

**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.

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### **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.