLM *Ecological*  
2 *Risk Guidelines for Open Pit Mine Lakes in Nevada* (2008). See Mount Hope Project Pit  
3 Lake Screening-Level Ecological Risk Assessment (SLERA) attached as **Exhibit 10**.<sup>14</sup>  
4 The SLERA's results found that concentrations of constituents of concern would not  
5 exceed species exposure concentration levels for avian or terrestrial life, except cadmium  
6 and fluoride for livestock. However, since the pit lake water is not expected to be  
7 accessible or desirable for livestock to use as their primary watering source, no adverse  
8 effects are expected to livestock.<sup>15</sup> *Id.* at NDEP 389-396. Ultimately, the SLERA  
9 concluded that "even using the most sensitive receptors (i.e. lowest toxicity criteria), the  
10 results of the assessment indicate that the most likely predicted water quality of the  
11 modeled future pit lake water at the Mount Hope Project would represent a low risk  
12 (HQ<1) to wildlife, terrestrial and avian, that are exposed to it via direct ingestion." *Id.*  
13 at NDEP 391-392. A hazard quotient (HQ) of less than 1 is the lowest achievable risk  
14 criteria in the SLERA. *Id.* at NDEP 390.

15 **4. Pit lake water quality is not an issue during this permit cycle.**

16 As part of this review process, NDEP will stipulate to revise Schedule of  
17 Compliance (SOC) item 6 in the Permit to require E/M to obtain written NDEP approval  
18 of a revised groundwater flow model, predictive pit lake model, and ecological risk  
19 assessment, prior to E/M mining below the pre-dewatering groundwater elevation. These  
20 revised studies shall be submitted as a permit renewal or major modification to the  
21 permit, which will include an additional public comment period and an opportunity for  
22 appeal.

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25 <sup>14</sup> This ecological risk assessment was performed prior to the NDEP's creation and  
26 implementation of the Profile III Reference Values. NDEP reassessed exposure risks to  
27 human, terrestrial, and avian life using the Profile III reference values. Notably, the  
28 results of the analysis did not change the outcome of the assessment (NDEP-BMRR Pit  
Lake Tables and Mount Hope Screening Ecological Risk Assessment).

<sup>15</sup> The hazard quotient (HQ) for livestock was less than one, which means that no  
adverse health effects are expected occur.

1           **E. Operations and Closure Plans Are Protective of Groundwater**  
2           **Resources.**

3           E/M's mill and associated structures, waste rock disposal facilities (WRDF), and  
4 low grade ore (LGO) stockpiles are designed to prevent contaminants from being  
5 discharged to surface waters and/or groundwaters of the State. The design criteria for  
6 these process components are described by Nevada regulation and require NDEP to apply  
7 best engineering judgment to determine if more or less protection is warranted.

8                   **1. The mill and associated buildings**

9           The mill and associated structures will be built southeast of the mine pit and are  
10 engineered to prevent any spills of contaminants from leaking to the ground and  
11 groundwater. More specifically, the mill and its associated structures will be constructed  
12 with reinforced concrete floors and stemwalls (for secondary containment, tanks and  
13 piping for primary containment), which will have embedded flexible water stops at all  
14 joints (e.g., in the joint between the floor and stemwall). The floors will drain fluids to  
15 embedded concrete floor sumps, which are designed to contain 110% of a maximum  
16 potential release from the largest tank within the mill. Other mill components use double-  
17 lined synthetic liners constructed of high-density polyethylene (HDPE) to prevent any  
18 process solution from leaking to the ground and groundwater.

19           Tailings generated in the mill will be pumped to the synthetically lined South  
20 Tailings Storage Facility (TSF). The base of the TSF will be constructed with a system of  
21 drainage blankets and pipes that will collect and transport any remaining solution in the  
22 tailings to double-lined storage ponds, which will have a leak detection system. The  
23 solution collected in these ponds will be pumped back to the mill for reuse. *See* 2018  
24 Permit Renewal Fact Sheet attached as Exhibit 7 at NDEP 249-256.

