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Feds Ask Ninth Circuit to Approve Arizona Copper Mine Plan

[February 1, 2021](#) [BRAD POOLE](#)

The U.S. Forest Service told a federal appeals court Monday that the Rosemont Copper Co. should be allowed to put mine waste on federal land near its claim in Arizona.

The Santa Rita Mountains of Arizona. (\$1LENCE D00600D via English Wikipedia)

(CN) — A Canadian mining company should be permitted to pile waste rock on U.S. Forest Service land in Arizona near a planned open-pit copper mine, attorneys for the federal agency and the company told a Ninth Circuit appeals panel Monday.

The U.S. Service Forest Service approved placement of a tailings pile, which would cover 2,700 acres, on “open land” — land not covered by a mining claim — located two miles from the planned site of the Rosemont copper mine. But in August 2019 a federal judge [ruled](#) the agency misapplied regulations that govern where Rosemont Copper Co. can put the waste overturned the agency’s approval of the mine.

According to Department of Justice attorney Amelia Yowell, that ruling was based on a faulty interpretation of regulations and the 1872 General Mining Act, which have allowed placement of tailings on government land for more than 100 years.

“If the Service were to deny Rosemont land to store its waste rock and tailings, that would in effect prohibit Rosemont from exercising its right under the mining law,” Yowell told the panel.

A complex array of regulations allow the waste, even if it is placed off the claim, because it is an integral part of the mine operation, she said.

Julian Poon, representing Rosemont — an intervenor in the case — said the standards allowing the tailings pile are longstanding.

“We’re talking about taking a century and a half of established practice and turning it on its head,” Poon said.

The federal government’s appeal is the latest action in a lawsuit brought against it by three Native American tribes and four nonprofits. Rosemont’s Canadian parent company, Hudbay Minerals, has said the mine would produce copper for export, mainly to China. The mile-wide pit would be on a remote stretch of desert foothills on the eastern flank of the Santa Rita Mountains, about 30 miles north of the U.S.-Mexico border.

Attorneys for the plaintiffs argued Soto’s ruling was correct and that Rosemont can only place the tailings on land that contains valuable mineral deposits, which the approved spot does not have.

Heidi McIntosh, representing the tribes, said the question boils down to whether the company can permanently alter land beyond their claims.

“These are all resources that the Forest Service has the ability to protect under the Organic Act,” she told the judges.

Federal regulations only allow the mines ancillary operations on land that has underlying “valuable mineral deposits,” she said, adding that the Mining Law doesn’t address large operations like this one, because in 1872, such large mines didn’t exist.

Two of the judges — U.S. Circuit Judges William A. Fletcher and Eric D. Miller — questioned at different points during the arguments whether the current plan was the only option available where Rosemont might place the tailings. There are other options, McIntosh said.

Rosemont should be required to place the tailings on the claim, effect a land swap or buy land for it, she said.

The plaintiffs in the lawsuits include the Center for Biological Diversity, Grand Canyon Chapter of The Sierra Club, Arizona Mining Reform Coalition, Save the Scenic Santa Ritas, and the Tohono O’Odham Nation, Pascua Yaqui and Hopi tribes.

Rosemont has been planning the mile-wide pit for more than a decade. The current plan calls for a 20-year operation, but that could be extended.

The area is just across the Santa Rita range from Helvetia, the former site of numerous pick-and-shovel copper mines in the late 19th and early 20th centuries. Mining giant Phelps-Dodge maintained a small smelter in Helvetia until the 1920s, when copper prices collapsed and Helvetia became a ghost town.

U.S. Circuit Judge Danielle J. Hunsaker, a Donald Trump appointee, joined Miller, also a Trump appointee, and Fletcher, a Bill Clinton appointee, on the panel.

The panel gave no indication as to when they might rule.