

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MONTANORE MINERALS
CORPORATION,
Plaintiff-Appellee,

v.

ARNOLD BAKIE; OPTIMA, INC.;
FRANK DUVAL,
Defendants-Appellants,

and

EASEMENTS AND RIGHTS OF WAY
UNDER, THROUGH AND ACROSS
THOSE CERTAIN UNPATENTED LODE
MINING CLAIMS LOCATED IN THE
NE 1/4 OF SECTION 15, TOWNSHIP
27 NORTH, RANGE 31 WEST,
LINCOLN COUNTY, MONTANA AND
IDENTIFIED AS POPS 12, POPS 13,
POPS 14 AND POPS 15; UNKNOWN
OWNERS, and all other persons,
unknown, claiming or who might
claim any right, title, estate, or
interest in or lien or encumbrance
the unpatented lode mining claims
described above or any cloud upon
title thereto, whether such claim or
possible claim be present,
Defendants.

Nos. 15-35707
15-35753

D.C. No.
9:13-cv-00133-
DLC

ORDER

Filed October 18, 2017

Before: DOROTHY W. NELSON, MILAN D. SMITH,
JR., and MORGAN CHRISTEN, Circuit Judges.

ORDER

The opinion, filed on August 16, 2017, is amended as follows: On page 15, line 13, a footnote is added following <§ 70-30-304(1),> which reads: <Unless a jury is expressly waived, MCA Section 70-30-304(1) provides that appeals from the compensation decision in this type of action shall be heard by a jury. The district court acknowledged this provision, but ruled: “Regardless of whether the Defendants choose to appeal this order and seek a trial by jury, the Court has concluded that judgment should be entered in favor of Montanore at this time, thereby obviating the need for a jury trial in this Court.”>.

With the foregoing amendment, Appellee and Cross-Appellant Montanore Minerals Corporations’s petition for panel rehearing, filed August 30, 2017, is DENIED. Judge M. Smith and Judge Christen vote to deny the petition for rehearing en banc, and Judge D.W. Nelson so recommends. The full court has been advised of the petition for rehearing en banc, and no judge requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc, filed the same date, is DENIED. No future petitions shall be entertained.