25                   **2. Waste rock and ore management**

26           The Project is expected to produce approximately 450 million tons of PAG waste  
27 rock, 1,300 million tons of non-PAG waste rock, and 263 million tons of Low Grade Ore.  
28

1 The Low Grade Ore (LGO) stockpile will be constructed on the east side of the open  
2 pit and will store all LGO produced during the life of the mine. The LGO stockpile  
3 foundation will be constructed with a minimum 1-foot-thick prepared subgrade having a  
4 low coefficient of permeability<sup>16</sup> (less than or equal to ( $\leq$ )  $1 \times 10^{-6}$  centimeters per second  
5 (cm/s) or 1/1,000,000 cm/s). Water repelled by and drained from the subbase of the LGO  
6 stockpile will be collected by foundation drains in synthetically lined natural drainages at  
7 the base of the LGO stockpile and conveyed to an HDPE (high density polyethylene) lined  
8 collection channel located along the east side of the stockpile, which will convey the water  
9 to the single HDPE-lined stormwater collection pond.

10 E/M's Waste Rock Management Plan (WRMP) provides a procedure for  
11 characterizing potentially acid generating (PAG) and non-PAG waste-rock. According to  
12 the rock characterization data, the total sulfur content in waste rock is the best indicator  
13 of the rock's ability to generate acid. During mining, every tenth blast hole in a pattern  
14 will be analyzed for sulfide (total sulfur) content. Waste rock taken from these areas with  
15 sulfide content greater than or equal to ( $\geq$ ) 0.3 percent total weight will be classified and  
16 managed as PAG and waste rock with a sulfide content less than or equal to ( $\leq$ ) 0.3  
17 weight percent will be classified and managed as non-PAG. 2018 Permit Renewal Fact  
18 Sheet attached as Exhibit 7 at 10-11.

19 The PAG Waste Rock Disposal Facility (WRDF) will be constructed on the north  
20 side of the open pit and will have a foundation with a minimum 1-foot-thick engineered  
21 subgrade demonstrating a coefficient of permeability less than or equal to  $1 \times 10^{-5}$  or  
22 1/100,000 cm/s (approximately 10 feet/year). Foundation drains will be installed in  
23 synthetically lined natural drainages at the base of the PAG WRDF on the low  
24 permeability subgrade, which will collect and convey precipitation drainage from the  
25 waste rock to the single-lined stormwater collection evaporation ponds.

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28 <sup>16</sup> The coefficient of permeability measures the capacity of soil to transmit water. If  
soil has a very low coefficient of permeability there is very little to no room for water to  
move through the soil.

1 The non-PAG WRDF will be constructed along the west and south sides of the open  
2 pit. The non-PAG WRDF will rest on the land surface which will have been grubbed, or  
3 cleared of vegetation, and graded. Rock berms and temporary sediment control structures  
4 will be placed as necessary around the WRDF to control stormwater runoff prior to  
5 placement of waste rock directly on graded land surface. Rock characterization data  
6 indicate that the non-PAG waste rock will not have the potential to degrade waters of the  
7 State. *See* 2018 Permit Renewal Fact Sheet attached as Exhibit 7 at NDEP 240-243.

8 At closure, the PAG WRDF and the LGO (if not processed) will be regraded and  
9 closure covers will be placed to minimize meteoric infiltration into the waste rock and  
10 LGO. SOC Item 2 of the Permit requires the construction of a cover test facility to ensure  
11 that the designed closure cover is protective of waters of the State. The non-PAG WRDF  
12 will be regraded at closure and covered with growth media (e.g. vegetation). Depending on  
13 the cover study results, NDEP may require additional cover requirements.

14 Due to the provided engineering containment, waste rock management strategies,  
15 and subsequent closure covers, the NDEP does not anticipate perpetual treatment of  
16 solution from the LGO Stockpile, non-PAG WRDF, or the PAG WRDF.

