



Matthew Dolphay

Partner
406.896.4628
Billings
MHDolphay@hollandhart.com

MT Supreme Court Greenlights First New Copper Mine in Decades

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In a momentous decision last week, the Montana Supreme Court affirmed the Montana Department of Environmental Quality's (MDEQ) issuance of a mine operating permit to Tintina Montana¹ for the Black Butte Copper Project, rejecting the environmental groups' legal challenges, ending the litigation, and allowing Tintina to move forward with mining.² Located in central Montana, the mine will be Montana's first new copper mine in decades. The mine is projected to employ approximately 240 full-time employees, contractors, and associated workers and produce an estimated 440 tons of copper concentrate each day.

Holland & Hart represented Tintina throughout the almost 10-year permitting and litigation journey that involved challenges by environmental groups during the MDEQ permitting process, in state district court, and on appeal (where we worked with Dale Schowengerdt of Landmark Law PLLC) to the Montana Supreme Court.

Background of Project

In 2015, Tintina submitted its application for a mine operating permit to MDEQ. As part of the mine plan, Tintina proposed a "zero-failure" tailings impoundment that utilizes cement in the tailings to further ensure the tailings remain non-flowable in the extremely unlikely event of an embankment failure.

After a comprehensive five-year permitting process during the Bullock Administration, including an extensive Environmental Impact Statement, MDEQ issued a Record of Decision approving the project in 2020. The agency's administrative record stands at nearly 90,000 pages of testimony, information, and expert analysis. Then, environmental groups challenged MDEQ's approval on six grounds, including allegations that the cement content in the tailings would not ensure the tailings remained non-flowable.

Litigation and Montana Supreme Court Decision

The district court agreed in full with the environmental groups' claims, partially vacating the permit. Both Tintina and MDEQ appealed the district court's decision. In a 5-2 decision, the Montana Supreme Court rejected all of the district court's legal conclusions and reinstated MDEQ's approval of the mine operating permit. On the tailings impoundment challenge, the Court found the record clearly demonstrated that the impoundment's design exceeds the strenuous safety and stability requirements imposed under Montana law, even absent the cement in the tailings. The Court

further concluded that the "record contains substantial evidence to support DEQ's determination that the surface tailings would form a stable, non-flowable mass," affirming DEQ's finding regarding the impoundment's zero-failure feature.

Implications

It is estimated that more than 300 new mines could be needed in the United States over the next decade to meet the increasing demand for critical minerals essential for the shift to renewable energy sources.³ Throughout the permitting process and litigation, Tintina emphasized the importance of mining copper for the manufacturing of inputs for the shift to renewable energy technology. By greenlighting the Black Butte Copper Mine project to develop domestic sources of copper, the Montana Supreme Court's decision allows Tintina to help decrease the nation's dependency on imported critical minerals, an important issue of national security.

¹ Tintina Montana is a subsidiary of Sandfire Resources America Inc.

² A separate, different challenge by environmental groups regarding a beneficial use water permit remains pending, but the mine now has all permits to proceed with mining.

³ See Benchmark Mineral Intelligence estimate available at <https://source.benchmarkminerals.com/article/more-than-300-new-mines-required-to-meet-battery-demand-by-2035>.

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