

Tribes attack BLM for broken trust over mines

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MISSOULA -- An attorney for the Fort Belknap Tribes argued in federal court Monday that the Bureau of Land Management has broken its trust obligation to the tribes in its permitting and oversight of the Zortman-Landusky gold mines.

"Not even the most basic requirements were followed by the federal government," Mike Axline, an attorney for the Western Environmental Law Center, told federal Judge Donald Molloy.

The Fort Belknap Tribes sued the BLM and two other federal agencies in 2000, saying the government neglected its duties to protect the tribe's natural resources and historic sacred lands in its dealings with the now-defunct mines.

But a federal attorney argued Monday that the BLM followed state and federal laws in regulating the mines, which are on public and private property adjacent to the reservation's southern border.

"The (BLM) has taken great strides and spent millions of dollars to stem the source of pollution that the tribe is concerned about," said John Martin, an attorney with the Department of Justice.

The hearing was held at the request of both sides, which asked Molloy to issue a judgement instead of going to trial.

Martin also asked that the other agencies named as defendants, the Bureau of Indian Affairs and the Indian Health Service, be dropped from the suit.

The judge is expected to issue a decision based on Monday's arguments within the next several months.

Axline did not specify what damages the tribe is seeking. He suggested a round of settlement meetings if Molloy decides in the tribe's favor.

Axline argued Monday that the BLM failed to use its full power to protect the Fort Belknap Reservation from environmental damage from the mining operation, which used a heap leach cyanide technique to extract gold from the Little Rocky Mountains.

The mines' operator, the Pegasus Gold Corp., went bankrupt in 1998, leaving behind arsenic and other toxins, hills of waste rock and exposed mountainsides whose rock generates highly acidic runoff.

Contaminated water from the site will have to be treated for as long as 80 years.

Attending the hearing were at least 20 tribal members, including elders, community college students and staff, and employees from the tribes' environmental protection office.

Axline argued that the BLM shirked its trust duties to the tribe and directly violated several environmental laws.

The BLM permitted Pegasus Gold Corp. to expand the mines on 21 occasions over 15 years and failed to consult the tribes about the expansions, a breach of its trust responsibility, Axline said.

What's more, the entire Little Rockies Mountain range is nominated for inclusion in the National Register of Historic Places, making the agency's failures there a violation of the National Historic Preservation Act, he said.

The tribe's traditional sun dance ceremonies are held in the Little People's Creek area just downstream from where it flows off the mine site on the southern end of the reservation.

"Blasting at the mine would often interrupt those sun dance ceremonies," Axline said. "Children during the sun dance ceremony played in that water right at the reservation's edge."

In later years, the BLM halted mining for four days each year during the sun dance.

But Axline said that only shows "how meager" the BLM's attempts to fulfill their trust responsibility to the tribe have been.

He also said the BLM violated the National Environmental Policy Act by failing to prepare an Environmental Impact Statement for the site until 1996. The violation of NEPA also is a violation of the Federal Land Policy Management Act, he said.

The BLM says that, according to case law, the tribe's argument that the agency violated environmental regulations is moot because it has since satisfied NEPA requirements.

The BLM already has addressed environmental threats to tribal land, Martin said.

The state and federal government have spent almost \$30 million moving earth, lining the heap-leach cyanide pits and other measures to clean up or seal in contamination at the mine site, he said. The reclamation project is basically complete.

The tribe was extensively involved in the reclamation plan, on which it signed off, Martin said.

He added that when concerns about acidic runoff first arose at the site in 1992, the BLM issued a press release and held a meeting with the tribal council a month later.

Martin said a long administrative record shows that the BLM aggressively monitored the mining operation.

"It's imply untrue that the BLM slept on this site," Martin said.

What's more, water flowing from the mine site onto the reservation does not violate state drinking water standards, Martin said.

"There are no impacts to tribal resources as a result of the Zortman Mine," he told Molloy. "...It's hard to see what remedy the court could grant when there is no actual impact to the tribe from the Zortman Mine."

The Landusky mine site, which is closer to the reservation, is of greater concern to the tribes.

Tests taken in 2003 showed that levels of iron, manganese, arsenic and cadmium are increasing in the upper reaches of the Swift Gulch drainage below Landusky.

Although those contaminants aren't increasing where the water crosses the reservation boundary, sulfate levels have increased, which the tribe says is an indicator of acidic runoff from the mine site.

The state and the BLM are conducting tests to determine how much of that acidity is natural. Drought also could have influenced the higher acidity, said Scott Haight, mineral resource specialist with the BLM's Lewistown office.

Linings installed in the mine pit floor next to Swift Gulch should stop any new contaminated runoff from flowing into the drainage, Haight said.

But Ben Speakthunder, chairman of the Fort Belknap Indian Community Council, isn't satisfied with the remediation efforts.

"The government's arguments as far as Swift Gulch are pretty weak," he said after Monday's hearing.

The tribe's research shows contamination coming down Swift Gulch is increasing and will only get worse, he said.

And although the damaged land is off the reservation, "that whole area is an ancestral land," with cultural value to the tribes, Speakthunder said.

Catherine Halver said she was satisfied that the judge heard the tribe's arguments at Monday's proceeding.

Thirty years ago, Halver helped found the Island Mountain Protectors group to fight environmental damage at the mines.

Back then, "nobody could give us any answers as to what the long-term impacts were going to be," she said. "Hopefully today we will see good results. In the last 30 years, it has been nothing but a constant fight."

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