### 17 **3. Tentative plan for permanent closure.**

18 The pit will be allowed to fill with water after mining is completed. Based on the  
19 predicted pit lake water quality and the low risk to human, terrestrial and avian life  
20 determined by the screening level ecological risk assessment, no pit lake treatment or  
21 other mitigation is proposed in the Tentative Plan for Permanent Closure (TPPC). The  
22 ecological risk assessment does state that if “the predicted or actual chemistry of the pit  
23 lake changes from that used in this assessment, further analysis, and possibly mitigation  
24 may be warranted.” *See* SLERA attached as Exhibit 10 at NDEP 397. The ecological risk  
25 assessment must be updated with every Permit renewal, and the TPPC would then be  
26 updated, as appropriate based on any changes to the ecological risk assessment findings.  
27 *See* 2018 Permit attached as Exhibit 5 at NDEP 104.

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1           **F.     The Mine Bond Provides Financial Assurance for Mine Reclamation**  
2           **and Closure.**

3           Nevada regulations require E/M to post financial assurance to provide for  
4 reclamation of the Project. The anticipated surety for the Project is expected to be  
5 approximately \$156,796,147.00. This bond amount was calculated by the Nevada  
6 Standard Reclamation Cost Estimator (NSRCE)<sup>17</sup> and the Process Fluid Cost Estimator  
7 (PFCE).

8           However, as of the time of this appeal, the project has not been developed into an  
9 actual operating mine. The United States Bureau of Land Management (BLM) currently  
10 holds a surety bond in the amount of \$2,802,009.00, which covers the cost of revegetating  
11 any land that is cleared in preparation of mine construction. Pursuant to BLM's Surety  
12 Decision letter, dated February 15, 2019, E/M must increase this surety to \$3,093,686.00  
13 by April 15, 2019. The increase in surety accounts for inflation in construction costs since  
14 2012. Prior to creating further disturbance, E/M must provide additional surety to cover  
15 all related reclamation costs.

16           In 2012, BLM also generated a Long Term Monitoring and Maintenance (LTMM)  
17 Cost Estimate for the Mount Hope Project (Project # 123-91709) to address long term  
18 monitoring and maintenance costs for the project. However, on March 20, 2019, BLM  
19 terminated the Long Term Trust Agreement upon E/M's request. BLM agreed that, given  
20 the current project status, it was no longer necessary to retain the Long Term Trust  
21 Agreement. Once E/M makes a decision to resume plans to construct the facility, this  
22 BLM instrument will be replaced by a similar one. The Long Term Funding Mechanism  
23 will provide full funding of LTMM activities, which include groundwater monitoring, PAG  
24 WRDF monitoring, pit lake analytical water sample costs, evaporation pond replacement,  
25 and fencing annual maintenance costs.

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28           <sup>17</sup> SRCE is a software developed as a cooperative effort between NDEP, U.S.  
Bureau of Land Management, and the Nevada Mining Association.

1 **III. LEGAL ANALYSIS**

2 **A. Legal Standard**

3 GBRW's Appeal is based on NAC 445B.890(2), which provides that "any person  
4 aggrieved by a final decision of [NDEP] may . . . appeal the decision." See NAC  
5 445B.890(1). The subsections upon which GBRW bases its appeal require GBRW to show  
6 that: "(d) the final decision was affected by other error of law (e) the final decision was  
7 clearly erroneous in view of the reliable, probative and substantial evidence on the  
8 whole record; or (f) the final decision was arbitrary or capricious or characterized by  
9 abuse of discretion." See NAC 445B.890(2)(e)-(f).

10 NAC 445B.890(2) establishes such high standards of proof because "an  
11 administrative agency charged with the duty of administering an act is impliedly clothed  
12 with the power to construe the relevant laws and set necessary precedent to  
13 administrative action, and the construction placed on a statute by the agency charged  
14 with the duty of administering it is entitled to deference." *Nev. Pub. Emps. Ret. Bd. v.*  
15 *Smith*, 129 Nev. 618, 624 (2013).

16 "On questions of fact, an administrative agency's decision is given deference;  
17 therefore, a reviewing court must confine its inquiry to determining whether the record  
18 provides substantial evidence supporting the administrative agency's decision." *State*  
19 *Indus. Ins. Sys. v. Bokelman*, 113 Nev. 1116, 1119, 946 P.2d 179, 181 (1997). "An agency's  
20 conclusions of law which are closely related to the agency's view of the facts are entitled to  
21 deference." *Id.* "Substantial evidence exists if a reasonable person could find the evidence  
22 adequate to support the agency's conclusion." *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780,  
23 784 (2013); see also *White Pine Cty. Sch. Dist. v. Benavidez*, No. 70908, 2017 WL 4217042,  
24 at \*1 (Nev. App. Sept. 15, 2017) ("substantial evidence is evidence which a reasonable  
25 mind would accept as adequate to support a conclusion").

