

MINING

Feds defend contentious Ariz. copper project

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Published: Tuesday, February 2, 2021



The Rosemont Copper mine would be located in this area in Arizona. Arizona Mining Reform

The federal government in an appeals court yesterday defended the Forest Service's decision to allow a copper mining company to store waste rock on public land in Arizona.

The case before the 9th U.S. Circuit Court of Appeals could have a widespread impact on how land management agencies approach mining proposals.

The 1872 General Mining Act allows miners to stake a claim to federal land if it is open to mineral entry. The claim becomes "valid," and the miner gains occupancy rights, if the land sits atop valuable minerals.

Rosemont, a subsidiary of Canada's Hudbay Minerals Inc., has a valid claim for a copper deposit on 5,431 acres of the Coronado National Forest outside of Tucson.

But the U.S. District Court for the District of Arizona halted construction of the Rosemont copper mine in 2019. Judge James Soto found that the Forest Service had not determined claim validity for the 2,447-acre site where Rosemont plans to store 1.9 billion tons of waste rock ([Greenwire](#), Aug. 1, 2019).

Several environmental groups and Native American tribes have opposed the open-pit mine, which they say threatens endangered jaguar habitat, burial grounds and sacred sites.

Justice Department attorney Amelia Yowell told a three-judge panel yesterday that no case has addressed whether the mining law requires a valid claim for tailings storage.

"If the Service were to prohibit Rosemont from placing its waste rock and tailings on federal lands, that would unreasonably prohibit Rosemont's right to mine its large deposit," Yowell said in oral arguments.

In practice, land management agencies typically presume claims are valid because conducting validity exams would be too expensive ([*Greenwire*](#), Oct. 29, 2020).

But the validity of Rosemont's claims is irrelevant, Yowell said. Even if the Forest Service found there were no minerals at the storage site, Rosemont should be allowed to keep waste there because the land is open to mineral entry under the mining law, she said.

"The fact that these may or may not be valid mining claims makes no difference whatsoever? That's not how I read the Forest Service's analysis," said Judge William Fletcher, who was nominated by former President Clinton.

When former President Grant signed the mining law after the Civil War, it was meant to promote mineral development and westward expansion. But even as mining operations have grown larger and more sophisticated, Congress has rarely revised the law.

Judge Danielle Hunsaker, one of two judges on the panel nominated by former President Trump, tried to come to grips with applying the statute's 149-year-old language to today's mining practices.

"If our purpose and our policy is to explore and utilize valuable minerals, why would we make a system where you have to pile waste from that activity right on top of something that could be valuable?" Hunsaker said.

Heidi McIntosh, an attorney representing the Hopi, Tohono O'odham and Pascua Yaqui tribes in the case, said general support for mining shouldn't override the language in the statute.

"The bottom line is if there is no valuable mineral deposit, there is no right to occupancy," McIntosh said.

She suggested other avenues for waste rock storage. Rosemont could stake separate claims for mill sites, which are nonmineral lands often used to support mines. The company could also pursue a land exchange or work waste storage into plans for its valid claims.

The Center for Biological Diversity, Save the Scenic Santa Ritas, the Arizona Mining Reform Coalition and the Grand Canyon Chapter of the Sierra Club are also plaintiffs in the case, *Center*

for Biological Diversity v. Fish and Wildlife Service. Rosemont has also intervened on the side of the federal defendants