



Enviros Urge 9th Circ. To Overturn Uranium Mine Ruling

By Caroline Simson

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(April 28, 2015, 2:06 PM ET) -- Environmental groups suing to halt a uranium mining project have joined the Havasupai Tribe in urging the Ninth Circuit to reverse a district court ruling that the U.S. Forest Service was not required to conduct further environmental review for the project to resume.

The Grand Canyon Trust, the Center for Biological Diversity and the Sierra Club on Monday filed a notice of appeal and said they intended to challenge an Arizona federal judge's April 7 ruling stating that renewed operations at the Canyon Uranium mine, located near a sacred tribal site in Arizona, didn't trigger a full review under the National Environmental Policy Act or the National Historic Preservation Act.

The judge noted in the ruling that a full environmental impact statement had been conducted when the original mining plan for the site was approved in 1986. Even though surrounding land had been closed to mining in 2012 by the U.S. Department of the Interior to address threats posed by uranium mining in and around Grand Canyon National Park, the DOI had noted that it expected the Canyon mine to continue operations, according to the ruling.

Thereafter, the U.S. Forest Service had found that the mine's owner — Energy Fuels Resources Inc., a defendant intervenor in the suit — had valid existing rights on the mining claims.

The plaintiffs had claimed that because the withdrawal necessitated the valid existing rights determination, it was therefore a major federal action that triggered full reviews under NEPA and NHPA.

But U.S. District Judge David G. Campbell disagreed, finding that the Canyon mine project didn't require a new plan of operation and rights determination because the withdrawal didn't require the shuttering of existing mines.

The Havasupai Tribe had filed its notice of appeal on April 14 and is specifically appealing the portion of the ruling dealing with the Forest Service's alleged failure to comply with the NHPA. Several days after filing its appeal, the tribe asked the court to block any progress on the mining project while its appeal is before the Ninth Circuit.

The environmental groups' appeal, meanwhile, will focus on the Forest Service's alleged failure to comply with NEPA and its determination that Energy Fuels Resources had the rights to resume mining at the site, according to Marc Fink, internal counsel for the Center for Biological Diversity.

"The Forest Service's stubborn reliance on a 30-year-old analysis to mine deadly uranium at Grand Canyon's doorstep abandons all caution shown in the Obama administration's popular ban on new uranium mining there," said Taylor McKinnon with the Center for Biological Diversity on Tuesday.

“At stake are sacred sites and irretrievable contamination of aquifers that feed Grand Canyon’s springs. Risking aquifer pollution that would be impossible to clean up is plainly irresponsible.”

A spokesman from Energy Fuels noted on Tuesday that the company had been expecting the second appeal.

“While these activist groups follow a familiar playbook, they have unsuccessfully appealed similar rulings in the past,” he said. “It is vexing to us that these groups oppose our responsible and heavily regulated mining activities, as the uranium we mine — and nuclear energy it fuels — helps us confront two of the greatest challenges we face today: air pollution and climate change.”

The Canyon Mine is a breccia pipe uranium mine that is located six miles south of Grand Canyon National Park in the Kaibab National Forest and four miles north of Red Butte, a site of cultural and religious importance for the Havasupai and other tribes, according to court documents.

The tribe and the environmental groups filed their complaint in March 2013, saying Energy Fuels’ plans constituted a “major federal action” as defined by NEPA that required the Forest Service to perform a new environmental impact statement.

The complaint also said the service violated the National Historic Preservation Act by not performing a full review of the potential mining effect on the Red Butte area, which was designated a traditional cultural property by the federal government in 2010.

The tribe and the environmental groups are represented by Richard W. Hughes of Rothstein Donatelli Hughes Dahlstrom Schoenburg & Bienvenu LLP, Marc D. Fink of the Center for Biological Diversity, Neil Levine of the Grand Canyon Trust and Roger Flynn of the Western Mining Action Project.

The government is represented by Jared S. Pettinato of the U.S. Department of Justice.

Energy Fuels is represented by Bradley Joseph Glass and Michael K. Kennedy of Gallagher & Kennedy PA and David J. DePippo of Hunton & Williams LLP.

The case is Grand Canyon Trust et al. v. Michael Williams et al., case number 3:13-cv-08045, in the U.S. District Court for the District of Arizona.

--Additional reporting by Matt Sharp. Editing by Philip Shea.