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1           **B.     The SEC Should Dismiss GBRW’s Appeal Without Prejudice Based**  
2           **on the Ripeness Doctrine.**

3     “In deciding whether an agency's decision is, or is not, ripe for judicial review, the Court  
4     ... must consider: (1) whether delayed review would cause hardship to the plaintiffs; (2)  
5     whether judicial intervention would inappropriately interfere with further administrative  
6     action; and (3) whether the courts would benefit from further factual development of the  
7     issues presented.” *Pub. Lands for the People, Inc. v. U.S. Dep't of Agric.*, 733 F. Supp. 2d  
8     1172, 1184 (E.D. Cal. 2010). The ripeness doctrine serves “to prevent the courts, through  
9     avoidance of premature adjudication, from entangling themselves in abstract  
10    disagreements over administrative policies, and also to protect the agencies from judicial  
11    interference until an administrative decision has been formalized and its effects felt in a  
12    concrete way by the challenging parties.” *Abbott Laboratories v. Gardner*, 387 U.S. 136,  
13    148-49 (1967). In considering whether a case is ripe, a court must evaluate “the fitness of  
14    the issues for judicial decision and the hardship to the parties of withholding court  
15    consideration.” *Id.* at 149. “A claim is fit for decision if the issues raised are primarily  
16    legal, do not require further factual development, and the challenged action is final.” *Id.*  
17    “In interpreting the finality requirement, a court looks to whether  
18    the agency action represents the final administrative word to insure that judicial review  
19    will not interfere with the agency's decision-making process.” *Winter v. California Med.*  
20    *Review, Inc.*, 900 F.2d 1322, 1325 (9th Cir. 1989)

21           This case will benefit from further factual development after mining has  
22    commenced. The renewed permit requires E/M to submit a revised Waste Rock  
23    Management Plan (WRMP) within 180 days after it initiates the Project’s construction  
24    schedule. This updated WRMP must include a characterization plan that outlines  
25    sampling and analytical procedures for portions of the final pit wall that have not been  
26    characterized. The data collected from these samples will be inputted into PHREEQC  
27    model to further characterize the expected pit lake water quality after mining is  
28    completed. In addition, as part of this appeal process, NDEP will stipulate to revise



1 Schedule of Compliance item 6 in the Permit to require E/M to obtain written NDEP  
2 approval of a revised groundwater flow model, predictive pit lake model, and ecological  
3 risk assessment, prior to E/M mining below the groundwater table. These revised studies  
4 will be submitted as a permit renewal or major modification to the permit, which will  
5 include an additional public comment period and possible appeal of any NDEP decision to  
6 allow E/M to continue mining below the groundwater table.

7 While NDEP considers the current data and modeling analyses substantial and  
8 credible evidence to support a decision to permit E/M to mine past the groundwater table,  
9 NDEP acknowledges that its conclusions will only become more certain with data  
10 collection conducted after mining of the Project has commenced. Clearly, GBRW cannot  
11 claim prejudice from such a decision since the crux of its argument is that E/M has not  
12 collected enough data and its modeling is too uncertain for NDEP to permit mining past  
13 the groundwater table. Such concerns are clearly remedied by NDEP's proposal. Further,  
14 to the extent GBRW argues that NDEP will be less inclined to deny E/M's permit renewal  
15 or major modification after mining has commenced, such argument is clearly speculative,  
16 and, in any case, the administrative appeals process obviates these concerns.

17 For these reasons, NDEP requests that the SEC set a pre-trial hearing on this  
18 issue and dismiss GBRW appeal, without prejudice, on this basis.

19 **C. GBRW Has Misinterpreted and Misapplied the Statutes and**  
20 **Regulations Governing Pit Lake Water Quality.**

21 When determining the validity of an administrative regulation, courts generally  
22 give "great deference" to an agency's interpretation of a statute that the agency is charged  
23 with enforcing. *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293  
24 (2000). "The agency's own interpretation of its regulation is entitled to great weight."  
25 *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1, 9 (1998).

26 GBRW incorrectly argues that a pit lake must meet drinking water quality  
27 standards. GBRW points to a myriad of statutes and regulations that apply generally to  
28 "waters of the state." However, GBRW ignores NRS 445A.520 which grants the SEC

1 power to “establish water quality standards at a level designed to protect and ensure a  
2 continuation of the designated beneficial use or uses which the Commission has  
3 determined to be applicable to each stream, segment or other body of surface water.” The  
4 term “water quality standard” is defined as “the degree of pollution of water or the  
5 physical, chemical or biological condition of water, as expressed numerically or  
6 descriptively, used for controlling the quality of water in each segment of a stream and  
7 each other body of surface water in this State.” NRS 445A.420. These two statutes allow  
8 the SEC to establish regulations specifically for the degree of degradation permissible in  
9 certain bodies of water.

10         The SEC utilized its power under NRS 445A.520 to adopt a regulation which sets  
11 the water quality standards for pit lakes. NAC 445A.429(3) provides that “bodies of water  
12 which are a result of mine pits penetrating the water table must not create an  
13 impoundment which: (a) has the potential to degrade the groundwaters of the State; or (b)  
14 has the potential to affect adversely the health of human, terrestrial or avian life.” This  
15 regulation is in line with the purpose of the water pollution control statutes, which is to  
16 “maintain the quality of the waters of the State consistent with public health and  
17 enjoyment, the propagation and protection of terrestrial and aquatic life, *the operation of*  
18 *existing industries*, the pursuit of agriculture, and *the economic development of the State.*”  
19 NRS 445A.305. NAC 445A.429 effectively balances the protection of public health and  
20 terrestrial life with the State’s economic interest in the continued operation of the mining  
21 industry.

22         Thus, under the applicable regulation, the appropriate question in this case is  
23 whether NDEP acted arbitrarily or capriciously in determining that the Mount Hope  
24 project: (1) does not have the potential to degrade the groundwaters of the State; and (2)  
25 does not have the potential to affect adversely the health of human, terrestrial or avian  
26 life.

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1           **D. The Mount Hope Project Does Not Have the Potential to Degrade**  
2           **the Groundwaters of the State or Affect Adversely the Health of**  
3           **Human, Terrestrial or Avian Life.**

4           Under Nevada law, an agency’s interpretation of its governing statutes and  
5 regulations is entitled to deference. *Taylor v. Dep’t of Health & Human Servs.*, 129 Nev.  
6 928, 930 (2013). Regulatory terms should be “construed in light of the policy and spirit of  
7 the law, and the interpretation made should avoid absurd results.” *Flamingo Paradise*  
8 *Gaming, LLC v. Chanos*, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009).

9           In the present case, the applicable regulation examines whether pit lakes have the  
10 potential to degrade groundwater or adversely affect the health of human, terrestrial or  
11 avian life. Importantly, “when we speak of a *potential* we don't mean certainty or even  
12 likelihood; but we also don't mean rank, wild speculation. The possibility must be a  
13 meaningful one.” *Meinhard v. State*, 2016 UT 12, 371 P.3d 37, 47. Therefore, NDEP’s  
14 interpretation of NAC 445A.429(3) involves examining whether there exists a meaningful  
15 possibility that the pit lake will degrade groundwater or adversely affect human or  
16 animal life.

17           GBRW, on the other hand, incorrectly claims that “any risk” whatsoever violates  
18 NAC 445A.429. *See* Opening Brief at 14:16. GBRW’s interpretation would create an  
19 absurd result, because there is *always* a mere possibility that a pit lake could adversely  
20 affect human or animal health. In fact, any body of water presents that unlikely  
21 possibility. Rather, a reasonable interpretation of the term “potential” in NAC 445A.429  
22 requires NDEP to assess whether there is a meaningful possibility that the pit lake  
23 waters will degrade the groundwater of the State or adversely affect human, terrestrial,  
24 or avian health.

25           **1. Potential of pit lake to degrade groundwater.**

26           There is no meaningful possibility that the Mount Hope pit lake will degrade  
27 groundwaters of the State. NDEP has reviewed the provided PHREEQC model results  
28 which are based on the extensive and comprehensive data collected in and around the  
Project. The model results indicate that the Mount Hope pit lake will be a hydrologic sink,

1 otherwise known as a “terminal sink.” This means that the volume of water that is  
2 expected to flow into the pit lake from the surrounding aquifer and precipitation after  
3 mining is complete is expected to equal the evaporation from the surface of the pit lake at  
4 equilibrium. In addition, groundwater levels around the perimeter of the pit lake are  
5 expected to remain higher in elevation than the water elevation in the pit lake. In other  
6 words, groundwater flows into the pit lake, and the only way for water to leave the pit  
7 lake is through evaporation. Water in the pit lake will not mix with the groundwater  
8 around the pit lake and cannot not flow up gradient away from the pit lake. *See* July 2010  
9 Hydrology and Numerical Modeling Executive Summary attached as Exhibit 8 at NDEP  
10 266.

11 GBRW argues that the Mount Hope pit lake will inherently degrade groundwaters  
12 of the State because the pit lake will eventually fill with groundwater. But such a reading  
13 is nonsensical and circular. “Bodies of water which are the result of mine pits penetrating  
14 the water table” will by their very nature become filled with groundwater. But once the  
15 water enters the pit lake, it is no longer “subsurface water comprising the zone of  
16 saturation.” *See* NAC 445A.361. Under GBRW’s interpretation, any chemical alteration in  
17 the water when it enters a pit lake would be impermissible. This would effectively mean  
18 that pit lakes could not be formed altogether. Such a result could not have been the  
19 intention of those who drafted and implemented the regulation. If NAC 445A.429  
20 intended to prevent pit lakes altogether it would have stated such. Instead, it simply  
21 sought to ensure that pit lakes do not harm the groundwater surrounding the lake, nor  
22 the human or animal life outside of the lake.

23 **2. Potential of pit lake to affect adversely the health of human, terrestrial**  
24 **or avian life.**

25 The Mount Hope pit lake will not pose any meaningful risk to human, terrestrial or  
26 avian life. E/M performed an ecological risk assessment of the Mount Hope pit lake. This  
27 evaluation used the predicted pit lake water quality result from the PHREEQC model  
28 and followed guidance provided by the *U.S. Department of the Interior, BLM Ecological*

1 *Risk Guidelines for Open Pit Mine Lakes in Nevada (2008)*. The Screening-Level Risk  
2 Assessment (SLERA) found that concentrations of constituents of concern would not  
3 exceed the screening level for avian, or terrestrial life, except cadmium and fluoride for  
4 livestock, which required a further evaluation of the results. *See* the SLERA attached as  
5 Exhibit 10.

6 The assessment utilized a number of assumptions, that when compared to more  
7 realistic assumptions, were conservative. The assessment assumed that the pit lake  
8 would be the only perennial water source in the area and that the receptor species would  
9 utilize this water as 100% of their drinking water supply. *Id.* at NDEP 396. However,  
10 since the pit lake water is not expected to be accessible or desirable to livestock for use as  
11 their primary watering source, and the use of other available water sources is more likely,  
12 no adverse effects are expected to livestock. *Id.* at NDEP 389–396. Based on the results of  
13 the SLERA, there is no meaningful possibility that the Mount Hope pit lake would affect  
14 adversely the health of human, terrestrial or avian life.

15 GBRW claims that the Final Pit Lake Geochemistry Report (“Pit Lake Model”)  
16 contains three “red flags” that suggest conceptual errors in the model design. These are  
17 not “red flags,” but rather red herrings.

18 In response to red flag #1, humidity cell testing<sup>18</sup>, a widely used and accepted  
19 method required by NDEP, was utilized to determine the rate of acid generation and  
20 variation in leachate water quality. Leachate, in this context, is water that has percolated  
21 through the pit lake wall. Here, the Pit Lake Model does not “depend on the first flush<sup>19</sup>  
22 composition measured in humidity cells” as GBRW claims, but rather utilizes three  
23 different averages of the humidity cell data to predict a range of results that put upper  
24 and lower bounds on the expected pit lake chemistry.

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27 <sup>18</sup> Humidity cell testing simulates and accelerates chemical weathering rates and  
28 measures the release of chemical constituents from rock samples collected at the mine  
site.

<sup>19</sup> First flush composition is the initial flush of constituents from a humidity cell.

1 Red flag #2 criticizes the Pit Lake Model for not incorporating a time element in pit  
2 wall solute leaching. This is not correct. The Pit Lake Model implicitly includes time by  
3 averaging three distinguishable stages of humidity cell testing that are typically  
4 observed. During the first stage, readily available metals and solutes are released  
5 resulting in the “first flush”. During the second stage, the release of metals and solutes  
6 may increase or decrease, depending on the acid and buffering capacity of the sample.  
7 During the final or late stage, either acidity or buffering capacity dominates resulting in  
8 acidic or neutral chemistry. The timing of these three distinguishable stages varies with  
9 each sample, hence the use of averages. Mount Hope developed averages of these three  
10 distinguishable stages in HCT testing to predict the early, average, and late stage  
11 chemistry of the Mount Hope pit lake. As discussed above, Mount Hope final pit lake  
12 chemistry is predicted to be neutral.

13 Lastly, red flag #3 claims that “there is no indication that the model tracks mass  
14 balance of sulfide minerals<sup>20</sup> in wall rock.” The Pit Lake Model does not track sulfide, but  
15 it actually goes one step further. It conservatively incorporates the assumption that an  
16 unlimited supply of sulfide is available for reaction in the pit high wall. This is a highly  
17 conservative assumption, because, in reality, the sulfide minerals in the pit wall will  
18 either be depleted through time or become coated and unavailable for reaction.

19 Since the Model used three different types of averaging, as noted above, including  
20 an average of the late time results from the humidity cells as a worst case scenario, and  
21 because the model also conservatively determined PAG and non-PAG material based on  
22 extrapolation of the outermost borehole to the final pit shell, NDEP has determined that  
23 the Model’s predictions on pit lake water quality are conservative and appropriate until it  
24 can be updated with additional site characterization and monitoring data.

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28 <sup>20</sup> Sulfide minerals have the potential to generate acid, but the extent of this acid generation potential varies greatly and needs to be determined by laboratory analysis.

1                   **3. Potential of acid generating (PAG) waster rock disposal**  
2                   **facilities (WRDF) and low grade ore (LGO) stockpiles to**  
3                   **degrade groundwater.**

4                   E/M's design of the PAG WRDF and the LGO stockpile are protective of  
5 groundwater. In particular, both of these process components will be built on subgrades  
6 designed to repel and channel<sup>21</sup> meteoric water filtering through these piles to  
7 evaporation ponds. On this point, GBRW's brief fails to offer evidence to suggest that the  
8 subgrade containment, drainage, and pond system will not operate as designed, given the  
9 preferential flow path for this water will be horizontal as opposed to vertical, the depth to  
10 groundwater where these process components will be placed, the potential for natural  
11 attenuation of constituents in soil, and the engineered cover for the PAG WRDF and LGO  
12 stockpile (if not processed), which could include low permeability compact material,  
13 vegetation, and an impermeable synthetic liner, if needed.

14                   An expansion of PAG WRDF and LGO will also require engineered containment to  
15 protect against releases of contaminants. GBRW speculates that an expansion of the PAG  
16 WRDF may impact two springs, SP-3 and SP-4, due to the proximity of the expanded  
17 footprint to these springs. However, proximity alone is not determinative of this issue.  
18 The expanded PAG WRDF will be 350 feet cross-gradient of spring SP-3 and  
19 downgradient of spring SP-4, so, the springs will not be impacted due to surface  
20 containment of meteoric water, which will drain downgradient and away from these  
21 springs. For these reasons, GBRW's concerns regarding these process components are  
22 either unfounded or unsubstantiated.

23                   **E. Financial Assurance Will Ensure Mine Closure.**

24                   NAC 519A.350 will require E/M to post a surety with NDEP or BLM to ensure all  
25 areas disturbed by the Project will be reclaimed. The anticipated surety for the Project is  
26 expected to be approximately \$156,796,147.00. The bond must be posted prior to mining

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27                   <sup>21</sup> The PAG WRDF and LGO Stockpile subgrades must be 1-foot-thick and  
28 demonstrate coefficients of permeability of less than or equal ( $\leq$ )  $1 \times 10^{-5}$  or 1/100,000  
cm/s (approximately 10 feet/year) ( $\leq$ )  $1 \times 10^{-6}$  centimeters per second (cm/s) or 1/1,000,000  
cm/s), respectively and incorporate drainage systems.

1 and, thereafter, updated at least every three years to ensure sufficient funding exists for  
2 the Project's reclamation plan should E/M become insolvent or otherwise cease to exist  
3 after mining has commenced. See NRS 519A.210(5) (requiring a surety as a part of the  
4 application for permit); NAC 519A.380 (providing for review of the surety every 3 years  
5 after the effective date of the permit).

6 In addition, E/M will be required, once mining commences, to provide BLM with a  
7 surety for long-term monitoring and maintenance after mine closure. Such activities will  
8 include groundwater monitoring, PAG WRDF monitoring, pit lake analytical water  
9 sample costs, evaporation pond replacement and fencing annual maintenance costs.

10 In sum, no mining will take place at the Project unless and until NDEP receives  
11 sufficient financial assurance to cover all costs to reclaim the Project after mining has  
12 commenced.

#### 13 **IV. CONCLUSION**

14 For these reasons, NDEP requests the following relief:

15 1. That the SEC convene a pre-hearing conference to decide NDEP's request to  
16 dismiss this appeal, without prejudice, under the ripeness doctrine.

17 2. Alternatively, if the SEC decides at the pre-hearing conference that this  
18 matter is ripe for adjudication, that the SEC find NDEP's decision to renew E/M's permit  
19 is supported by substantial and credible evidence and complies with all applicable Nevada  
20 statutes and regulations.

21 DATED this 28th day of March, 2019.

22 AARON D. FORD  
23 Attorney General

24 By: /s/ Daniel P. Nubel  
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Environmental Protection*



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the State of Nevada, Office of the  
3 Attorney General, and on this 28th day of March, 2019, I served a copy of the foregoing,  
4 NEVADA DIVISION OF ENVIRONMENTAL PROTECTION’S RESPONSE BRIEF, via  
5 email to:

6 Val King  
7 Executive Secretary  
8 State of Nevada  
9 State Environmental Commission  
Email: vking@ndep.nv.gov

10 Julie Cavanaugh-Bill  
11 CAVANAUGH-BILL LAW OFFICES, LLC  
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16 /s/ Daniel Nubel  
17 Daniel Nubel  
18 State of Nevada,  
19 Office of the Attorney General  
20  
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**INDEX OF EXHIBITS**

<b>EXHIBIT No.</b>	<b>EXHIBIT DESCRIPTION</b>	<b>NUMBER OF PAGES</b>	<b>BATES STAMPED PAGES</b>
1	2012 Great Basin Resource Watch Comment Letter	7	P 00001 – P 00007
2	2012 Nevada Division of Environmental Protection Permit Notice of Decision	34	P 00008 – P 00041
3	2018 Great Basin Resource Watch Comment Letter	27	P 00042 – P 00068
4	2018 Nevada Division of Environmental Protection Permit Notice of Decision	21	P 00069 – P 00089
5	2018 Renewed Permit NEV2008106	23	P 00090 – P 00112
6	2008 General Moly Waste Rock and Pit Wall Geochemical Characterization Report	121	P 00113 – P 00233
7	2018 Permit Renewal Fact Sheet	27	P 00234 – P 00260
8	2010 Hydrogeology and Numerical Modeling Executive Summary	11	P 00261 – P 00271
9	2010 Eureka Moly Final Pit Lake Geochemistry Report	84	P 00272 – P 00355
10	2010 General Moly Mount Hope Project Pit Lake Screening-Level Ecological Risk Assessment	48	P 00356 – P 00403